

In the Matter of the 2015 Review of the Delivery Capital Recovery Rider Contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company. ) ) Case No. 15-1739-EL-RDR ) ) ) ) ) )

The Supreme Court of Ohio has consistently held that “intervention ought to be **liberally allowed** so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO.”<sup>1</sup> In the “absence of some evidence in the record calling those claims into doubt or showing that intervention would unduly prolong or delay the proceedings, intervention should [be] granted.”<sup>2</sup>

Yet despite this liberal standard, The Cleveland Electric Illuminating Company, Toledo Edison and Ohio Edison (collectively “FirstEnergy”) opposes OCC's intervention. FirstEnergy takes a novel approach by claiming that OCC has no real or substantial interest in a PUCO proceeding resulting from the audit review process. However, not

<sup>1</sup> *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶20 (2006) (Emphasis added).

<sup>2</sup> *Id.*

only has OCC been granted intervention in prior Delivery Capital Rider cases<sup>3</sup>, but OCC has intervened and participated in the similar proceedings of AEP Ohio (Distribution Investment Rider)<sup>4</sup> on an annual basis. FirstEnergy has never opposed OCC's intervention in the past<sup>5</sup> and its attempt to prevent OCC from intervening raises serious questions about FirstEnergy's motivation.

Additionally, FirstEnergy claims that OCC has no right to participate in this process. But this argument misinterprets the PUCO Opinion and Order in the Electric Security Plan ("ESP") case where the DCR was approved. The Order states that "OCEA [referring to non-signatory parties] will have the opportunity to fully participate in any commission proceeding *resulting* from the audit process, including ample rights for discovery."<sup>6</sup> This is the PUCO proceeding that is a result of the audit process. The audit is being currently conducted and the results of the audit and an opportunity to comment will be provided in this docket. Therefore, this is the appropriate proceeding in which OCC should intervene.

FirstEnergy further claims that OCC has "put the cart before the horse" and intervened too early by filing a motion to intervene prior to the filing of the audit report.

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<sup>3</sup> See In the Matter of the Review of the Deliver Capital Recovery Rider Contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company, Case No. 14-1929-EL-RDR, OCC's Motion to Intervene (June 3, 2015) ("*2014 FirstEnergy DCR Audit Case*"); In the matter of the Delivery Capital Recovery Rider Contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, Case No. 12-2855-EL-RDR, OCC's Motion to Intervene (January 2, 2013) ("*2012 FirstEnergy DCR Audit Case*").

<sup>4</sup>See In the Matter of the Distribution Investment Rider Contained in the Tariffs of Ohio Power Company, Case No. 13-0419-EL-RDR, OCC's Motion to Intervene (March 27, 2013); In the Matter of the Distribution Investment Rider Contained in the Tariffs of Ohio Power Company, Case No. 14-0255-EL-RDR, OCC's Motion to Intervene (April 3, 2014) (collectively "*AEP DIR Audit Cases*").

<sup>5</sup> See *2012 FirstEnergy DCR Audit Case*.

<sup>6</sup> In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. §4928.143, in the Form of an Electric Security Plan, Case No. 10-388-EL-SSO, Opinion and Order at 40 (August 25, 2010).

In fact under the PUCO's own regulations, a motion to intervene is timely as long as it was filed 5 days before any hearing, there is no bar on intervening earlier than this deadline.<sup>7</sup> A motion to intervene may be made once the PUCO opens a docket, thereby commencing a proceeding.<sup>8</sup> Since OCC's motion was filed before any hearing date was set or Attorney Examiner Entry, this motion is timely. Additionally, in the 2012 DCR case, and cases with AEP, OCC has always intervened shortly after the auditor has been selected and no party has ever objected before.<sup>9</sup> It is simply the standard procedure of OCC in its many years of practice before the PUCO in these cases. For FirstEnergy to sit up and object after years of this standard practice makes FirstEnergy "a day late and a dollar short."

Furthermore, in the original Electric Security Plan Case, OCC warned the PUCO that the DCR audit process could lessen "traditional regulatory oversight of rates and violate basic regulatory principle and practice that requires participation in Commission proceedings by all parties affected by proceedings."<sup>10</sup> FirstEnergy dismissed OCC concerns in its brief,<sup>11</sup> and now the PUCO should not condone circumventing regulatory process and hiding behind the curtain of obfuscation.

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<sup>7</sup> Ohio Admin. Code §4901-1-11(E).

<sup>8</sup> See Ohio Admin Code §4901-1-11(allowing a person to intervene in a proceeding); §4901-1-17(A) (permitting discovery by a party to begin immediately after a proceeding is commenced).

<sup>9</sup> See *2012 First Energy DCR Audit Case; AEP DIR Audit Cases*.

<sup>10</sup> In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company For Authority to Establish a Standard Service Offer Pursuant to R.C. §4928.143 in the Form of an Electric Security Plan, Testimony of Wilson Gonzalez at 15 (April 15, 2010).

<sup>11</sup> See In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company For Authority to Establish a Standard Service Offer Pursuant to R.C. §4928.143 in the Form of an Electric Security Plan, Post-Hearing Brief of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company at 37 (April 30, 2010).

For the reasons set forth in this Reply and the Motion for Intervention, 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 and the PUCO. The Commission should grant OCC's Motion to Intervene.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this *Reply to the Memorandum Contra of the Cleveland Electric Illuminating Company, Toledo Edison Company, and Ohio Edison Company's Motion to Intervene* was served on the persons stated below electronic transmission this 11<sup>th</sup> day of January 2016.

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Summary: Reply Reply to the Cleveland Electric Illuminating Company, Toledo Edison and Ohio Edison's Memorandum Contra OCC's Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Kumar, Ajay K. Mr.