

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The	)	
Ohio Edison Company, The Cleveland	)	
Electric Illuminating Company, and The	)	Case No. 17-974-EL-UNC
Toledo Edison Company's Compliance	)	
with R.C. 4928.17 and Ohio Admin. Code	)	
Chapter 4901:1-37	)	

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**MOTION TO INTERVENE AND REQUEST FOR LEAVE TO INTERVENE OUT OF  
TIME BY THE CITIZENS' UTILITY BOARD OF OHIO**

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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 regarding an audit of compliance by the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy EDUs") with the corporate separation provisions of R.C. 4928.17 and the Companies' corporate separation plans.

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 have been adversely impacted by the enactment of House Bill 6 through the imposition of charges such as a new decoupling rider. In the last several months, former contractors of the FirstEnergy EDUs' affiliate, Energy Harbor (then FirstEnergy Solutions) have pled guilty to federal criminal violations in connection with the passage of that legislation, and the FirstEnergy EDUs' parent company FirstEnergy Corporation has publicly stated that some of its executives have violated certain FirstEnergy Corp. policies and its code of conduct, also potentially related to House Bill 6. The Public Utilities Commission of Ohio

(“Commission”) has therefore instituted a new corporate separation audit to determine whether the FirstEnergy EDUs have complied with applicable corporate separation rules and requirements during the relevant time periods. CUB Ohio therefore seeks intervention in this proceeding in order to protect the interests of its members in ensuring corporate separation compliance by the FirstEnergy EDUs and obtaining appropriate remedies for any corporate separation violations. 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.

Although the Commission initially set an intervention deadline in this docket of October 20, 2018, in an order issued on September 20, 2018, extraordinary circumstances exist sufficient to warrant a grant of intervention now pursuant to Ohio Admin. Code 4901-1-11(F). It was only in November 2020 that the Commission ordered a new and expanded corporate separation audit in this proceeding, in response to circumstances regarding the conduct of FirstEnergy contractors and employees that were not publicly known until after the original October 20, 2018 intervention deadline. In addition, CUB Ohio was not established as an organization until 2020. For both these reasons, CUB Ohio’s intervention based on the new scope of the proceeding would not have been possible as of October 20, 2018.

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

January 21, 2021

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF THE MOTION TO INTERVENE  
AND REQUEST FOR LEAVE TO INTERVENE OUT OF TIME  
BY THE CITIZENS' UTILITY BOARD OF OHIO**

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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 impacted by the enactment of House Bill 6 through the imposition of new rider charges that undercut the cost-effective deployment of advanced, clean energy in Ohio. These riders include a decoupling charge that guarantees the FirstEnergy EDUs disproportionate revenue recovery without any commensurate consumer benefits in the form of cost-effective energy efficiency programs. CUB Ohio has a real and substantial interest in determining whether FirstEnergy EDUs’ conduct in connection with the passage of House Bill 6 violated applicable corporate separation requirements, and pursuing any appropriate remedy if that was the case.

With respect to the third factor, CUB Ohio’s participation in this docket will not unduly delay the proceeding or prejudice any other party. Although the Commission set an initial intervention deadline of October 20, 2018, material facts and allegations regarding House Bill 6 did not become publicly known until summer 2020 and later, and the Commission did not issue its order requiring a new audit of the FirstEnergy EDUs’ corporate separation compliance in response to those developments until November 4, 2020. Furthermore, CUB Ohio did not exist as an organization prior to 2020 and could not have intervened in 2018 regardless. These events constitute extraordinary circumstances warranting CUB Ohio’s late intervention pursuant to

Ohio Admin. Code 4901-1-11(F). CUB Ohio does plan to comply with any applicable procedural deadlines issued in the docket in future.

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 able to provide the perspective of a non-profit consumer advocacy organization that has been actively engaged in providing accountability for any wrongdoing surrounding the enactment of House Bill 6, including through the filing of a complaint in Case No. 20-1756-EL-CSS that presents reasonable grounds to believe the FirstEnergy EDUs have violated the Commission's corporate separation rules. Accordingly, CUB Ohio is well-acquainted with facts relevant to this proceeding and prepared to pursue appropriate remedies for any actionable findings resulting from the Commission's corporate separation audit.

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;
- (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 to provide benefits to residential and small business utility customers. As part of this mission, CUB Ohio seeks accountability for utility misconduct that undercuts the deployment of innovative clean energy, including through cost-effective energy efficiency and demand-side management programs. 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 to promote regulation that utilizes advanced technology and innovation to maximize consumer benefits.

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. CUB Ohio also requests that, if necessary, the Commission allow this intervention out of time based on the extraordinary circumstances described above.

January 21, 2021

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### **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 as of January 21, 2021.

/s/ Madeline Fleisher  
Madeline Fleisher

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Summary: Motion to Intervene and Request for Leave to Intervene Out of Time by the Citizens' Utility Board of Ohio electronically filed by Ms. Madeline Fleisher on behalf of Citizens' Utility Board of Ohio