

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Determination of the)
Existence of Significantly Excessive)
Earnings for 2018 Under the Electric)
Security Plan of Ohio Edison Company,) Case No. 19-1338-EL-UNC
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 intervene¹ here where the Public Utilities Commission of Ohio ("PUCO") will examine the FirstEnergy utilities'² 2018 earnings to determine if they were "significantly excessive" and if customers are entitled to a refund.

In this regard, FirstEnergy asserts that its earnings in 2018 were \$148,242,053 for Ohio Edison Company, \$86,219,827 for Cleveland Electric Illuminating Company, and \$32,960,209 for Toledo Edison Company.³ Importantly, these earnings exclude approximately \$134.7 million in after-tax revenue from FirstEnergy's Distribution Modernization Rider,⁴ which the Supreme Court of Ohio recently ruled was an unlawful charge. The FirstEnergy utilities' exclusion of the DMR charge revenues from the annual profits review may prevent customers from obtaining a refund they might otherwise receive

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

² Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively "FirstEnergy").

³ Direct Testimony of Tracy M. Ashton, at Schedule TMA-2.

⁴ *Id.*

under the law. This harm to customers is compounded by the fact that FirstEnergy was permitted to keep and not refund \$456 million of unlawful DMR charges collected from customers.

OCC is filing on behalf of FirstEnergy's 1.8 million residential electric utility customers. The reasons the PUCO should grant OCC's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Angela O'Brien

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MEMORANDUM IN SUPPORT

FirstEnergy provides electric service to its customers through its electric security plan approved by the PUCO in accordance with the provisions of R.C. 4928.143. As a consumer protection written into the law, R.C. 4928.143(F) requires the PUCO to annually evaluate a utility's earnings (on a stand-alone basis) to determine whether they are "significantly excessive" when compared to the earnings of comparable businesses and utilities. If the PUCO determines that the plan has allowed earnings that are significantly excessive, refunds to customers must be ordered.

Under R.C. Chapter 4911, OCC has the authority to represent the interests of FirstEnergy's 1.8 million residential utility customers.

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 in Ohio may be "adversely affected" by this case, especially if those customers were unrepresented in a proceeding where the PUCO is determining whether customers are entitled to a refund as a result of rates charged to customers under FirstEnergy's electric security plan. 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 FirstEnergy's residential customers in this case where the PUCO will be determining whether FirstEnergy had significantly excessive earnings in 2018 under its electric security plan and owes customers a refund. This interest is different from that of any other party, and especially different from 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 rates that customers pay should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. OCC has argued and will continue to argue that the DMR charge revenues should be considered in this annual profits review, despite the PUCO's rulings otherwise. OCC's position is therefore directly related to the 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 to equitably and lawfully decide 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 decide if customers are entitled to a refund as a result of FirstEnergy's significantly excessive earnings in 2018.

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 "[t]he 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.⁵

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)
Ohio Consumers’ Counsel

/s/ Angela O’Brien

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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 31st day of July, 2019.

/s/ Angela O'Brien

Angela O'Brien

Assistant Consumers' Counsel

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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 O'Brien, Angela D.