**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of the Cleveland Electric Illuminating Company for Authority to Abandon Electric Service Lines Pursuant to Ohio Revised Code Sections 4905.20 and 4905.21. | )))))) | Case No. 24-54-EL-ABN |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene[[1]](#footnote-3) in this case where Cleveland Electric Illuminating (“CEI”) seeks authority to abandon and/or withdraw its meters and electric service lines serving 242 residential consumer accounts at three apartment complexes located in Cleveland, Ohio.[[2]](#footnote-4) CEI proposes to abandon and/or withdraw the meters and electric service lines to the apartment complex residents because Nationwide Energy Partners, plans to install master-metered service and submetering equipment to resell electric service to the apartment complex residents.[[3]](#footnote-5) If CEI abandons its meters and electric service lines to these apartment complex residents, the residents will lose important rights under Ohio law that they previously enjoyed. These residents are existing customers of CEI who did not rent their apartments knowing that NEP would become their electric service provider and cause them to lose critical Ohio protections. Additionally, all

CEI consumerscould be forced to pay higher rates. That would be unreasonable and contrary to “the welfare of the public” under R.C. 4905.21.

CEI’s abandonment of meters and electric service lines to the apartment complex residents is not “reasonable,” nor is it consistent with “the welfare of the public.”[[4]](#footnote-6) OCC is filing on behalf of CEI’s more than 770,000 residential electric utility consumers. The reasons the Public Utilities Commission of Ohio (“PUCO”) should grant OCC’s Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

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Ohio Consumers’ Counsel

*/s/ Donald J. Kral*

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## MEMORANDUM IN SUPPORT

CEI has requested authority from the PUCO to abandon its meters and electric service lines serving 242 residential consumer accounts in three Cleveland, Ohio apartment complexes.[[5]](#footnote-7) CEI seeks authority to abandon the meters and service lines because the Landlord, through Nationwide Energy Partners, plans to establish master-metered service to submeter (*i.e.*, resell) electric utility service to the current apartment complex residents who had been receiving service from CEI. As customers CEI, a public utility, these customers currently receive the benefits and protections of PUCO rules and regulations on disconnections, reconnections, budget billing, XYZ.[[6]](#footnote-8)

CEI’s abandonment of electric service lines and meters will unquestionably harm the residents at the apartment complexes, who will lose the statutory protections under Ohio law they would otherwise receive from being served by a PUCO-regulated utility (CEI).[[7]](#footnote-9) These losses includes the inability to participate in the Percentage of Income Payment Plan (“PIPP”), loss of statutory protections of the Ohio Administrative Code regarding disconnections and reconnections, loss of regulated processes for resolving disputes over pricing and services, and the inability to take advantage of CEI’s budget billing plan. These residents are existing customers of CEI who had no idea they could lose these critical Ohio protections when they rented their apartments.

But the harm is not limited to just residential utility consumers at the apartment complexes. CEI’s abandonment of meters and electric service lines may adversely affect other CEI electric utility consumers, who could be forced to pay higher rates for service due to a reduced utility revenues or abandoned/stranded utility assets at the apartment complexes.

OCC has statutory authority, under R.C. Chapter 4911, to represent the interests of the more than 770,000 residential electric utility consumers of CEI, all of whom may be adversely affected if the CEI facilities are abandoned.

R.C. 4903.221 provides the standard for permissive intervention – where the PUCO may exercise discretion in ruling upon a party’s motion to intervene. That law provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding.

The interests of CEI’s residential consumers may be “adversely affected” by this case. That is especially so if they were unrepresented in a proceeding where CEI’s abandonment of meters and electric service lines to the apartment complexes could cause increases in electric utility rates. In addition, the apartment complex residents themselves will lose protections under Ohio law that they normally receive when their essential electric utility service is provided through the PUCO-regulated utility, CEI. These are

protections they expected to continue to have when they rented their apartment units. Thus, this element of the permissive intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the PUCO to consider the following criteria in ruling on permissive intervention:

(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 proceeding; and

(4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC’s interest is representing CEI’s residential consumers where CEI’s abandonment of meters and electric service lines could result in higher rates and reduced consumer protection for essential electric utility service. CEI’s residential utility consumers are already facing potentially devastating increases in costs through the pending electric security plan case in which FirstEnergy is seeking approximately $1.4 billionunder the proposed electric security plan (“ESP V”) alone.[[8]](#footnote-10) These consumer charges balloon to an astounding $6.2 billionwhen FirstEnergy’s proposed riders are included.[[9]](#footnote-11) CEI’s residential utility consumers don’t deserve even more increases. OCC’s interest is different than that of any other party and especially different than that of CEI whose advocacy includes the financial interest of stockholders.

Second, OCC’s advocacy for residential consumers will include advancing the position that under R.C. 4905.21, CEI’s abandonment would not be “reasonable,” nor would it serve “the welfare of the public.” OCC’s advocacy will further include that CEI residential utility consumers should not be forced to pay unreasonable rates for essential electric utility service while giving up rights and protections under Ohio law that they receive from CEI, the PUCO-regulated utility. OCC’s position is therefore directly related to the merits of this case, which is pending before the PUCO, the authority with regulatory control of public utilities’ rates and service quality in Ohio.

Third, OCC’s intervention will not unduly prolong or delay the proceedings. Delay in and of itself does not mean that intervention should be denied. The key consideration is whether the intervention will cause “undue delay.” Here OCC’s intervention will not cause undue delay.

OCC promptly seeks leave to intervene. The case has not progressed beyond the January 25, 2024 filing of CEI’s application. The PUCO has not issued any rulings or set a procedural schedule for its review of the application. No testimony has been filed in the case. Nor has any hearing been scheduled such that granting OCC’s intervention would delay the hearing.

OCC will attempt to avoid duplicative discovery in the proceeding. The issues OCC will raise fall clearly within the scope of the proceeding – including whether CEI’s abandonment is “reasonable” and in “the welfare of the public” - consistent with the statutory mandate of R.C. 4901.21. In addition, OCC will also use its best efforts to comply with any procedural schedule that the PUCO may adopt for this proceeding.

Further, OCC, with its longstanding expertise and experience in PUCO proceedings and consumer protection advocacy, will duly allow for the efficient processing of the case with consideration of the public interest. OCC has already intervened and filed comments in a recent case before the PUCO regarding another utility’s proposed abandonment of electric service lines in a similar situation regarding submetering.[[10]](#footnote-12) There will be no prejudice to the PUCO Staff and CEI in granting OCC intervention.

Fourth, OCC’s intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC’s interest in protecting residential consumers will lead it to examine issues fully and carefully regarding the impact of CEI’s proposed meter and electric service line abandonment on residential consumer rates.. No other party is solely focused on the needs of residential consumers and thus, there can be no equitable resolution of the factual issues in this case absent OCC’s participation. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code Rule 4901-1-11(A) which sets the standard for *intervention as of right,* mirroring Ohio Civil Rule 24(A). Under 4901:1-11(A)(2) a person shall be granted intervention as of right if it has a real and substantial interest in a proceeding and is “so situated that disposition of

the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person’s interest is adequately represented by existing parties.”

As the statutory advocate for residential utility consumers, OCC has a very real and substantial interest in this case where CEI proposes to abandon meters and electric service lines to the apartment complex residents which could impose additional costs on all CEI consumers and harm “the welfare of the public.” Disposition of this proceeding may, as a practical matter, impair or impede OCC’s ability to protect that interest where the interest is not adequately represented by existing parties. OCC should be granted intervention as of right under O.A.C. 4901-1-11(A)(2).

In addition, OCC meets the permissive intervention criteria of O.A.C. 4901-1-11(B)(1)-(4). These criteria mirror the permissive intervention criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

O.A.C. 4901-1-11(B)(5) states that the PUCO shall consider “(t)he extent to which the person’s interest is represented by existing parties.” While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it has been uniquely designated as the state representative of the interests of Ohio’s residential utility customers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed OCC’s right to intervene in PUCO proceedings, in deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in

denying OCC’s interventions and that OCC should have been granted intervention in both proceedings.[[11]](#footnote-13)

OCC meets the criteria set forth in R.C. 4903.221, O.A.C. 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential customers, the PUCO should grant OCC’s Motion to Intervene.

Respectfully submitted,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ Donald J. Kral*

Donald J. Kral (0042091)

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 **CERTIFICATE OF SERVICE**

 I hereby certify that a copy of the foregoing Motion to Intervene was served via electronic transmission upon the parties this 16th day of February 2024.

 /s/ *Donald J. Kral*

 Donald J. Kral

 Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

**SERVICE LIST**

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1. *See* R.C. Chapter 4911, R.C. 4903.221 and O.A.C. 4901-1-11. [↑](#footnote-ref-3)
2. Fulton Place Apartments on Fulton Road, Memorial Heights on Memphis Avenue and Las Colinas Apartments on Puritas Avenue (together “Wolfe Properties”). [↑](#footnote-ref-4)
3. CEI Application at ¶ 4. [↑](#footnote-ref-5)
4. R.C. 4905.21. [↑](#footnote-ref-6)
5. Wolfe Properties. [↑](#footnote-ref-7)
6. CEI Application at ¶ 4. [↑](#footnote-ref-8)
7. *See, e.g., In the Matter of the Complaint of Ohio Power Company vs. Nationwide Energy Partners,* Case No. 21-990-EL-CSS, Opinion and Order (September 6, 2023) at ¶ 224. [↑](#footnote-ref-9)
8. *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*,Case No. 23-301-EL-SSO, Application (April 5, 2023). [↑](#footnote-ref-10)
9. *Id.* [↑](#footnote-ref-11)
10. *See, e.g., In the Matter of the Application of Ohio Power Company for Authority to Abandon Electric Service Lines, Pursuant to Ohio Revised Code Sections 4905.20 and 4905.21*,Case No. 22-693-EL-ABN, Motion to Intervene and Memorandum in Support by Office of the Ohio Consumers’ Counsel (September 9, 2022), Consumer Protection Comments by Office of the Ohio Consumers’ Counsel (December 4, 2023), and Consumer Protection Reply Comments by Office of the Ohio Consumers’ Counsel (December 19, 2023). [↑](#footnote-ref-12)
11. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-13)