

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Edison)
Company, The Cleveland Electric Illuminating) Case No. 19-0363-EL-WVR
Company, and The Toledo Edison Company for)
a Waiver of Rule 4901:1-39-04.)

**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 FirstEnergy¹ will file an energy efficiency portfolio plan by December 1, 2019.² (The PUCO 's existing rules require that FirstEnergy file an energy efficiency portfolio plan by September 1, 2019). The existing PUCO rules, however, have been superseded with the passage of House Bill 6.

OCC is filing on behalf of the 1.9 million residential utility customers of FirstEnergy. FirstEnergy's residential customers (and some nonresidential customers) pay for these programs, including the costs of the programs and utility profits referred to as "shared savings."³ These charges are capped at a maximum of \$107 million per year for 2017, 2018, and 2019, and should be similarly capped at \$107 million in 2020.⁴ 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 FirstEnergy is the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, collectively.

² Entry (Aug. 22, 2019).

³ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

⁴ See Case No. 16-743-EL-POR, Opinion & Order (Nov. 21, 2017).

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Christopher Healey

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MEMORANDUM IN SUPPORT

Under Ohio House Bill 6, 133rd General Assembly (“HB 6”), the General Assembly amended the law regarding energy efficiency programs. In particular, HB 6 provides that if a utility has energy efficiency programs in place in 2019, those programs will continue through the end of 2020 without modification unless changes are authorized by the PUCO. This includes continuing the current budget, which for FirstEnergy is \$107 million per year.⁵ This means that customers cannot be charged more than \$107 million per year currently, so they cannot be charged more than \$107 million in 2020 either.

OCC has authority under law to represent the interests of all the 1.9 million residential utility customers of FirstEnergy under 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 involving charges to consumers for energy efficiency programs, including the costs of running the programs and utility profits resulting from those programs. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

⁵ See Case No. 16-743-EL-POR, Opinion & Order (Nov. 21, 2017).

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 the residential customers of FirstEnergy in this case involving the amount that they might be charged for energy efficiency programs in 2020. 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, among other things, advancing the position that customers should pay a maximum of \$107 million in 2020 for FirstEnergy's energy efficiency programs. OCC's position is therefore directly related to the merits of this case, which 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 FirstEnergy seeks to continue its programs for 2020 under HB 6 and to charge customers tens of millions of dollars for those programs.

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 already has 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 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

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,

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Ohio Consumers' Counsel

/s/ Christopher Healey
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Counsel of Record
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⁶ 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 28th day of August 2019.

/s/ Christopher Healey
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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.