

**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 Application for)
Approval of a Distribution Platform)
Modernization Plan)

**MOTION TO INTERVENE BY THE OHIO ENVIRONMENTAL COUNCIL
AND ENVIRONMENTAL DEFENSE FUND**

The Application by the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy” or the “Companies”) regarding their proposed distribution platform modernization plan raises financial and environmental concerns for Ohio’s residents and the state’s clean energy future. Therefore, the Ohio Environmental Council (“OEC”) and the Environmental Defense Fund (“EDF”) respectfully move for leave to intervene in the above-captioned proceeding. Pursuant to OAC § 4903.221 and Ohio Administrative Code 4901-1-11, the Public Utilities Commission of Ohio (“the Commission”) should grant OEC and EDF’s Motion because the organizations and our members have a substantial interest in the outcome of this case, we represent interests separate from those of the already existing parties, and our contribution will lead to a just and expeditious resolution of the issues involved in the proceeding without causing undue delay.

The OEC and EDF are not-for-profit organizations devoted to ensuring Ohioans and the United States have access to clean water, clean air, and a healthy environment. OEC and EDF have provided a more detailed explanation of our standing in this case, reasons for intervention, and arguments why the Commission should grant our Motion in the accompanying Memorandum in Support.

December 22, 2017

Respectfully Submitted,

/s/ Miranda Leppla

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MEMORANDUM IN SUPPORT

I. Ohio law permits intervention of parties in cases before the Public Utilities Commission of Ohio.

The Ohio Revised Code permits parties “who may be adversely affected by a public utilities commission proceeding [to] intervene in such proceeding.” R.C. § 4903.221. The Commission has four factors for consideration of such motions for intervention:

- (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 proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues. R.C. §4903.221(B).

This statute is further amplified by OAC §4901-1-11, which states that the commission may permit intervention based on the following five factors:

- (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 proceedings.
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.
- (5) The extent to which the person’s interest is represented by existing parties.

OAC §4901-1-11(B). OEC and EDF satisfy this five-factor balancing test based on the argument discussed in detail in this Memorandum in Support.

II. The Commission should grant the Ohio Environmental Council and Environmental Defense Fund’s Motion to Intervene in the Commission’s review of FirstEnergy’s Application for Approval of a Distribution Platform Modernization Plan.

OEC and EDF respectfully request the Commission grant our Motion to Intervene. OEC and EDF’s interest in this case is fundamental to our mission to protect Ohio’s environment and ensure clean energy for all of the State’s citizens, and that interest will fundamentally assist the Commission in its analysis of FirstEnergy’s proposed Distribution Platform Modernization Plan. Further, the Ohio Supreme Court has emphasized 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 [Commission].” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 2006-Ohio-5853, 856 N.E.2d 940, ¶ 20.

A. The Ohio Environmental Council and Environmental Defense Fund have a real and substantial interest in FirstEnergy’s Application regarding Distribution Platform Modernization.

The OEC is a not-for-profit organization incorporated in Ohio under Section 501(c)(3) of the U.S. Internal Revenue Code, with approximately 3,000 individual members. Its main office is located at 1145 Chesapeake Avenue, Suite I, Columbus, OH 43212. The OEC’s principal purpose is to protect the natural resources and environment of the citizens of the State of Ohio.

EDF is a not-for-profit organization headquartered in New York at 257 Park Avenue South New York, NY 10010. EDF’s purpose is to link science, economics, and law to create innovative, equitable and cost-effective solutions to society’s most urgent environmental problems. EDF has over 300,000 members nationwide with 9,590 members located in Ohio.

OEC and EDF can best protect Ohio's environment and natural resources by pursuing a clean energy future for the state, which includes intervening in this Distribution Platform Modernization application. Our intervention will protect Ohio's environment by ensuring cost-effective implementation of new technologies that can improve energy efficiency and reduce energy consumption, and improve Ohio's generation mix by increasing renewables. Thus, OEC and EDF have a real and substantial interest in the issues, and the outcome, of the Commission's consideration of FirstEnergy's Application. OEC and EDF satisfy the first prong of the OAC's five part balancing test for permissive intervention before the Commission.

B. The Ohio Environmental Council and the Environmental Defense Fund's legal position will assist in a just resolution of this case.

OEC and EDF seek to ensure FirstEnergy's Distribution Platform Modernization Plan complies with the letter and intent of the state's energy law and policies, and intend to recommend improvements and alternatives to proposals that are not in sync with the needs of Ohioans and our environment. OEC and EDF will provide additional resources and knowledge to assist the Commission in carefully reviewing and analyzing the Application to ensure energy savings and that funds proposed to be spent on this Plan are used by FirstEnergy in a manner that ensures environmental benefits for Ohioans.

C. The intervention of the Ohio Environmental Council and Environmental Defense Fund will not cause undue delay to the Commission's review of FirstEnergy's Application.

OEC and EDF have timely filed this Motion to Intervene with the intention to pursue a fair adjudication of the merits of the case. Both parties have no intention to cause undue delay to the Commission's review of the Application, and both parties' experience in matters before the Commission illustrates our ability to participate without causing undue delay in any type of proceeding. OEC has been consistently involved in the development and enactment of S.B. 221

and the associated rules, including as a party in numerous cases before the Commission, and EDF has litigated such cases in Ohio as well as in other Public Utility Commissions around the United States. Our intervention will not unduly prolong or delay these proceedings, but will add value to the development of this case.

Accordingly, OEC and EDF's intervention into the Commission's review of FirstEnergy's Application for its Distribution Platform Modernization Plan will not cause undue delay.

D. The Ohio Environmental Council and Environmental Defense Fund will contribute to a just and expeditious resolution of the issues involved in the proceeding.

OEC and EDF will contribute to a just and expeditious resolution of the issues involved in the proceeding because of both parties' expertise in presenting relevant factors for the Commission's review of adjudicatory matters. OEC has participated in previous proceedings dealing with grid modernization (*see e.g., Application of Ohio Power Co. to Initiate Phase 2 of its gridSMART Project*, PUCO Case No. 13-1939-EL-RDR), and are heavily involved in the PowerForward grid modernization efforts at the Commission. In addition, EDF can provide a national perspective on Ohio's energy future, providing the Commission with valuable information it may not otherwise hear in its adjudicatory procedure. Accordingly, both parties' perspectives will assist in the just and expeditious resolution of the issues and will not detract or confuse that process.

E. The Ohio Environmental Council and Environmental Defense Fund have different interests than those of the existing parties, and they can represent those interests more effectively than the existing parties.

OEC and EDF intervene in these proceedings with a particular focus on the clean energy needs of Ohioans, and a desire to ensure Ohioans' money is used to modernize the distribution system in a way that will best help them save energy and ensure a cleaner future for our state.

OEC and EDF represent different interests, and different constituents, than those already existing parties, and thus the interests of both the OEC and EDF are vital to the Commission's adjudication of this proceeding.

III. Conclusion

The Commission should grant OEC and EDF's Motion to Intervene in the Commission's review of FirstEnergy's Filing of its Application for Approval of a Distribution Platform Modernization Plan. OEC and EDF have a real and substantial interest in the Plan's effect on Ohio's clean energy future. OEC and EDF have an important legal perspective in this proceeding, and our intervention will not cause undue delay in the Commission's review. Both parties will contribute to a just and expeditious resolution of the issues involved, and they can represent those interests more effectively than already existing parties. Finally, the Ohio Supreme Court has emphasized the liberal nature of the legal standard at play for intervention into Commission proceedings. See *Ohio Consumer's Council*, at ¶ 20. For the reasons stated in this Memorandum in Support, OEC and EDF respectfully request that the Commission grant our Motion to Intervene in the instant matter.

Respectfully Submitted,

/s/ Miranda Leppla

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this filing will be electronically served via the Public Utility Commission of Ohio's e-filing system and via email on all parties referenced in the service list of the docket.

/s/ Miranda Leppla
Miranda Leppla

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Summary: Motion to Intervene by the Ohio Environmental Council and Environmental Defense Fund and Memorandum in Support electronically filed by Ms. Miranda R Leppla on behalf of Ohio Environmental Council and Environmental Defense Fund