**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 Approval of a New Service. | ))))) | Case No. 14-1980-EL-ATACase No. 14-1981-EL-ATACase No. 14-1982-EL-ATA |

**MOTION TO INTERVENE**

**AND**

**INITIAL COMMENTS**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene[[1]](#footnote-2) in these cases where electric distribution utilities want to market (and charge for) insurance products unrelated to distribution service to their customers through customers’ utility bills. Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (“FirstEnergy”) filed an Application to offer insurance products to their customers as a “Special Customer Service.” OCC files this Motion on behalf of the 1.9 million residential utility customers of FirstEnergy.

The reasons the PUCO should grant OCC’s Motion to Intervene are further set forth in the attached Memorandum in Support. This filing also includes initial comments for consumer protection.

Respectfully submitted,

 BRUCE J. WESTON

 OHIO CONSUMERS’ COUNSEL

 */s/ Jodi Bair*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**MEMORANDUM IN SUPPORT OF MOTION**

**AND**

**INITIAL COMMENTS**

# I. BACKGROUND

On November 11, 2014, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (“FirstEnergy” or “Utility”) filed an Application requesting approval of a new service. Under this new service, the Utility would be able to market (and charge for) insurance products and related services offered by third party non-utilities to customers. Confusingly for customers, the marketing would appear on the Utility customers’ bills for regulated distribution service.

The PUCO should deny FirstEnergy’s application. The offering of this insurance has no relationship to the regulated electric utility services over which the PUCO has jurisdiction. FirstEnergy’s proposal to administer and bill for these services will create customer confusion.

FirstEnergy requests approval to market this insurance offering under its tariff provision “Special Customer Services.” Currently, the services offered in this section include those related to the provision of electric services. For example, included in the customer services offered are charges for construction of customer substations, operation and maintenance of electrical facilities, and restorative temporary underground service, etc.[[2]](#footnote-3) Customers are informed that there are other options available for obtaining these services and the costs are negotiated between the customer and the Utility. Each of these “Special Customer Services” in some manner relates to the provision of electricity (public utility service). The new Utility proposal “arranging for the offering of insurance products and related services to customers by insurance companies or producers” has nothing to do with electric service. The insurance-related products and services include a Disaster Protection Plan and a Personal Disaster Recovery Plan.

# ii. MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

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 customers[[3]](#footnote-4) may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding where FirstEnergy has requested authority to market insurance related products to customers through customers’ distribution bills. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission 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 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 customers of FirstEnergy in this case involving FirstEnergy’s request to market insurance related products to residential customers through their distribution bills. This interest is different than that of any other party and particularly different than that of the Utility whose advocacy includes the financial interest of stockholders.

Second, OCC’s advocacy for residential customers will include advancing the position that both FirstEnergy’s tariff and billings should be accurate and understandable to customers.[[4]](#footnote-5) And our position includes that the customer confusion to result from FirstEnergy’s proposal should be avoided by the PUCO denying the Application. 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 the 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 customers, OCC has a very real and substantial interest in this case where FirstEnergy has proposed changes to its customer’s bills.

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 customers. That 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.[[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 Supreme Court of Ohio for intervention. On behalf of Ohio residential customers, the PUCO should grant OCC’s Motion to Intervene.

# iii. INITIAL COMMENTS

## A. The PUCO Should Protect Customers By Denying FirstEnergy’s Proposed Tariffs For Marketing Insurance Products On Regulated Electric Bills, Because The PUCO Has No Jurisdiction Over The Insurance Products And Related Services.

FirstEnergy requests that the PUCO approve a tariff provision “arranging for the offering of insurance products and related services to customers by insurance companies or producers.”[[6]](#footnote-7) The two examples of insurance products and services that are provided by FirstEnergy include a disaster protection plan that will pay insurance deductibles, emergency cash payments, and locksmith services in the event of home damage during a disaster. The second example of insurance is a personal disaster recovery plan that will pay mortgage payments and other benefits while a home is temporarily uninhabitable following a disaster.

The section of the tariff that FirstEnergy proposes for including these insurance products is entitled “Special Customer Services.” Currently, the other items in this section permit the Utility to charge for the design and construction of customer substations, resolving power quality problems on customer equipment, operation and maintenance of electrical facilities, etc. These services are related in some manner to the provision of electric service. But offering disaster insurance has nothing to do with the provision of PUCO-regulated distribution electric service.

The PUCO is vested with power and jurisdiction to supervise and regulate public utilities and to require all public utilities to furnish and produce and render all service exacted by the Commission or by law.[[7]](#footnote-8) The PUCO is a creature of statute, and as such does not have the authority to act beyond the authority provided under Ohio statutes. See, e.g., *Canton Storage and Transfer Co. v. Public Util. Comm.* (1995), 72 Ohio St.3d 1, 647 N.E.2d 136. FirstEnergy provides no statutory authority for the PUCO to approve its Application. Allowing FirstEnergy to include insurance offerings in its tariff exceeds the PUCO’s jurisdiction and must be denied.

## B. The PUCO Should Deny FirstEnergy’s Request Because It May Cause Customer Confusion.

Under Ohio Adm. Code 4901:1-10-22(B), customer bills “shall contain clear and understandable form and language.” But under FirstEnergy’s proposal, additional information, unrelated to utility services the customer is billed for, will be contained on customers’ bills. This may cause customer confusion. Customers’ bills already contain a great deal of information. Additional information that is not related to utility services is just more information that customers will have to sort through. And the fact that the insurance products are offered (and potentially paid for) on customers’ bills, may lead customers to believe there is a connection between the insurance offering and their utility service. For instance, customers may believe that full payment, including the insurance fee, must be made or they will lose electric service. That is certainly not the law in Ohio. To allow an unregulated product, such as insurance, to be a part of the customers’ utility bills – and included in the total amount due, may be very misleading and confusing. For this reason alone, the proposal should be rejected, consistent with the PUCO’s directive that customer bills for utility service be understandable to customers.

## C. The PUCO Should Deny FirstEnergy’s Request Because Making The Insurance Offering A Tariff-Approved Service Could Be Claimed (Wrongly) By The Utility To Allow For Disconnection Of Electric Service If A Customer Fails To Pay The Insurance Charge.

FirstEnergy will not set the pricing for the insurance products or services, but will receive compensation from the insurance companies for the billing, collection, and administrative services that it provides to the insurance companies. FirstEnergy states that the insurance products are offered to customers by the insurance companies. And it states that such products are available from other vendors and *do not have to be purchased in order to receive electric service*.[[8]](#footnote-9)

This statement, provided in FirstEnergy’s application, demonstrates why the PUCO should not approve this new service on FirstEnergy’s tariffs. Disaster insurance has no relationship to electric service. It does not belong in a utility tariff. In other PUCO-regulated industries, such as telecommunications, tariffs include only specific utility services. Ohio Adm. Code 4901:1-6-11 provides a list of nine services that must be tariffed, then states “[a]ll other telecommunications services offered by a phone company shall not be included in tariffs filed with the commission, but shall still be subject to commission oversight and regulation.” The PUCO must come to the same conclusion in this case – that the insurance offering cannot be included it FirstEnergy’s tariff.

Ohio rules provide that electric companies under the jurisdiction of the PUCO may disconnect service to residential customers for nonpayment of regulated services.[[9]](#footnote-10) And Ohio Adm. Code 4901:1-10-19 states that no electric utility may disconnect service to a residential customer when that customer fails to pay any charge for a non-tariffed service.[[10]](#footnote-11) If the PUCO approves FirstEnergy’s Application in this case, “arranging for the offering of insurance products and related services to customers by insurance companies or producers,”[[11]](#footnote-12) becomes a tariffed service and therefore, the Utility may claim it can disconnect the customer for non-payment of insurance premiums.

In other words, FirstEnergy could (wrongly) claim it has the right to disconnect the customer for nonpayment because, according to Ohio Adm. Code 4901:1-18-03, the service is tariffed, and that may be interpreted as being a regulated service. Also, the insurance service is not a non-tariffed service. If the service is a non-tariffed service, the customer cannot be disconnected from the electric service. However, if the PUCO approves this Application, the insurance offering becomes a tariffed service.

The PUCO must not approve FirstEnergy’s applications because it may allow the disconnection of customers’ electric service for nonpayment of insurance fees.

## D. FirstEnergy Has Not Demonstrated That Providing This Billing Service To Insurance Companies Prohibits Anticompetitive Subsidies From A Noncompetitive Retail Distribution Service To A Competitive Retail Electric Service Or Product.[[12]](#footnote-13)

There is no information demonstrating that the distribution consumers are not subsidizing the costs of marketing these insurance products. Undoubtedly, there will be costs of administering, such as billing and collection efforts. FirstEnergy has not shown that these costs will not be passed along to customers. The Ohio Supreme Court found that allowing a generation-cost component to be recovered in a distribution rate case is a violation of R.C. 4928.02(G).[[13]](#footnote-14) And the Court held in another case “that distribution service would not subsidize the generation portion of the business.”[[14]](#footnote-15) In this case, FirstEnergy could not allow its distribution customers to pay for costs associated with offering insurance customers’ bills, which is clearly not a distribution-related cost. If the PUCO allows FirstEnergy to provide this service, despite OCC’s recommendations otherwise, the Utility must be required to demonstrate that its customers do not incur *any* costs associated with the third party insurance products. This would amount to an unlawful subsidy.

# IV. CONCLUSION

OCC meets the standards for intervention in this proceeding. The PUCO should grant OCC’s Motion to Intervene.

On behalf of the 1.9 million FirstEnergy customers, the OCC recommends that the PUCO deny FirstEnergy’s request to market disaster insurance to utility customers through their bills. The offering is confusing. The confusion could lead to customers making purchases they otherwise would avoid. And the PUCO is without jurisdiction to approve FirstEnergy’s tariff that offers a new service (disaster insurance coverage) unrelated to any PUCO-regulated tariffed electric service.

 Respectfully submitted,

 BRUCE J. WESTON

 OHIO CONSUMERS’ COUNSEL

 */s/ Jodi Bair*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of this *Motion to Intervene and Initial Comments* was served on the persons stated below via electronic transmission this 30th day of January, 2015.

 */s/ Jodi Bair*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Jodi Bair

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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 Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval*, Case Nos. 14-1980-EL-ATA, 14-1981-EL-ATA, and 14-1982-EL-ATA, Application at Exhibit B (Nov. 11, 2014). [↑](#footnote-ref-3)
3. OCC has authority under law to represent the interests of the 1.9 million FirstEnergy residential utility customers pursuant to R.C. Chapter 4911. [↑](#footnote-ref-4)
4. Ohio Adm. Code 4901:1-10-22(B). [↑](#footnote-ref-5)
5. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006). [↑](#footnote-ref-6)
6. *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval*, Case Nos. 14-1980-EL-ATA, 14-1981-EL-ATA, and 14-1982-EL-ATA, Application at Exhibit B (Nov. 11, 2014). [↑](#footnote-ref-7)
7. Ohio Rev. Code 4905.04. [↑](#footnote-ref-8)
8. *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval*, Case Nos. 14-1980-EL-ATA, 14-1981-EL-ATA, and 14-1982-EL-ATA, Application at Exhibit C-2 (Nov. 11, 2014)(emphasis added). [↑](#footnote-ref-9)
9. Ohio Adm. Code 4901:1-18-03. [↑](#footnote-ref-10)
10. Ohio Adm. Code 4901:1-10-19. [↑](#footnote-ref-11)
11. FirstEnergy App. Ex. B. [↑](#footnote-ref-12)
12. R.C. 4928.02(H) and *Elyria Foundry Co, v. PUC*, 114 Ohio St.3d 305, 871 N.E.2d 1176 (2007). [↑](#footnote-ref-13)
13. *Elyria Foundry Co, v. PUC*, 114 Ohio St.3d 305, 871 N.E.2d 1176 (2007). [↑](#footnote-ref-14)
14. *Migden-Ostrander v. PUC*, 102 Ohio St.3d 451, 813 N.E.2d 955 (2004). [↑](#footnote-ref-15)