

**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) Case No. 19-1338-EL-UNC
Ohio Edison Company, The Cleveland)
Electric Illuminating Company, and The)
Toledo Edison Company.)

In the Matter of the Determination of the)
Existence of Significantly Excessive Earnings)
for 2019 Under the Electric Security Plan of) Case No. 20-1034-EL-UNC
Ohio Edison Company, The Cleveland)
Electric Illuminating Company, and The)
Toledo Edison Company.)

**MOTION TO INTERVENE OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

Pursuant to R.C. 4903.221 and Ohio Adm. Code 4901-1-11, the Ohio Manufacturers' Association Energy Group (OMAEG) respectfully moves the Public Utilities Commission of Ohio (Commission) to intervene in this matter with the full powers and rights granted to intervening parties. As demonstrated in the attached Memorandum in Support, OMAEG has a real and substantial interest in this proceeding that may be adversely affected by the outcome herein, and which cannot be adequately represented by any other party. Accordingly, OMAEG satisfies the standard for intervention set forth in Ohio statutes and regulations.

Therefore, OMAEG respectfully requests that the Commission grant this motion to intervene for the reasons stated herein and as more fully set forth in the attached Memorandum in Support. OMAEG also requests that it be made a full party of record in these proceedings.

Respectfully submitted,

/s/ Kimberly W. Bojko

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Energy Group*

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MEMORANDUM IN SUPPORT

On July 15, 2019 and May 15, 2020, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy) filed Applications seeking findings from the Commission that FirstEnergy did not have significantly excessive earnings under R.C. 4928.143(F) for calendar years 2018 and 2019, respectively. On July 29, 2020, the Commission issued an Entry consolidating the two cases and directed stakeholders to intervene by September 29, 2020.¹ On August 3, 2020, the Office of Ohio Consumers' Counsel (OCC) submitted an interlocutory appeal asserting that the current procedural schedule may unduly prejudice parties.² OCC noted the pendency of FirstEnergy's 2017 Significantly Excessive Earnings Test (SEET) Case before the Supreme Court of Ohio and the

¹ Entry at ¶ 8 (July 29, 2020).

² OCC's Interlocutory Appeal at 4 (August 3, 2020).

harm that could occur from litigating the above-captioned proceeding without the benefit of the Court's ruling in the 2017 SEET Case.³

FirstEnergy maintains that administration of the SEET with respect to its revenues for 2018 and 2019 should not warrant a refund.⁴ But in arriving at this conclusion, FirstEnergy excluded from its SEET calculation charges collected by FirstEnergy under its distribution modernization rider (DMR)⁵ until it was invalidated by the Commission following a decision by the Supreme Court of Ohio that held that R.C. 4928.143 does not authorize DMRs.⁶ When the Court determined that FirstEnergy's DMR was unlawful, the Court did not immediately mandate the return of previously-collected DMR funds.⁷ Instead, the Court explicitly noted that customers would not be prejudiced by the lack of refunds as the next SEET proceeding would provide the proper venue for customers to address the refund issue and potentially receive refunds if the electric security plan (ESP) that included the unlawful DMR resulted in significantly excessive earnings.⁸

³ Id. (citing *In the Matter of the Determination of the Existence of Significantly Excessive Earnings for 2017 Under the Electric Security Plans of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Supreme Court Case No. 2019-961 ("2017 SEET Case")).

⁴ *In the Matter of the Determination of the Existence of Significantly Excessive Earnings for 2018 Under the Electric Security Plan of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 19-1338-EL-UNC; Application at 1 (July 15, 2019); *In the Matter of the Determination of the Existence of Significantly Excessive Earnings for 2019 Under the Electric Security Plan of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*; Case No. 20-1034-EL-UNC, Application at 1 (May 15, 2020).

⁵ Direct Testimony of Tracy M. Ashton, at 6 (July 15, 2019); Direct Testimony of Tracy M. Ashton, at 6 (May 15, 2020).

⁶ *In re Application of Ohio Edison*, 157 Ohio St.3d 73, 2019-Ohio-2401, ¶ 56; *In the Matter of the Application of the Dayton Power & Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 16-395-EL-SSO et al., Supplemental Opinion and Order at ¶ 110 (Nov. 21, 2019).

⁷ *In re Application of Ohio Edison*, 157 Ohio St.3d 73, 2019-Ohio-2401, ¶¶ 32-34 ("Further, utility customers will not be prejudiced by the failure to immediately address the issue. R.C. 4928.143(F) expressly provides for customer refunds if the ESP resulted in significantly excessive earnings, but that determination can be made only in a SEET proceeding.").

⁸ Id.

This proceeding will determine whether or not FirstEnergy has excessively earned and whether customers will receive refunds for any excessive earnings that FirstEnergy collected. As explained in more detail below, given the impact this case could have on consumers, especially manufacturing customers, many of whom are members of OMAEG, OMAEG has a real and substantial interest in the outcome of this proceeding.

R.C. 4903.221 and Ohio Adm. Code 4901-1-11 establish the standard for intervention in the above-captioned proceedings. R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a Commission proceeding is entitled to seek intervention in that proceeding. R.C. 4903.221(B) further requires the Commission to consider the nature and extent of the prospective intervenor’s interest, the legal position advanced by the prospective intervenor and its probable relation to the merits of the case, whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding, and the prospective intervenor’s potential contribution to a just and expeditious resolution of the issues involved.

OMAEG is a non-profit entity that strives to improve business conditions in Ohio and drive down the cost of doing business for Ohio manufacturers. OMAEG members and their representatives work directly with elected officials, regulatory agencies, the judiciary, and the media to provide education and information to energy consumers, regulatory boards and suppliers of energy; advance energy policies to promote an adequate, reliable, and efficient supply of energy at reasonable prices; and advocate in critical cases before the Commission. Here, OMAEG has an interest in ensuring that FirstEnergy is not significantly excessively earning and charging ratepayers excessive amounts. As consumers of significant amounts of energy in FirstEnergy’s service territory, OMAEG has been involved in numerous FirstEnergy cases previously.⁹

⁹ See, e.g., *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a Decoupling Mechanism*, Case Nos. 19-2080-EL-ATA, et al.;

Moreover, OMAEG has participated in prior proceedings before the Commission and the Supreme Court of Ohio involving FirstEnergy's DMR.¹⁰

For these reasons, OMAEG has a direct, real, and substantial interest in the issues raised in this proceeding and is so situated that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect that interest. It is regularly and actively involved in Commission proceedings and, as in previous proceedings, OMAEG's unique knowledge and perspective will contribute to the full development and equitable resolution of the factual issues in this case. OMAEG's interest will not be adequately represented by other parties and its timely intervention will not unduly delay or prolong these proceedings.

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Case No. 14-1297-EL-SSO; In The Matter Of The 2014 Review Of The Demand Side Management And Energy Efficiency Rider Of Ohio Edison Company, The Cleveland Electric Illuminating Company, And The Toledo Edison Company, Case Nos. 13-2173-EL-RDR, In the Matter of the Application of The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Plans for 2013 through 2015, Case No. 12-2190-EL-POR.

¹⁰ See, e.g., *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Case No. 2017-1444, Appeal from Public Utilities Commission of Ohio, Case No. 14-1297-EL-SSO; In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for an Extension of the Distribution Modernization Rider, Case No. 19-361-EL-RDR.*

Because OMAEG satisfies the criteria set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11, Ohio law authorizes OMAEG to intervene in this proceeding with the full powers and rights granted by the Commission to intervening parties. OMAEG respectfully requests that the Commission grant this motion to intervene and make OMAEG a full party of record.

Respectfully submitted,

/s/ Kimberly W. Bojko

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on August 5, 2020 upon the parties listed below.

/s/ Kimberly W. Bojko
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Summary: Motion to Intervene of The Ohio Manufacturers' Association Energy Group
electronically filed by Mrs. Kimberly W. Bojko on behalf of OMA Energy Group