

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Determination of the)
Existence of Significantly Excessive) Case No. 14-0828-EL-UNC
Earnings for 2013 Under the Electric)
Security Plans of Ohio Edison Company,)
The Cleveland Electric Illuminating)
Company, and The Toledo Edison)
Company.)

**MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where it will be determined whether customers of FirstEnergy¹ are entitled to a refund because of the amount of 2013 earnings (profits) of the Utility.² OCC is filing on behalf of all the 2.1 million residential utility customers 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.

¹ "FirstEnergy" or "the Utility" refers collectively to Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

² See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Michael J. Schuler

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MEMORANDUM IN SUPPORT

This case involves the review of the 2013 earnings of FirstEnergy generated by the rates paid by customers under the Utility’s electric security plan (“ESP”), which could necessitate a refund to those customers. On July 30, 2008, S.B. 221 became effective, amending R.C. 4928.143 and requiring electric distribution utilities (“EDUs”) to provide customers with a Standard Service Offer (“SSO”). The PUCO approved FirstEnergy’s second SSO, in the form of an ESP, on August 25, 2010. Under R.C. 4928.143(F), the PUCO is tasked with determining whether the ESP produces “significantly excessive earnings” for the utility. This annual review is intended to protect customers and can result in customers benefitting from reduced prospective electric rates. OCC has authority under law to represent the interests of all the 2.1 million residential utility customers of FirstEnergy, pursuant to 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 customers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding where the PUCO is seeking to determine

whether FirstEnergy had significantly excessive earnings in 2013. If so, residential customers are entitled to a return of ESP earnings found to be significantly excessive under R.C. 4928.143(F). 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 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 where the PUCO will determine if the rates that were paid for electric service in 2013 allowed the Utility to earn significantly excessive profits. 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 customers will include advancing the position that rates paid by residential customers 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 where the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio,

will examine whether FirstEnergy's customers paid excessive rates for 2013 electric service.

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 the PUCO will decide if customers are entitled to a refund for rates paid in 2013.

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.³

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.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Michael J. Schuler

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³ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

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 9th day of July, 2014.

/s/ Michael J. Schuler
Michael J. Schuler
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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Schuler, Michael J.