

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review and Audit of       )  
the Advanced Metering Infrastructure       )  
Rider of Ohio Edison Company, the       ) Case No. 18-1647-EL-RDR  
Cleveland Electric Illuminating Company,       )  
and the Toledo Edison Company.       )

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

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The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene because the Public Utilities Commission of Ohio ("PUCO") Staff will review and audit the charges that customers have paid—about \$13 million by residential customers—in 2019 for FirstEnergy's grid modernization pilot program. This pilot program is a precursor to many hundreds of millions of more dollars that FirstEnergy plans to charge customers for grid modernization in the coming years.<sup>1</sup> OCC is filing on behalf of the 1.9 million residential utility customers of FirstEnergy.<sup>2</sup> The reasons the PUCO should grant OCC's motion are further set forth in the attached memorandum in support.

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<sup>1</sup> See Case No. 18-1604-EL-UNC.

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

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

/s/ Christopher Healey

Christopher Healey (0086027)  
Counsel of Record  
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Assistant Consumers' Counsel

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**MEMORANDUM IN SUPPORT**

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FirstEnergy’s residential customers pay about \$13 million per year for grid modernization investments under the Utility’s Advanced Metering Infrastructure / Modern Grid Rider (“Rider AMI”). Each year, FirstEnergy files a report in support of Staff’s annual review of this rider, and Staff reviews and audits these charges.<sup>3</sup> In this case, the PUCO Staff will review and audit the charges that customers have paid under this rider in 2019. 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 where the PUCO will review charges that customers pay for grid modernization. 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:

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<sup>3</sup> See Case No. 16-2166-EL-RDR (Staff review of 2017 charges); Case No. 17-2276-EL-RDR (Staff review of 2018 charges).

- (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 an audit of 2019 charges collected from customers for grid modernization. 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 the Utility can only collect prudently incurred costs from its consumers through this rider and that the rider rate is just and reasonable. 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 grid modernization charges paid by residential consumers are under review.

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.<sup>4</sup>

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<sup>4</sup> 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)  
Ohio Consumers' Counsel

*/s/ Christopher Healey*

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(willing to accept service by e-mail)

### **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 5th day of November 2019.

/s/ Christopher Healey  
Christopher Healey  
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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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.