

**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) Case No. 19-0361-EL-RDR
Edison Company for an Extension of)
Their Distribution Modernization Rider.)

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

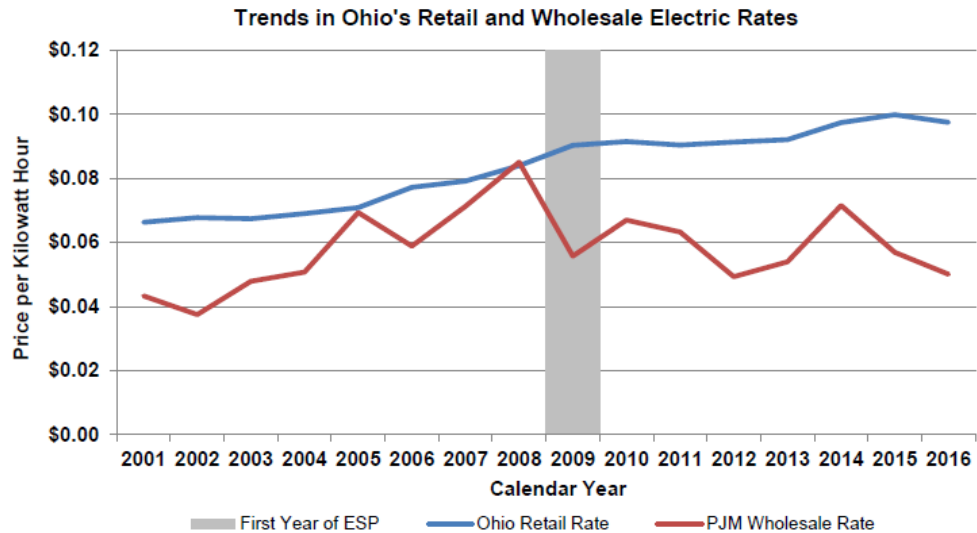
The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene¹ to protect 1.8 million residential consumers from another ride on FirstEnergy's² subsidy-go-round, where the price of admission is hundreds of millions of dollars in higher electric bills. FirstEnergy is seeking a two-year extension of its misleadingly-named Distribution Modernization Rider ("DMR"). Confusingly, the Distribution Modernization Rider has enabled FirstEnergy to collect above-market subsidies from Ohio consumers without it being required to spend a penny on distribution modernization. We asked FirstEnergy what it's doing with the hundreds of millions of dollars that it's taking from consumers. But FirstEnergy declined to answer and the PUCO denied our motion to compel an answer from FirstEnergy.³

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

² Collectively, Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company.

³ See *In the Matter of the Review of the Distribution Modernization Rider of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 17-2474-EL-RDR, Entry (November 1, 2018).

OCC represents FirstEnergy's residential electric utility customers in Ohio. As revealed in the chart below,⁴ the Ohio Legislative Service Commission has shown how wholesale electric prices have been declining since 2008 but Ohio's retail electric prices have mostly increased.



Source: Average Ohio retail price of electricity from U.S. Energy Information Administration; total wholesale power price from 2016 State of the Market Report for PJM

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

⁴ The chart can be found at <https://www.legislature.ohio.gov/download?key=8111&format=pdf>.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

FirstEnergy is seeking authority from the PUCO to extend, for another two years, its three years of charging Ohioans for its so-called distribution modernization rider. The DMR is designed to permit FirstEnergy to charge customers hundreds of millions of dollars for credit support and purportedly to facilitate upgrades to the grid (though FirstEnergy is not required to spend a penny on distribution modernization). OCC has statutory authority to represent the interests of FirstEnergy's 1.8 million residential electric utility customers under R.C. Chapter 4911. Considering the charge's negative effect on consumers who pay this subsidy, it is important that the PUCO scrutinize the requested extension with a highly skeptical eye.

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 FirstEnergy's residential customers may be "adversely affected" by this case, especially if they were unrepresented in a proceeding to determine if they should be charged hundreds of millions of dollars more under FirstEnergy's proposal to extend the distribution modernization rider. 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 proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is representing FE's residential customers in this case, where FirstEnergy has proposed a two-year extension of the DMR and the subsidy charges to customers under it. This interest is different from that of any other party, and especially different from that of FE whose advocacy includes the financial interest of shareholders. As a representative of FirstEnergy's residential customers who will be affected by the outcome of this case, OCC is an "interested stakeholder."

Second, OCC's advocacy for residential customers will include advancing the position that FE should charge its customers no more than what 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 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 the PUCO will determine whether to extend charges to customers under FE's DMR.

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.

Further, the Supreme Court of Ohio ("Court") affirmed 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.⁵

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Court for intervention. On behalf of Ohio residential customers, the PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

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⁵ 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 electronic transmission, this 8th day of March 2019.

/s/ William J. Michael

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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 Michael, William J. Mr.