

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Filing by FirstEnergy |) | |
| Solutions Corp. of a Petition for |) | Case No. 18-569-EL-UNC |
| Reorganization under Chapter 11 of the |) | |
| United States Bankruptcy Code. |) | |

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

On March 31, 2018, FirstEnergy Solutions Corp. (“FES”) and six of its affiliates¹ filed for bankruptcy.² FES serves customers in four states, including Ohio. The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene on behalf of residential consumers to protect them regarding the bankruptcy.

The bankruptcy filing was not a surprise, given public disclosures and discussions preceding it. In this regard, OCC filed a letter with the Public Utilities Commission of Ohio (“PUCO”) nearly five months before the bankruptcy filing, seeking consumer protections regarding the potential FES bankruptcy.³

FES is a certified retail electric supplier (“marketer”) providing generation service throughout the State of Ohio.⁴ FES also provides generation service through the standard

¹ The debtors do not include the FirstEnergy Ohio distribution utilities (Ohio Edison Company, the Toledo Edison Company, and the Cleveland Electric Illuminating Company).

² *In re FirstEnergy Solutions Corp.*, No. 18-50757 (Bankr. N.D. Ohio).

³ *In re Application of FirstEnergy Solutions Corp. to Become a Certified Retail Elec. Supplier in the State of Ohio*, Case No. 00-1742-EL-CRS, Correspondence by the Office of the Ohio Consumers’ Counsel (Nov. 6, 2017).

⁴ Entry ¶ 4 (Apr. 4, 2018). *See also* <http://www.energychoice.ohio.gov/ApplesToApplesCategory.aspx?Category=Electric#> (showing FES as a marketer for residential customers in all six electric distribution utility service territories).

service offer for several of Ohio's electric distribution utilities.⁵ Thus, FES's bankruptcy could materially and adversely impact many of the more than four million residential consumers that OCC represents.

The PUCO should grant OCC's motion to intervene in this case for the reasons set forth in the attached memorandum in support.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Christopher Healey
Christopher Healey (0086027)
Counsel of Record
Amy Botschner-O'Brien (0074423)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215
Telephone [Healey]: (614) 466-9571
Telephone [O'Brien]: (614) 466-9575
christopher.healey@occ.ohio.gov
amy.botschner.obrien@occ.ohio.gov
(willing to accept service by e-mail)

⁵ *Id.* ¶ 10.

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MEMORANDUM IN SUPPORT

The PUCO opened this proceeding “to protect Ohio consumers from any adverse impacts due to the recent filing by FirstEnergy Solutions Corp. of a petition for reorganization under Chapter 11 of the United States Bankruptcy Code.”⁶ OCC represents the interests of all residential customers of investor-owned electric distribution utilities in Ohio (over 4 million in total), many of whom may be directly or indirectly affected by FES’s bankruptcy filing. The PUCO should grant OCC’s motion to intervene in this case to protect those customers’ interests.

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 consumers may be adversely affected by this case, especially if customers were unrepresented in a proceeding where the PUCO will address the potential impacts of FES’s bankruptcy on residential consumers in Ohio. 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:

⁶ Entry ¶ 1 (Apr. 4, 2018).

- (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; and
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

OCC meets these criteria. First, the nature and extent of OCC's interest is representing residential consumers in this case where the PUCO is seeking to “to protect Ohio consumers from any adverse impacts due to” FES’s bankruptcy filing. This interest is different from that of any other party.

Second, OCC will advocate for residential consumers by advancing the position that rates should be no more than what is reasonable and permissible under Ohio law.⁷ OCC’s position is therefore directly related to the merits of the proposal before the PUCO in this case.

Third, OCC’s intervention will not unduly prolong or delay the proceeding. OCC, with its longstanding expertise and experience in PUCO proceedings, will contribute to the efficient processing of the case with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to fully developing and equitably resolving the factual issues. OCC’s intervention will provide the PUCO with information relating to the interests of residential consumers. OCC will obtain and develop information that the PUCO should consider to equitably and lawfully decide the case in the public interest.

⁷ R.C. 4905.22.

OCC also satisfies the intervention criteria in the Ohio Administrative Code, which are subordinate to the criteria 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 real and substantial interest in this case where the outcome could affect the rates that residential customers pay.

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 has already 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.” While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion because it has been uniquely designated as the statutory representative of Ohio's residential utility consumers.⁸ 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.⁹

The Office of the Ohio Consumers' Counsel meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme

⁸ R.C. Chapter 4911.

⁹ *See Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 13-20 (2006).

Court of Ohio for intervention. On behalf of Ohio residential consumers, the PUCO should grant OCC's motion to intervene.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Christopher Healey
Christopher Healey (0086027)
Counsel of Record
Amy Botschner-O'Brien (0074423)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215
Telephone [Healey]: (614) 466-9571
Telephone [O'Brien]: (614) 466-9575
christopher.healey@occ.ohio.gov
amy.botschner.obrien@occ.ohio.gov
(willing to accept service by e-mail)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this Motion to Intervene has been served upon the below-named persons via electronic transmission this 3rd day of May 2018.

*/s/ Christopher Healey*_____

Christopher Healey
Counsel of Record

SERVICE LIST

William.Wright@ohioattorneygeneral.gov
michael.schuler@aes.com
rocco.dascenzo@duke-energy.com
Elizabeth.watts@duke-energy.com
Jeanne.kingery@duke-energy.com

fdarr@mwncmh.com
mpritchard@mwncmh.com
stnourse@aep.com
cmbblend@aep.com

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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.