

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Determination of the	)	
Existence of Significantly Excessive	)	Case No. 20-1034-EL-UNC
Earnings for 2019 Under the Electric	)	
Security Plan of Ohio Edison Company,	)	
The 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 where the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company ("FirstEnergy") seek to avoid returning to consumers excessive profits. The PUCO's review to determine if FirstEnergy's 2019 earnings were excessive directly impacts the electric rates that customers pay. OCC is filing on behalf of the 1.9 million residential utility customers of FirstEnergy who are protected under law from paying profits to FirstEnergy that are too high. 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/ Amy Botschner O'Brien*

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

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FirstEnergy seeks a PUCO determination that its three companies operating under a joint electric security plan did not incur significantly excessive earnings during the annual period ending December 31, 2019.<sup>1</sup> Specifically, FirstEnergy's application presents information on the utilities' earnings and equity to attempt to show that the return on equity earned in 2019 was not significantly in excess of the return that was earned by publicly traded companies as described in the statute.<sup>2 3</sup>

Resolution of FirstEnergy's claims will directly affect the electric rates that FirstEnergy's customers pay, including the utilities' residential customers. OCC has authority under law to represent the interests of all of the 1.9 million residential utility customers of FirstEnergy, under R.C. Chapter 4911.

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<sup>1</sup> FirstEnergy Application at 1 (May 15, 2020).

<sup>2</sup> See, R.C. 4928.143(F).

<sup>3</sup> FirstEnergy Application at 1-3; See also; Direct Testimony of Tracy M. Ashton at 8.

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 consumers may be “adversely affected” by this case. That is especially so if the customers were unrepresented in this PUCO proceeding which is reviewing whether or not customers are entitled to a refund of excessive profits that FirstEnergy may have earned in 2019. This proceeding directly impacts the rates customers pay. 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; and
- (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 as the PUCO reviews whether consumers deserve a refund. The refund would result if FirstEnergy earned profits that are too high under its electric security plan in 2019. This interest is different from that of any other party and especially different than that of FirstEnergy whose advocacy includes the financial interest of stockholders whose interest is in making and keeping profits.

Second, OCC’s advocacy for consumers will include, among other things, advancing the position that FirstEnergy’s customers should receive adequate service at a

reasonable rate under Ohio law.<sup>4</sup> 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 the 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 residential utility consumer advocate, OCC has a very real and substantial interest where FirstEnergy asks the PUCO to conclude that the return on equity earned during 2019 did not cause FirstEnergy to earn too high profits resulting in significantly excessive earnings under the utilities' electric security plan, and is more favorable in the aggregate than the expected results from the competitive market.

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.

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<sup>4</sup> See R.C. 4905.22 ("All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission . . .").

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 consumers. 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>5</sup>

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 consumers, the PUCO should grant OCC's Motion to Intervene.

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<sup>5</sup> See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20.

Respectfully submitted,

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*/s/ Amy Botschner O'Brien*

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below via electric transmission this 2nd day of July 2020.

/s/ Amy Botschner O'Brien  
Amy Botschner O'Brien  
Counsel of Record

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 Botschner-O'Brien, Amy