**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Review of the Non-Market-Based Services Rider Contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company. | )  )  )  )  )  ) | Case No. 21-1225-EL-RDR |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene[[1]](#footnote-2) where the FirstEnergy Ohio utilities (“FirstEnergy”) submitted their annual Report to the PUCO, dated December 16, 2021, on their Non-Market-Based Rider (“Rider NMB”). The Report is for the twelve months beginning March 1, 2022. FirstEnergy charges consumers through Rider NMB for non-market-based transmission costs imposed on it by the Federal Energy Regulatory Commission (“FERC”) or PJM Interconnection, Inc. (“PJM”).[[2]](#footnote-3) The PUCO reviews changes to Rider NMB in accordance with its Orders in Case Nos. 10-388-EL-SSO, 12-1230-EL-SSO, 15-0648-EL-RDR, and 14-1297-SSO, 18-1818-EL-RDR, 20-1768-EL-RDR, and 21-695-EL-RDR.

OCC represents the interests of the 1.88 million Ohio residential consumers of FirstEnergy who pay the rider charge. Unlike some commercial and industrial consumers, residential consumers cannot opt out of the charge.[[3]](#footnote-4) The PUCO should grant OCC’s motion to intervene for the reasons set forth in the attached memorandum in support.

Respectfully submitted,

Bruce Weston (0016973)

Ohio Consumers’ Counsel

*/s/ Angela D. O’Brien*

Angela D. O’Brien (0097579)

Counsel of Record

Ambrosia Wilson (0096598)

Assistant Consumers’ Counsel

# Office of the Ohio Consumers’ Counsel

# 65 East State Street, Suite 700

# Columbus, Ohio 43215-4213

Telephone: [O’Brien] 614-466-9531

Telephone: [Wilson] 614-466-1292

[angela.obrien@occ.ohio.gov](mailto:angela.obrien@occ.ohio.gov)

[ambrosia.wilson@occ.ohio.gov](mailto:ambrosia.wilson@occ.ohio.gov)

(willing to accept service by e-mail)

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## MEMORANDUM IN SUPPORT

FirstEnergy is proposing to adjust the amount that it charges consumers for the costs associated with Rider NMB. The recovery mechanism, in the form of a rider, is designed to permit FirstEnergy to collect from consumers non-market-based transmission-related costs imposed by the Federal Energy Regulatory Commission or PJM. OCC has statutory authority, under R.C. Chapter 4911, to represent the interests of the 1.88 million residential electric utility consumers of FirstEnergy, all of whom pay for Rider NMB.

R.C. 4903.221 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. That is especially so if they were unrepresented in a proceeding to determine charges they pay under Rider NMB. Thus, this element of the 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 motions to intervene:

(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.

First, the nature and extent of OCC’s interest is representing FirstEnergy’s residential consumers in this case, where FirstEnergy is proposing adjustments to Rider NMB. This interest is different from that of any other party, and especially different from that of FirstEnergy whose advocacy includes the financial interest of shareholders. As a representative of the residential consumers who will be affected by the outcome of this case, OCC is an “affected part[y]” within the meaning of Ohio Adm. Code 4901:1-36-03(F).[[4]](#footnote-5)

Second, OCC’s advocacy for residential consumers will include advancing the position that FirstEnergy should charge consumers no more than what is just and reasonable under Ohio law. OCC’s position is therefore directly related to the merits of this case that 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. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC’s intervention will significantly contribute to full development and equitable resolution of the factual issues. 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 (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a “real and substantial interest” according to Ohio Adm. Code 4901-1-11(A)(2). As the advocate for residential utility consumers, OCC has a very real and substantial interest in this case where the PUCO will determine charges to consumers under Rider NMB.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the PUCO shall consider “The 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 uniquely has been designated as the state representative of the interests of Ohio’s residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

Further, the Supreme Court of Ohio (“Court”) affirmed 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.[[5]](#footnote-6)

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Court for intervention. For Ohio residential consumers, the PUCO should grant OCC’s Motion to Intervene.

Respectfully submitted,

Bruce Weston (0016973)

Ohio Consumers’ Counsel

*/s/ Angela D. O’Brien*

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Ambrosia Wilson (0096598)

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Telephone: [O’Brien] 614-466-9531

Telephone: [Wilson] 614-466-1292

[angela.obrien@occ.ohio.gov](mailto:angela.obrien@occ.ohio.gov)

[ambrosia.wilson@occ.ohio.gov](mailto:ambrosia.wilson@occ.ohio.gov)

(willing to accept service by e-mail)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below via electronic transmission, this 28th day of December 2021.

*/s/ Angela O’Brien*

Angela O’Brien

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**

|  |  |
| --- | --- |
| [John.jones@ohioAGOgov](mailto:John.jones@ohioAGOgov). | [cwatchorn@firstenergycorp.com](mailto:cwatchorn@firstenergycorp.com) |

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1. *See* R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11. [↑](#footnote-ref-2)
2. *In the Matter of the Review of the Non-Market-Based Services Rider Contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 21-695-EL-RDR, Finding and Order (Aug. 25, 2021), at ¶4. [↑](#footnote-ref-3)
3. *Id.* [↑](#footnote-ref-4)
4. Ohio Adm. Code 4901:1-36-03(F) governing applications for transmission cost recover riders states: “Affected parties may file a motion to intervene and detailed comments on any issues concerning any application filed under this rule within forty days of the date of the filing of the application.” [↑](#footnote-ref-5)
5. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20. [↑](#footnote-ref-6)