

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Filing by Ohio Edison)
Company, The Cleveland Electric) Case No. 17-2436-EL-UNC
Illuminating Company, and The Toledo)
Edison Company for Application for)
Approval of a Distribution Platform)
Modernization Plan.)

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

This case involves a proposal to charge consumers approximately \$450 million over five years to modify the distribution system of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy”).¹ The modifications are purported to be the platform for the grid of the future, which includes any PowerForward initiatives.

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene on behalf of FirstEnergy’s 1.9 million residential customers who would pay the bulk of the costs (around 60%) under FirstEnergy’s proposal.² 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 See Application (December 1, 2017) at 4 and Attachment C.

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

Respectfully submitted,

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MEMORANDUM IN SUPPORT

FirstEnergy proposes to modify its distribution system and wants consumers to pay for it. FirstEnergy plans to spend about \$450 million over three years for the project,³ with the cost collected from customers over five years.⁴ Residential customers would pay 56.69 percent of the costs, or about \$255 million, if FirstEnergy’s proposed allocation of costs – based on a percentage of distribution revenue responsibility – is accepted (which it should not be).⁵ The typical FirstEnergy residential customer will pay more than \$103 over the five-year period if the proposal is approved.⁶ Ohio law authorizes OCC to represent the interests of all of FirstEnergy’s approximately 1.9 million residential electricity customers.⁷

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

³ Application at 4.

⁴ *See id.*, Attachment C.

⁵ *See id.*

⁶ *See id.*

⁷ R.C. Chapter 4911.

residential consumers may be “adversely affected” by this case, especially if the consumers were unrepresented, because residential customers are being asked to pay increased charges in order for FirstEnergy to modify its distribution system. 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 the distribution system modification. 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. It is also different from that of other parties who would seek to minimize their responsibility for these distribution costs, and thus maximize the charges to residential customers.

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.⁸ OCC’s position is therefore directly related to the

⁸ R.C. 4905.22.

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 distribution system modifications 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 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 OCC should have been granted intervention.⁹

OCC meets the criteria set forth in R.C. 4903.221 and 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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⁹ 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 regular mail service this 20th day of December 2017.

/s/ Terry L. Etter

Terry L. Etter

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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 Etter, Terry L.