

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, the Cleveland Electric)	
Illuminating Company, and the Toledo)	
Edison Company for Approval of their)	Case No. 16-743-EL-POR
Energy Efficiency and Peak Demand)	
Reduction Program Portfolio Plans for)	
2017 through 2019.)	

**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 in which Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy" or the "Utility") seek approval of an energy efficiency and peak demand reduction portfolio plan (the "Portfolio Plan") that will cost consumers nearly \$400 million over three years.¹ OCC files this motion on behalf of FirstEnergy's 1.9 million residential electricity customers.² The Public Utilities Commission of Ohio ("PUCO") should grant OCC's motion for the reasons set forth in the attached memorandum in support.

¹ See Application, Ohio Edison Appendix C-4, PUCO 3: Summary of Portfolio Costs (\$156,272,565 in program costs); Application, Cleveland Electric Appendix C-4, PUCO 3: Summary of Portfolio Costs (\$109,691,246 in program costs); Application, Toledo Edison Appendix C-4, PUCO 3: Summary of Portfolio Costs (\$57,005,340 in program costs); Application § 7.1 (\$75 million in Utility profits for shared savings).

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

Respectfully submitted,

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/s/ Christopher Healey

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MEMORANDUM IN SUPPORT

This case relates to FirstEnergy's 2017-2019 energy efficiency and peak demand reduction Portfolio Plan. The Portfolio Plan includes over \$125 million in program costs paid by residential customers.³ The Portfolio Plan also requires residential customers to pay millions of dollars per year in shared savings profits to the Utility.⁴

Ohio law authorizes OCC to represent the interests of all of FirstEnergy's 1.9 million residential electricity customers.⁵ R.C. 4903.221 provides that any person "who may be adversely affected" by a PUCO proceeding is entitled to intervene in that proceeding. The interests of Ohio's residential consumers may be adversely affected by this case because the Portfolio will cost consumers hundreds of millions of dollars in program costs and Utility profits over the course of three years. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

³ See Application, Ohio Edison Appendix B-1 (\$62,503,800); Application, Cleveland Electric Appendix B-1 (\$43,892,392); Application, Toledo Edison Appendix B-1 (\$18,963,900).

⁴ See Application § 7.1 (requiring customers to pay the Utility up to \$25 million per year for shared savings profits but without details on allocation among classes).

⁵ See R.C. Chapter 4911.

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 and ensuring that the rates that they pay are just and reasonable. 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.⁶ 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. 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.

⁶ See R.C. 4905.22 ("All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission . . .").

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." *See* Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a real and substantial interest in this case in which the PUCO must address whether FirstEnergy will provide residential customers adequate service at a reasonable rate under Ohio law after implementation of the Portfolio Plan.

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), which OCC already has addressed and which 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." Although OCC does not concede that the PUCO must consider this factor, OCC satisfies it because OCC has been uniquely 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, in deciding two consolidated appeals regarding OCC's right to intervene, the Supreme Court of Ohio has confirmed that "intervention ought to be

liberally allowed."⁷ In those cases, OCC explained in its motion to intervene that the proceeding could negatively impact residential consumers, and OCC established that the interests of consumers would not be represented by existing parties.⁸ Because there was no evidence disputing OCC's position, nor any evidence that OCC's intervention would unduly delay the proceedings, the Supreme Court found that the PUCO could not deny OCC the right to intervene.⁹

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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/s/ Christopher Healey

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⁷ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 2006-Ohio-5853, ¶ 20 (2006).

⁸ *Id.* ¶¶ 18-20.

⁹ *Id.* ¶¶ 13-20.

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 29th day of April 2016.

/s/ Christopher Healey
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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 Healey, Christopher Mr.