

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of the)
Distribution Modernization Rider of Ohio) Case No. 17-2474-EL-RDR
Edison Company, The Cleveland Electric)
Illuminating company, and The Toledo)
Edison Company.)

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 where the utilities¹ are collecting \$204 million per year through the so-called Distribution Modernization Rider ("Rider DMR"), which ironically does not require a penny of the \$204 million collected to be spent on distribution modernization.² OCC is filing on behalf of the approximately 1.8 million residential utility customers of FirstEnergy. 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 Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy" or "utilities")

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

Respectfully submitted,

BRUCE WESTON (#0016973)
OHIO CONSUMERS' COUNSEL

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MEMORANDUM IN SUPPORT

The PUCO authorized FirstEnergy to collect \$204 million a year from customers through the distribution modernization rider.³ The PUCO required that the \$204 million per year collected from customers be “used, directly or indirectly, in support of grid modernization.”⁴ This case is a review of Rider DMR. OCC has authority under law to represent the interests of all the approximately 1.8 million residential utility customers of FirstEnergy, pursuant to R.C. Chapter 4911.

R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio’s residential customers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding where FirstEnergy is collecting \$204 million per year from customers for what is acknowledged to be credit support for FirstEnergy Corp.⁵ Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

³ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illumination Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan.* Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing at ¶202 (October 12, 2016).

⁴ *Id.* at ¶ 282.

⁵ *Id.* at ¶ 185.

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 the residential customers of FirstEnergy in this case involving reviewing the use of DMR funds collected from customers. This interest is different than 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 residential customers will include advancing the position that customers should pay no more for utilities than is just and reasonable under Ohio law. OCC's position is therefore directly related to the merits of this case that 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.

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 advocate for residential utility customers, OCC has a very real and substantial interest in this case where FE is collecting \$204 million per year from customers.

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 it uniquely has been designated as the state representative of the interests of Ohio’s residential utility customers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio (“Court”) 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 in both proceedings.⁶

⁶ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

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

Respectfully submitted,

BRUCE WESTON (#0016973)
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below *via* electronic transmission, this 14th day of March 2018.

/s/ Zachary E. Woltz
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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 Zachary E. Woltz