**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company to Amend Their Corporate Separation Plan. | ))))) | Case No. 24-867-EL-UNC |

**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 Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (“FirstEnergy”) are seeking to amend their corporate separation plan.[[2]](#footnote-4) Ohio’s corporate separation laws are in place to protect utility consumers from the adverse consequences associated with the abuse of market power and cross-subsidization.[[3]](#footnote-5) Ensuring FirstEnergy’s compliance with corporate separation laws is vitally important to protecting consumers’ rights to reasonably priced retail electric service.

Unfortunately for consumers, PUCO-appointed auditors have found that FirstEnergy has not complied with its *existing* corporate separation plan.[[4]](#footnote-6) Consumer protection requires OCC’s intervention here.

OCC is filing on behalf of the approximately 1.85 million residential utility consumers of FirstEnergy, all of whom have been adversely affected by FirstEnergy’s prior failures to comply with their corporate separation requirements.

The reasons 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/ William J. Michael*

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**MEMORANDUM IN SUPPORT**

It has been more than fifteen years since FirstEnergy’s existing corporate separation plan was filed.[[5]](#footnote-7) Since that time, both FERC[[6]](#footnote-8) and the independent auditors[[7]](#footnote-9) appointed by the PUCO have determined that FirstEnergy has violated the existing plan. These violations became very public in the course of the recent House Bill 6 scandal.

The PUCO (largely at OCC’s urging) opened an investigation into FirstEnergy’s corporate separation violations in the wake of H.B. 6. Now, FirstEnergy seeks to amend its corporate separation plan to reflect recommendations by the auditors in Case No. 17-974-EL-UNC (“Corporate Separation Case”) and to comply with Ohio’s corporate separation laws.[[8]](#footnote-10) OCC moves to intervene[[9]](#footnote-11) here to advocate for FirstEnergy’s residential consumers.

OCC has authority under R.C. Chapter 4911 to represent the interests of more than 1.85 million FirstEnergy residential consumers whose interests are directly affected by the corporate separation requirements on 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, especially if the consumers were unrepresented in a proceeding where FirstEnergy seeks to amend its corporate separation plan to comply with the audit reports in the Corporate Separation Case and Ohio law. Ohio’s corporate separation law protects consumers from market power and cross-subsidization by utilities. 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 residential consumers where FirstEnergy seeks to amend its corporate separation plan. The plan must protect residential consumers against the abuse of market power by FirstEnergy and cross-subsidization among FirstEnergy affiliates. This interest is different from that of any other party, and especially different than that of FirstEnergy, whose advocacy includes the financial interest of its shareholders.

Second, OCC’s advocacy for residential consumers will include, among other things, advocating that they should be charged no more than just and reasonable rates for adequate, reliable service.[[10]](#footnote-12) Consumers should not be improperly charged for costs related to other FirstEnergy owned and operated entities (cross-subsidization). 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’ corporate separation plans, 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. FirstEnergy’s Application was filed on September 3, 2024. The case has not progressed beyond the filing of the Application.

OCC will attempt to avoid duplicative discovery in the proceeding. The issues OCC will raise fall clearly within the scope of the proceeding, which includes whether FirstEnergy’s proposed amendments to its corporate separation plan will protect residential consumers from improper charges and result in just and reasonable rates for adequate, reliable service.[[11]](#footnote-13) In addition, OCC will also use its best efforts to comply with any procedural schedule that the PUCO may adopt for this proceeding. This will allow full development of the record upon which the PUCO can make a decision in consumers’ interest.

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 relating to corporate separation plans.[[12]](#footnote-14) OCC intervened in and participated both the matter that approved FirstEnergy’s existing corporate separation plan[[13]](#footnote-15) and the Corporate Separation Case.[[14]](#footnote-16) There will be no prejudice to the PUCO Staff or FirstEnergy in granting OCC intervention.

Fourth, OCC’s intervention will significantly contribute to full development and equitable resolution of the factual issues. OCC will examine issues fully and carefully. No other party is solely focused on the needs of residential consumers and thus, there can be no equitable resolution of the issues in this case absent OCC’s participation.

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. Ohio’s corporate separation laws are in place for the protection of consumers against the abuse of market power and cross-subsidization, and for just and reasonable rates for adequate, reliable service. Disposition of this proceeding may, as a practical matter, impair or impede OCC’s ability to protect that right where their interest is not adequately represented by existing parties—the PUCO Staff and FirstEnergy. 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/ William J. Michael*

William J. Michael (0070921)

Counsel of Record

John B. Steinhart (0099554)

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(willing to accept service by e-mail)

**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 4th day of October 2024.

*/s/ William J. Michael*

William J. Michael

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* Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company’s Application to Amend Their Corporate Separation Plan (Sept. 3, 2024) (“Application”). [↑](#footnote-ref-4)
3. *See* O.A.C. 4901:1-37 and R.C. 4928.17. [↑](#footnote-ref-5)
4. *In the Matter of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company’s Compliance with R.C. 4928.17*, Case No. 17-974-EL-UNC. [↑](#footnote-ref-6)
5. *See* Case No. 09-462-EL-UNC. [↑](#footnote-ref-7)
6. *See* Letter order to FirstEnergy Corporation approving the final audit report covering the period Jan. 1, 2015 to Sept. 30, 2021, Docket No. FA19-1-000 at p. 17. [↑](#footnote-ref-8)
7. *In the Matter of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company’s Compliance with R.C. 4928.17*, Case No 17-974-EL-UNC, Compliance Audit of the FirstEnergy Operating Companies with the Corporate Separation Rules of the Public Utilities Commission of Ohio (Sept. 13, 2021) at p. 8. [↑](#footnote-ref-9)
8. *See* O.A.C. 4901:1-37, R.C. 4928.17 and R.C. 4928.02. [↑](#footnote-ref-10)
9. *See* R.C. Chapter 4911, R.C. 4903.221 and O.A.C. 4901-1-11. [↑](#footnote-ref-11)
10. *See, e.g.,* R.C. 4905.22. [↑](#footnote-ref-12)
11. *Id.* [↑](#footnote-ref-13)
12. *See* *In the Matter of the Commission’s Review and Adjustment of the Corporate Separation Plan for Duke Energy Ohio, Inc.*, Case No. 08-613-EL-UNC; *In the Matter of the Adoption of Rules for Standard Service Offer/Corporate Separation/Reasonable Arrangements and Transmission Riders for Electric Utilities Pursuant to Sections 4928.14, 4928.17 and Substitute Senate Bill No. 221*, Case No. 08-777-EL-ORD. [↑](#footnote-ref-14)
13. *See* Case No. 09-462-EL-UNC. [↑](#footnote-ref-15)
14. *In the Matter of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company’s Compliance with R.C. 4928.17*, Case No 17-974-EL-UNC, Motion to Intervene (June 9, 2017). [↑](#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)