

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company, and The Toledo)	Case No. 19-2121-EL-ATA
Edison Company for Approval to)	
Establish a Legacy Generation Resource)	
Rider)	

MOTION TO INTERVENE BY THE CITIZENS' UTILITY BOARD OF OHIO

Pursuant to Ohio Revised Code 4903.221 and Ohio Administrative Code 4901-1-11, the Citizens' Utility Board of Ohio ("CUB Ohio") respectfully moves to intervene in the above-captioned proceeding. As explained more thoroughly in the attached Memorandum in Support, CUB Ohio has a real and substantial interest in this case, in which the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy EDUs") have each established a Legacy Generation Resource Rider, effective January 1, 2020. These riders charge the FirstEnergy EDUs' customers for costs attributable to two coal plants operated by the Ohio Valley Electric Corporation: the Kyger Creek Generating Station in Cheshire, Ohio; and the Clifty Creek Generating Station in Madison, Indiana.

As an independent, non-profit consumer watchdog that advocates for residential and small business utility customers in Ohio, CUB Ohio has members in the service territory of each of the FirstEnergy EDUs that pay the applicable Legacy Generation Resource Rider charges. CUB Ohio therefore seeks intervention in this proceeding in order to minimize the costs to its members of supporting uneconomic coal plants that provide no ratepayer benefits, in the event that the statutory provision requiring FirstEnergy EDU customers to bear these costs is repealed or modified by the Ohio legislature. The interests of CUB Ohio are not adequately represented by any other party to this matter and its participation in this proceeding will contribute to a just

and expeditious resolution of the issues that protects the interests of Ohio residential and small business customers. Finally, CUB Ohio's participation in this docket will not unduly delay the proceeding or prejudice any other party.

CUB Ohio respectfully requests this Commission grant its motion to intervene for these reasons and those set forth in more detail in the attached Memorandum in Support.

October 1, 2020

Respectfully submitted,

/s/ Madeline Fleisher
Madeline Fleisher (0091862)
(Counsel of Record)
Dickinson Wright PLLC
150 East Gay Street, Suite 2400
Columbus, Ohio 43215
(614) 591-5474
mfleisher@dickinsonwright.com

Counsel for Citizens' Utility Board of Ohio

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**MEMORANDUM IN SUPPORT OF THE MOTION TO INTERVENE
BY THE CITIZENS' UTILITY BOARD OF OHIO**

Ohio Revised Code (“R.C.”) 4903.221 states that “[a]ny other person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding” provided the Public Utilities Commission of Ohio (“PUCO” or “Commission”) makes certain determinations. This statutory provision requires the Commission to consider four factors when presented with a motion to intervene. In addition, the Commission’s procedural rules at Ohio Administrative Code (“Ohio Adm. Code”) 4901-11-1 similarly provide that it shall consider five factors when weighing a motion to intervene. This request for intervention by the Citizens’ Utility Board of Ohio (“CUB Ohio”) satisfies all of the factors set forth in statute and rule.

Pursuant to R.C. 4903.221, the Commission must consider:

- (1) The nature and extent of the prospective intervenor’s interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings; [and]
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

R.C. 4903.221(B).

With respect to the first and second factors, CUB Ohio is an independent, non-profit consumer watchdog that advocates for residential and small business utility customers in Ohio. CUB Ohio pursues affordable and reliable utility service that leverages advanced energy technology to benefit ratepayers. CUB Ohio has members in the service territory of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy EDUs”) who have been adversely affected by the Commission’s decision in this proceeding to approve a Legacy Generation Resource Rider, effective January 1, 2020, for each of the FirstEnergy EDUs. These riders charge the FirstEnergy EDUs’ customers, including CUB Ohio’s members, for costs attributable to two coal plants operated by the Ohio Valley Electric Corporation (“OVEC”): the Kyger Creek Generating Station in Cheshire, Ohio; and the Clifty Creek Generating Station in Madison, Indiana.

The Commission approved the Legacy Generation Resource Rider tariffs establishing these OVEC coal plant charges pursuant to R.C. 4928.148, which was enacted as part of House Bill (“H.B.”) 6, a law that became effective on October 22, 2019. In July 2020, a federal grand jury indicted former Speaker of the Ohio House Larry Householder and several others in connection with an alleged racketeering conspiracy to ensure passage of H.B. 6 in return for payments of approximately \$60 million.¹ In the wake of this indictment, the Ohio General Assembly is now considering multiple bills to repeal House Bill 6.² However, the FirstEnergy

¹ U.S. Attorney’s Office for the Southern District of Ohio, Press Release, Federal grand jury indicts Ohio House Speaker enterprise in federal public corruption racketeering conspiracy involving \$60 million (July 30, 2020), *available at* <https://www.justice.gov/usao-sdoh/pr/federal-grand-jury-indicts-ohio-house-speaker-enterprise-federal-public-corruption>.

² Senate Bill 346, <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-346>; House Bill 738, <https://www.legislature.ohio.gov/legislation/legislation->

EDUs' Legacy Generation Resource Rider tariffs as approved by the Commission in this docket do not provide for refund of customer charges in the event of a repeal or modification of H.B. 6. CUB Ohio therefore has a real and substantial interest in pursuing such a refund mechanism, since its members may otherwise pay charges to support the OVEC coal plants that are not returned even if H.B. 6 and R.C. 4928.148 are repealed or modified.

With respect to the third factor, CUB Ohio's participation in this docket will not unduly delay the proceeding or prejudice any other party. The Commission has set no deadline for intervention in this docket, and there is no procedural schedule currently in place. CUB Ohio also seeks an expedited ruling of its accompanying Motion to modify the FirstEnergy EDUs' Legacy Generation Resource Riders in order to ensure swift resolution of this issue.

Finally, CUB Ohio's participation in this proceeding will contribute to a just and expeditious resolution of the issues that protects the interests of Ohio residential and small business customers. CUB Ohio is intervening to seek a minor modification to the FirstEnergy EDUs' Legacy Generation Resource Rider tariffs to provide for customer refunds should H.B. 6 be repealed or modified, a request that no other party to the case has made.

Similarly, CUB Ohio satisfies the criteria set forth in Ohio Adm. Code 4901-11-1(B):

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings;

[summary?id=GA133-HB-738](https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-738); House Bill 746,
<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-746>.

- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues; [and]
- (5) The extent to which the person's interest is represented by existing parties.

The first four factors mirror those in R.C. 4903.221, and for the same reasons as stated above, CUB Ohio meets those factors. As to the fifth, although other ratepayer groups have intervened in this docket, CUB Ohio advocates for Ohio's transition to an energy sector that utilizes advanced technology, including clean energy and energy efficiency, to provide benefits to residential and small business utility customers. The Legacy Generation Resource Riders at issue here require customers to bail out two 65-year-old coal plants – including one in Indiana – and thereby divert CUB Ohio members' funds from support for advanced, clean energy and energy efficiency in Ohio. CUB Ohio maintains that no other party can adequately represent its interests as an independent non-profit advocating on behalf of residential and small business ratepayers for a shift away from corporate bailouts and toward prudent ratepayer investment in beneficial energy technologies and demand-side resources which will reduce grid and consumer costs.

Finally, this Commission's policy is to "encourage the broadest possible participation in its proceedings." *Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry at 2 (January 14, 1986). CUB Ohio's inclusion in this proceeding will contribute to this goal of broad participation in PUCO proceedings.

Because CUB Ohio meets the criteria set forth in both R.C. 4903.221 and Ohio Adm. Code 4901-11-1, it respectfully asks this Commission to grant its motion to intervene in the above-captioned proceeding.

October 1, 2020

Respectfully submitted,

/s/ Madeline Fleisher

Madeline Fleisher (0091862)

(Counsel of Record)

Dickinson Wright PLLC

150 East Gay Street, Suite 2400

Columbus, Ohio 43215

(614) 591-5474

mfleisher@dickinsonwright.com

Counsel for Citizens' Utility Board of Ohio

CERTIFICATE OF SERVICE

The e-filing system of the Public Utilities Commission of Ohio will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons listed below via electronic mail on October 1, 2020.

/s/ Madeline Fleisher
Madeline Fleisher

ksweeney@firstenergycorp.com
John.Jones@OhioAttorneyGeneral.gov
Christopher.healey@occ.ohio.gov
Angela.obrien@occ.ohio.gov
Michael.williams@puco.ohio.gov

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Summary: Motion to Intervene by the Citizens' Utility Board of Ohio electronically filed by Ms. Madeline Fleisher on behalf of Citizens' Utility Board of Ohio