

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric) Case No. 19-2080-EL-ATA
Illuminating Company, and The Toledo) Case No. 19-2081-EL-AAM
Edison Company for Approval of a)
Decoupling Mechanism.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene case where Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy" or the "Utility") want to charge residential customers more than \$12 million per year in "decoupling" charges, that is, charges for revenue that FirstEnergy allegedly loses when customers engage in energy efficiency activities either on their own or through utility programs.¹ OCC is filing on behalf of the 1.9 million residential utility customers of FirstEnergy. 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 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
Angela O'Brien (0097579)
Bryce McKenney (0088203)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

65 East State Street, 7th Floor
Columbus, Ohio 43215-4213
Telephone [Healey]: (614) 466-9571
Telephone [O'Brien]: (614) 466-9531
Telephone [McKenney]: (614) 466-9585

christopher.healey@occ.ohio.gov

angela.obrien@occ.ohio.gov

bryce.mckenney@occ.ohio.gov

(willing to accept service by e-mail)

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MEMORANDUM IN SUPPORT

The Ohio General Assembly recently passed House Bill 6, which, among other things, requires customers to pay hundreds of millions of dollars in subsidies for nuclear, coal plants, and solar projects and eliminates mandates for energy efficiency and renewable energy. Despite eliminating energy efficiency mandates, the law also allows utilities to file a request for “decoupling,” which means that the utility can charge customers for money that it allegedly would have made, if not for its energy efficiency programs.² In this case, FirstEnergy seeks to charge residential customers more than \$12 million per year in such decoupling charges.

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 their Utility seeks to charge them more than \$12 million per year in decoupling charges, thus undoing some of the benefit that those customers receive from

² R.C. 4928.471.

being energy efficient. 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 the residential customers of FirstEnergy in this case involving millions of dollars per year in decoupling charges. 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 shareholder.

Second, OCC's advocacy for residential customers will include, among other things, advancing the position that customers should not pay excessive amounts for decoupling, including any decoupling charges that might be duplicative of "lost revenues" charges that customers are also already paying. 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 residential consumers might be required to pay more than \$12 million in new decoupling charges.

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.³

³ 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 _____

Christopher Healey (0086027)
Counsel of Record
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christopher.healey@occ.ohio.gov
angela.obrien@occ.ohio.gov
bryce.mckenney@occ.ohio.gov
(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 17th day of December 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:

SERVICE LIST

Steven.beeler@ohioattorneygeneral.gov Thomas.mcnamee@ohioattorneygeneral.gov	bknipe@firstenergycorp.com edanford@firstenergycorp.com cwatchorn@firstenergycorp.com jang@calfee.com dborchers@bricker.com dparram@bricker.com
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Summary: Motion Motion to Intervene by The Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Healey, Christopher