**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 for an Increase in Electric Distribution Rates.  In the Matter of the Application of Ohio  Edison Company, The Cleveland Electric  Illuminating Company and The Toledo  Edison Company for Tariff Approval.  In the Matter of the Application of Ohio  Edison Company, The Cleveland Electric  Illuminating Company and The Toledo  Edison Company for Approval to Change  Accounting Methods.  In the Matter of the Application of Ohio  Edison Company, The Cleveland Electric  Illuminating Company and The Toledo  Edison Company for Approval of  Miscellaneous Customer Programs. | )  )  )  )  )  )  )  )  )  )  ) )  )  )  )  )  )  )  ) | Case No. 24-468-EL-AIR  Case No. 24-469-EL-ATA  Case No. 24-470-EL-AAM  Case No. 24-471-EL-UNC |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

For the first time since 2007,[[1]](#footnote-3) FirstEnergy[[2]](#footnote-4) has filed a notice of its intent to file an application to increase the rates that its distribution customers pay. FirstEnergy wants to increase its monthly service rate by $2.50 a month (from $4.00) and its monthly energy charge from between $2.72 and $11.22 for residential consumers throughout its service area.[[3]](#footnote-5) These increased charges could adversely impact FirstEnergy’s residential consumers.

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene in this case where FirstEnergy wants to increase the charges residential consumers pay for electric service.[[4]](#footnote-6)

OCC is filing on behalf of the two million residential consumers of FirstEnergy. 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,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ John Finnigan*

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(willing to accept service via email)

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**MEMORANDUM IN SUPPORT**

FirstEnergy has filed a notice of its intent to file an application to increase the rates that its distribution customers pay. FirstEnergy wants to increase its monthly service rate by $2.50 a month (from $4.00) and its monthly energy charge from between $2.72 and $11.22 for residential consumers throughout its service area.[[5]](#footnote-7) These increased charges could adversely impact FirstEnergy’s residential consumers. OCC moves to intervene to protect FirstEnergy’s residential consumers from paying unreasonable and unlawful charges that could result without OCC’s intervention. OCC has authority under R.C. Chapter 4911 to represent the interests of FirstEnergy’s two million residential consumers.

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 rate case, especially if any of the proposed charges are unreasonable or unlawful. 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 where FirstEnergy must demonstrate that its proposed base distribution rates are just and reasonable. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC’s advocacy for residential consumers will include, among other things, advancing the position that rates should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. 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.” FirstEnergy filed its notice of intent to file a rate case on May 1, 2024. The rate case application has not yet been filed. No procedural schedule has been set. OCC promptly seeks leave to intervene. Therefore, OCC’s intervention will not cause undue delay.

OCC will attempt to avoid duplicative discovery in the proceeding. The issues OCC will raise fall clearly within the scope of the proceeding which is a determination of whether the rates proposed by FirstEnergy are just and reasonable. 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 rate cases.[[6]](#footnote-8) There will be no prejudice to FirstEnergy 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 fully and carefully examine issues regarding whether FirstEnergy’s proposed rates are just and reasonable. 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 where FirstEnergy proposes new rates that its customers must pay. 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 the utility. 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.[[7]](#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 consumers, the PUCO should grant OCC’s Motion to Intervene.

Respectfully submitted,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ John Finnigan*

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Co-Counsel of Record

Donald J. Kral (0042091)

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(willing to accept service via email)

**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 14th day of May 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* *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices and for Tariff Approvals*, Case No. 07-551-EL-AIR, Opinion and Order (Jan. 21, 2009). [↑](#footnote-ref-3)
2. “FirstEnergy” collectively refers to Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company. [↑](#footnote-ref-4)
3. Notice of Intent to File an Application to Increase Electric Distribution Rates, Exhibit 4 (May 1, 2024). These increases are based on a typical residential consumer using 750 kWH per month. [↑](#footnote-ref-5)
4. *See* R.C. Chapter 4911, R.C. 4903.221 and O.A.C. 4901-1-11. [↑](#footnote-ref-6)
5. Notice of Intent to File an Application to Increase Electric Distribution Rates, Exhibit 4 (May 1, 2024). These increases are based on a typical residential consumer using 750 kWH per month. [↑](#footnote-ref-7)
6. *See, e.g., In the Matter of the Application of the Dayton Power & Light Company to Increase Its Rates for Electric Distribution*, Case No. 20-1651-EL-AIR,et al.; *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, et al., *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices and for Tariff Approvals*, Case No. 07-551-EL-AIR, Opinion and Order (Jan. 21, 2009). [↑](#footnote-ref-8)
7. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-9)