**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application for Establishment of a Reasonable Arrangement between Ohio Edison Company and Chestnut Commerce Center LLC. | ))))) | Case No. 24-388-EL-AEC |

**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 Chestnut Commerce Center LLC (“Chestnut”) has applied for PUCO approval of its Reasonable Arrangement Application (“Reasonable Arrangement” or “Application”).[[2]](#footnote-4) Under its proposed Reasonable Arrangement, Chestnut seeks to participate in FirstEnergy’s[[3]](#footnote-5) Non-Market Based Services Rider (“Rider NMB”) opt-out pilot program.

The Rider NMB opt-out pilot program allows some non-residential consumers to avoid paying transmission charges under Rider NMB. But that means residential utility consumers must pay more. An audit by the PUCO showed that FirstEnergy’s Rider NMB opt-out pilot program shifts *over a million dollars* per year to residential consumers who have *no choice* but to pay Rider NMB rates.[[4]](#footnote-6)

The subsidies inherent in the Rider NMB opt-out pilot program are unjust and unreasonable. The subsidies will continue to grow larger, with more cost shifting as the program is expanded to include more participants such as Chestnut. OCC is filing on behalf of FirstEnergy’s more than two million residential utility consumers. The reasons why the PUCO should grant OCC’s Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ John Finnigan*

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**MEMORANDUM IN SUPPORT**

OCC moves to intervene to protect FirstEnergy’s residential consumers from paying unreasonable or unlawful charges that could result from approval of Chestnut’s Application for a reasonable arrangement. Chestnut seeks PUCO approval to participate in FirstEnergy’s Rider NMB opt-out pilot program. Approval of the Application will mean that Chestnut will not have to pay transmission charges under FirstEnergy’s Rider NMB, which could unjustly and unreasonably shift costs to other consumers, including residential consumers.[[5]](#footnote-7)

Under Rider NMB, consumers pay for transmission charges such as Network Integration Transmission Service (“NITS”) and Regional Transmission Expansion Plan (“RTEP”) costs.[[6]](#footnote-8) Under the Rider NMB opt-out pilot program, large nonresidential customers can opt-out of Rider NMB and obtain transmission service on their own.[[7]](#footnote-9) Residential consumers cannot opt-out of Rider NMB.[[8]](#footnote-10)

A PUCO-appointed independent auditor found that the Rider NMB opt-out pilot program shifted over $1 million a year and $7.8 million during the six-year audit period to residential consumers.[[9]](#footnote-11) If the pilot program is expanded to allow other participants, such as Chestnut the cost shifting to residential consumers may increase.

When the PUCO approved the Rider NMB opt-out pilot program, the PUCO explained the program as providing an “opportunity to determine if industrial customers can obtain substantial savings by obtaining certain transmission services outside of Rider NMB *without imposing significant costs on other customers*.”[[10]](#footnote-12) Because the Rider NMB opt-out pilot program was supposed to be a pilot program, it was intended to be studied and used as a learning experience for regulatory policymaking. The PUCO should end the Rider NMB program (along with the unfair cost-shifting to residential consumers) instead of expanding it by allowing Chestnut to be served under this unfair rate.

In its Application, Chestnut states that its tenants are in the business of cryptocurrency mining.[[11]](#footnote-13) In another recent reasonable arrangement case involving a cryptocurrency mining business, PUCO Staff recommended against approval of a reasonable arrangement on the grounds that the cryptocurrency mining business:

will add material load to the grid (18 MW, nearly continuously) while employing 12 individuals at an average wage of $16.00 per hour. At this time, Staff does not believe that this level of investment justifies the use of a special rate arrangement. Further, subject to the pending outcome of FirstEnergy’s electric security plan case (Case No. 23- 301-EL-SSO), there may be transmission billing options that are similar to the Applicant’s reasonable arrangement proposal, which would make a reasonable arrangement unnecessary.[[12]](#footnote-14)

The PUCO should, consistent with its Staff recommendation, consider the number of employees and the level of investment Chestnut is committing to under its reasonable arrangement. This should provide additional support for not expanding FirstEnergy’s pilot program to include Chestnut.

OCC has authority under R.C. Chapter 4911 to represent the interests of the more than two million residential utility consumers of FirstEnergy.

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 FirstEnergy’s residential consumers may be “adversely affected” by this case where they could end up paying more transmission rates under Rider NMB if Chestnut is allowed to opt-out of paying transmission charges. 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 the residential consumers of FirstEnergy in this case involving Chestnut’s proposed Reasonable

Arrangement that could cause residential consumers to pay higher rates. This interest is different from any other party’s and especially different from Chestnut’s, which represents the interests of its principals.

Second, OCC’s advocacy for residential consumers will include, among other things, advancing concerns that residential consumers may pay more as a result of Chestnut’s participation in FirstEnergy’s Rider NMB opt-out pilot program. OCC’s position is therefore directly related to the merits of this case 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 has promptly sought leave to intervene. Chestnut’s Application was filed on April 15, 2024. The case has not progressed beyond the filing of the Application. OCC’s motion to intervene and comments are due to be filed within 20 days of the filing of the Application.[[13]](#footnote-15) No hearing has been scheduled such that granting intervention would delay the hearing. The PUCO Staff has not filed its Review and Recommendation regarding this proposed Reasonable Arrangement. No comments have been filed by any parties and the PUCO has not issued any dispositive rulings.

OCC will attempt to avoid duplicative discovery in the proceeding. The issues OCC will raise fall clearly within the scope of the proceeding—whether FirstEnergy’s residential consumers will be subject to increased rates as a result of the Reasonable Arrangement. 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 regularly intervenes and participates in cases regarding reasonable arrangements.[[14]](#footnote-16) There will be no prejudice to the PUCO Staff or Chestnut in granting OCC intervention.

Fourth, OCC’s intervention will significantly contribute to 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 any potential increase in costs to residential consumers as a result of the proposed Reasonable Arrangement. 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 O.A.C. 4901-1-11(A) which sets the standard for *intervention as of right*, mirroring Ohio Civil Rule 24(A). Under O.A.C.

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. Chestnut seeks to participate in FirstEnergy’s Rider NMB opt-out pilot program which could unjustly and unreasonably shift costs to residential consumers who have no option but to pay FirstEnergy’s Rider NMB charges. 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—the PUCO Staff and Chestnut. 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 consumers. OCC’s 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.[[15]](#footnote-17)

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 consumers, the PUCO should grant OCC’s Motion to Intervene.

Respectfully submitted,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ John Finnigan*

John Finnigan (0018689)

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**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of the foregoing Motion to Intervene has been served electronically upon those persons listed below this 26th day of April 2024.

 */s/ John Finnigan*

 John Finnigan

 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. *See* R.C. 4905.31 and O.A.C. 4901-38-05. [↑](#footnote-ref-4)
3. “FirstEnergy” collectively refers to Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company. [↑](#footnote-ref-5)
4. *See* *In the Matter of the Review of the Non-Market-Based Services Rider Pilot Program Established by Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company*, Case No. 22-391-EL-RDR, Exeter Associates, Inc., Review of the Non-Market Based Services Riders Established by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (July 17, 2023) (“Audit Report”) at 20. [↑](#footnote-ref-6)
5. *See supra* note 4. [↑](#footnote-ref-7)
6. *See In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 23-301-EL-SSO, Lawless Testimony at 7 (April 5, 2023). [↑](#footnote-ref-8)
7. *Id.* at 8. [↑](#footnote-ref-9)
8. *Id*. at 9. [↑](#footnote-ref-10)
9. *See supra* note 4*.* [↑](#footnote-ref-11)
10. *In re Application of [FirstEnergy] for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Elec. Sec. Plan*, Case No. 14-1297-EL-SSO, Opinion & Order at 94 (March 31, 2016). [↑](#footnote-ref-12)
11. Application at 1. [↑](#footnote-ref-13)
12. *In the Matter of the Application for Establishment of a Reasonable Arrangement for Glorious Sky LLC*, Case No. 24-143-EL-AEC, Staff Review and Recommendation (April 17, 2024). [↑](#footnote-ref-14)
13. *See* O.A.C. 4901-38-05(F). [↑](#footnote-ref-15)
14. *See, e.g., In the Matter of the Joint Application of Amazon Data Services, Inc. and Ohio Power Company*, Case No. 23-858-EL-AEC. [↑](#footnote-ref-16)
15. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-17)