

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Filing by Ohio Edison    )  
Company, The Cleveland Electric                ) Case No. 16-481-EL-UNC  
Illuminating Company, and The Toledo         )  
Edison Company of a Grid Modernization     )  
Business Plan.                                     )

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

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The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene<sup>1</sup> in this case where Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy") would have customers fund its expansive plan to install advanced infrastructure, including smart meters for every one of its 1.9 million residential customers, even though FirstEnergy has not revealed the cost customers will pay. The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

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<sup>1</sup> See R.C. Chapter 4911, R.C. 4903.221, and Ohio Adm. Code 4901-1-11.

Respectfully submitted,

BRUCE J. WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

/s/ Terry L. Etter

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**MEMORANDUM IN SUPPORT**

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In its most recent electric security plan case, as part of a stipulation (which OCC and numerous other parties did not sign), FirstEnergy committed to file a grid modernization plan, also known as “smartgrid.” The commitment included deployment of advanced infrastructure, “to achieve full smart meter implementation” with initiatives for PUCO consideration and approval.<sup>2</sup> FirstEnergy’s filing of a business plan in this proceeding is in response to that commitment.<sup>3</sup>

FirstEnergy offers the business plan “as the starting point for a collaborative process....”<sup>4</sup> FirstEnergy proposes that interested parties will have the opportunity to provide feedback on three alternative grid plans presented in its filing.<sup>5</sup> Under all three scenarios, the grid modernization will begin in late 2017,<sup>6</sup> and customers will begin to be charged for the plan starting three months after the PUCO has approved the plan.<sup>7</sup> Under

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<sup>2</sup> See Application (February 29, 2016) at 2.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 3.

<sup>5</sup> See *id.* at 4. See also *id.*, Exhibit A at 13.

<sup>6</sup> See *id.* at 13-14.

<sup>7</sup> *Id.* at 15.

each scenario, FirstEnergy will earn 10.88% profit on its investments, with customers paying for such profits.<sup>8</sup>

The business plan FirstEnergy filed, however, contains no information about the costs customers would pay for full-scale implementation of smartgrid. And yet, FirstEnergy apparently has detailed cost information about its proposed plans.<sup>9</sup>

FirstEnergy's unwillingness to disclose the cost customers will pay under its plans does not bode well for customers. One need only look at the roll-out of smart meters by FirstEnergy's Pennsylvania affiliates to envision the hundreds of millions of dollars FirstEnergy plans to extract from its Ohio customers for smartgrid. The deployment plan in Pennsylvania has an estimated cost of \$1.258 billion that will be collected from approximately 1.7 million residential customers.<sup>10</sup> And the Pennsylvania deployment plan is described by FirstEnergy as one of the "key experiences ... informing a significant portion" of its plan for Ohio.<sup>11</sup> It is no wonder FirstEnergy does not reveal how much it will charge customers.

Ohio law authorizes OCC to represent the interests of all of FirstEnergy's approximately 1.9 million residential electricity customers.<sup>12</sup> OCC's intervention should

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<sup>8</sup> *Id.* FirstEnergy's return on equity would be 10.38% with an additional 50 points adder.

<sup>9</sup> *See id.*, at 19 (where FirstEnergy made several references to the estimated costs: "The estimated costs of AMI were determined utilizing the significant analysis and resultant benefit/cost model created for the Pennsylvania smart meter project as adjusted to Ohio circumstances"; "The estimated costs of the ADMS system are based on an assessment of current hardware and software costs for such a system"; "All costs, as well as the operational cost savings estimates, were determined using a 'bottom-up' approach.") FirstEnergy does, however, identify the net present value of benefits to customers. *Id.* at 22.

<sup>10</sup> *See Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994, ME/PN/PP/WP Revised Smart Meter Deployment Plan (March 19, 2014) at 12, Fig. 1.2 (available at [www.puc.pa.gov/pcdocs/1278562.pdf](http://www.puc.pa.gov/pcdocs/1278562.pdf)).

<sup>11</sup> Application, Exhibit A at 2-3.

<sup>12</sup> R.C. Chapter 4911.

be granted in order to allow it to protect FirstEnergy's customers from being charged unjust and unreasonable rates.

R.C. 4903.221 provides, in part, that any person "who may be adversely affected" by a PUCO proceeding may seek to intervene in that proceeding. The interests of Ohio's residential consumers may be "adversely affected" by this case, especially if the consumers were unrepresented, because residential customers will be asked to pay increased charges in order for FirstEnergy to implement its grid modernization plan. 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 FirstEnergy's residential consumers who will see significant increases to their electric bills to pay for smartgrid. This interest is different from 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 consumers will include, among other things, advancing the position that FirstEnergy's customers should receive adequate service at a

reasonable rate under Ohio law.<sup>13</sup> OCC's position is therefore directly related to the merits of this case 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 residential utility consumer advocate, OCC has a very real and substantial interest in this case in which the PUCO must address whether FirstEnergy's grid modernization plan will provide residential customers adequate service at a reasonable rate, under Ohio law.

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

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<sup>13</sup> R.C. 4905.22.

concede the lawfulness of this criterion, OCC satisfies this criterion in that OCC 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 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.<sup>14</sup>

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 consumers, the PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

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OHIO CONSUMERS' COUNSEL

/s/ Terry L. Etter

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<sup>14</sup> See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below via electric transmission this 25<sup>th</sup> day of March 2016.

*/s/ Terry L. Etter*\_\_\_\_\_

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