

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Tariff Update of the Demand Side	)	
Management and Energy Efficiency	)	
Riders of Ohio Edison Company, The	)	Case No. 20-1673-EL-RDR
Cleveland Electric Illuminating Company	)	
and The Toledo Edison Company.	)	

In the Matter of the Application of Ohio	)	
Edison Company, The Cleveland Electric	)	
Illuminating Company and The Toledo	)	Case No. 20-1748-EL-ATA
Edison Company for Approval of a New	)	
Tariff.	)	

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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 in this case where FirstEnergy seeks to continue charging customers for energy efficiency, even though the Ohio General Assembly expressly ended the energy efficiency mandates.<sup>1</sup> OCC is filing on behalf of the 1.9 million residential utility customers of FirstEnergy.<sup>2</sup> The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

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<sup>1</sup> See R.C. 4928.66 (as modified by House Bill 6).

<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  
Assistant Consumers' Counsel

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**MEMORANDUM IN SUPPORT**

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This case involves FirstEnergy’s attempt to circumvent the law and violate a PUCO order. Ohio law—R.C. 4928.66(G)(3) requires energy efficiency charges to end after 2020. Consistent with that law, a recent PUCO Order requires FirstEnergy to set its energy efficiency riders to zero as of January 1, 2021.<sup>3</sup>

FirstEnergy, however, has filed an application that would allow it to keep charging customers for energy efficiency in 2021 and beyond. Under FirstEnergy’s proposal, residential customers would pay \$2.6 million in the first six months of 2021.<sup>4</sup>

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

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<sup>3</sup> Case Nos. 16-574-EL-POR, 16-576-EL-POR, 16-743-EL-POR, 17-1398-EL-POR, Finding & Order ¶ 8 (Nov. 8, 2020) (the “Order”).

<sup>4</sup> Application, Exhibit C (\$976,190 for Ohio Edison, \$1,068,997 for Cleveland Electric, and \$560,502 for Toledo Edison).

Ohio's residential customers may be "adversely affected" by this case, especially if the customers were unrepresented in a proceeding where the utility seeks to charge customers for energy efficiency programs, which contradicts Ohio law and a PUCO Order. 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 a proposal for the collection of millions of dollars in unlawful 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 stockholders.

Second, OCC's advocacy for residential customers will include, among other things, advancing the position that FirstEnergy must follow the PUCO's Order and must not violate a statute by continuing to charge customers for 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 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 advocate for residential utility customers, OCC has a very real and substantial interest in this case where residential customers could be charged millions in unlawful energy efficiency 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.<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 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  
Assistant Consumers’ Counsel

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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.

### **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 21<sup>st</sup> day of December 2020.

/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**

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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.