**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Updates to the Advanced Metering Infrastructure / Modern Grid Rider of Ohio Edison Company, the Toledo Edison Company and the Cleveland Electric Illuminating Company. | )  )  )  )  )  ) | Case No. 23-1071-EL-RDR |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene in this case where the Public Utilities Commission of Ohio (“PUCO”) Staff will review and audit what FirstEnergy spent in 2022 on grid modernization investments. The audit will review the prudence of nearly $164 million of FirstEnergy investments charged to consumers through the Advanced Metering Infrastructure / Modern Grid Rider (“Rider AMI”).[[1]](#footnote-2)

OCC is filing on behalf of the 2.1 million residential utility consumers of FirstEnergy.[[2]](#footnote-3) 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*William J. Michael (0070921)   
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## MEMORANDUM IN SUPPORT

In 2022, FirstEnergy spent nearly *$164 million* on grid modernization capital investments and incremental operations and maintenance expenses,[[3]](#footnote-4) which are being charged to consumers through the Advanced Metering Infrastructure / Modern Grid Rider (“Rider AMI”). Each year, FirstEnergy files an application for an annual PUCO review of the prudence of the costs it charges consumers through Rider AMI.[[4]](#footnote-5) In this case, the PUCO Staff will review and audit the charges that consumers have paid under this rider in 2022.

In a recent audit of FirstEnergy’s Grid Mod program (“Grid Mod I”), which is charged to consumers under Rider AMI, the PUCO appointed auditor (“Daymark Energy Advisors”) was unable to determine the operational benefits to consumers. The auditor identified numerous flaws in FirstEnergy’s ability to demonstrate that consumers are actually getting the benefits they pay for under Grid Mod I. The auditor concluded that “the lack of clear documentation\*\*\*combined with the lack of direct reporting as to operational savings being achieved, precluded a direct audit determination of a current and future level of operational savings to be credited to Rider AMI [consumers].”[[5]](#footnote-6) The auditor made twelve key findings demonstrating that FirstEnergy’s implementation of Grid Mod I is essentially unauditable.[[6]](#footnote-7)

OCC has authority under law to represent the interests of all the 2.1 million residential utility customers of FirstEnergy (who are forced to pay for FirstEnergy’s Grid Mod program through Rider AMI) under R.C. Chapter 4911.

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 Ohio’s residential consumers may be “adversely affected” by this case, especially if consumers are unrepresented in a proceeding where the PUCO will review charges that

consumers paid in 2022 for FirstEnergy’s grid modernization. As noted, the recent audit of FirstEnergy’s Grid Mod I plan uncovered numerous flaws with how FirstEnergy determines the benefits consumers receive from the Grid Mod program they pay for through Rider AMI. 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; and

(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 the residential consumers of FirstEnergy in this case involving an audit of 2022 charges charged to consumers for FirstEnergy’s grid modernization. This interest is different than that of any other party and especially different than that of the FirstEnergy whose advocacy includes the financial interest of stockholders.

Second, OCC’s advocacy for residential consumers will include, among other things, advancing the position that FirstEnergy can only charge consumers through Rider AMI for investments that are used and useful and prudently incurred. Amounts under FirstEnergy’s Rider AMI charged to consumers must be just and reasonable. OCC’s position is therefore directly related to the merits of this case before the PUCO, which has regulatory control of public utilities’ rates and service quality in Ohio.

Third, OCC’s intervention will not unduly prolong or delay the proceedings. There has been no activity in this matter beyond FirstEnergy’s filing of its updates to Rider AMI on December 1, 2023. Thus, OCC’s intervention is not a cause for delay at the early stage in this matter. Further, 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. OCC has participated in other PUCO reviews of FirstEnergy’s charges to consumers through Rider AMI.[[7]](#footnote-8)

Fourth, OCC’s intervention will significantly contribute to the full development, analysis, and equitable resolution of the factual issues related to FirstEnergy’s Rider AMI, including whether charges to consumers are just and reasonable and whether FirstEnergy’s costs were used and useful and prudently incurred. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding this matter in the public interest. Consumers pay for FirstEnergy’s Grid Mod program through Rider AMI. There can be no equitable or lawful resolution of this matter without intervention by the state advocate for residential consumers, OCC.

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 O.A.C. 4901-1-11(A)(2). As the advocate for residential utility consumers, OCC has a real and substantial interest in this case where FirstEnergy’s grid modernization charges are paid by residential consumers through Rider AMI are under review.

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

O.A.C. 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.

Moreover, the Supreme Court of Ohio (“Court”) 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.[[8]](#footnote-9)

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/ William J. Michael*William J. Michael (0070921)   
Counsel of Record

Thomas J. Brodbeck (0093920)  
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(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 2023.

*/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* Case No. 21-1130-EL-RDR, Report in Support of Staff’s 2022 Annual Review of the Advanced Metering Infrastructure/Modern Grid Rider (“Rider AMI”) Submitted by Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (February 28, 2023) (“Annual Report”), Exhibit F. [↑](#footnote-ref-2)
2. *See* R.C. Chapter 4911, R.C. 4903.221 and O.A.C. 4901-1-11. [↑](#footnote-ref-3)
3. Case No. 21-1130-EL-RDR, Annual Report (February 28, 2023), Exhibit F. [↑](#footnote-ref-4)
4. *See* Case No. 16-2166-EL-RDR (Staff review of 2017 charges); Case No. 17-2276-EL-RDR (Staff review of 2018 charges); Case No. 18-1647-EL-RDR (Staff review of 2019 charges); Case No. 19-1903-EL-RDR (Staff review of 2020 charges); Case No. 22-1042-EL-RDR (Staff review of 2021 charges). [↑](#footnote-ref-5)
5. Case No. 16-481-EL-UNC, et al.,Daymark Energy Advisors’ Operational Benefits Assessment of FirstEnergy Ohio’s Grid Mod I (November 14, 2022) (“Audit Report”). [↑](#footnote-ref-6)
6. Audit Report, at 1-5. [↑](#footnote-ref-7)
7. *See e.g. In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Review of Rider AMI*, Case No. 20-1672-EL-RDR; and *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Review of Rider AMI*, Case No. 19-1903-EL-RDR. [↑](#footnote-ref-8)
8. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-9)