

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio       )  
Edison Company, The Cleveland Electric    ) Case No. 21-0101-EL-ATA  
Illuminating Company, and The Toledo       )  
Edison Company for Approval of Tariff       )  
Amendments.                                       )

---

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

---

FirstEnergy filed yesterday to set to zero its “decoupling” tariffs that it currently uses to collect more than \$2 million weekly from consumers. The filing seems good news for consumers. FirstEnergy offers no real explanation for the filing, not even in the PUCO template that provides for a description of the proposal.

Earlier at the PUCO, OCC sought refundability for FirstEnergy’s decoupling charges in our motion to modify compliance tariffs dated February 6, 2020.<sup>1</sup> Like FirstEnergy’s earlier filings (before OCC’s Motion), there is no reference in FirstEnergy’s new filing to refunding decoupling money collected from customers to date. As OCC stated in our earlier motion, there should be refundability of decoupling charges already collected from consumers.

Decoupling is like a guarantee for utilities that they can collect the same amount from customers even when customers use less electricity. In other words, it is not customer friendly. Chuck Jones, the fired former CEO of FirstEnergy, boasted to investors that decoupling “essentially

---

<sup>1</sup> *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 No. 19-2080-EL-ATA Motion to Modify Compliance Tariffs Consistent With Commission Finding and Order by the Office of the Ohio Consumers’ Counsel (Feb. 6, 2020).

... takes about one-third of our company and I think makes it somewhat recession-proof.”<sup>2</sup> To date, FirstEnergy’s decoupling under House Bill 6 has cost customers about \$27 million in higher energy bills to help make FirstEnergy recession-proof.

FirstEnergy’s decoupling benefit was part of the legislation, House Bill 6, that the U.S. Attorney described as “likely the largest bribery, money-laundering scheme ever perpetrated against the people in the state of Ohio.”<sup>3</sup> House Bill 6 is especially known for the bail out of FirstEnergy’s failing nuclear plants, with the decoupling subsidy less well known.<sup>4</sup>

OCC files this motion to intervene on behalf of the 1.9 million residential utility customers of FirstEnergy. The Public Utilities Commission of Ohio (“PUCO”) should grant OCC’s motion for the reasons set forth in the attached memorandum in support.

---

<sup>2</sup> Utility Dive, *FirstEnergy Nears Proposal to Decouple Ohio Utility Revenues, Electric Consumption: CEO* (Nov. 5, 2019), available at: <https://www.utilitydive.com/news/firstenergy-nears-proposal-to-decouple-ohio-utility-revenues-electricity-c/566610/>

<sup>3</sup> Cleveland.com, *Ohio House Speaker Larry Householder, allies got more than \$60 million in FirstEnergy bribes to pass HB6, feds claim* (July 21, 2020), available at: <https://www.cleveland.com/open/2020/07/ohio-house-speaker-larry-householder-allies-got-more-than-60-million-in-firstenergy-bribes-to-pass-hb6-feds-claim.html>

<sup>4</sup> *United States of America v. Larry Householder, Jeffrey Longstreth, Neil Clark, Matthew Borges and Generation Now*, Case No. 1:20-MJ-00526 (S.D. Ohio).

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

/s/ John Finnigan

John Finnigan (0018689)  
Counsel of Record  
Christopher Healey (0086027)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

65 East State Street, 7th Floor  
Columbus, Ohio 43215-4213  
Telephone: [Finnigan] (614) 466-9585  
Telephone: [Healey] (614) 466-9571  
[john.finnigan@occ.ohio.gov](mailto:john.finnigan@occ.ohio.gov)  
[Christopher.healey@occ.ohio.gov](mailto:Christopher.healey@occ.ohio.gov)  
(willing to accept service by e-mail)

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio	)	
Edison Company, The Cleveland Electric	)	Case No. 21-0101-EL-ATA
Illuminating Company, and The Toledo	)	
Edison Company for Approval of Tariff	)	
Amendments.	)	

---

**MEMORANDUM IN SUPPORT**

---

The Ohio General Assembly in 2019 passed H.B. 6, which, among other things, requires customers to pay hundreds of millions of dollars in subsidies for nuclear and coal power plants. The legislation also eliminated the so-called “mandates” for energy efficiency and renewable energy.

The law also gave a particular utility, FirstEnergy, a sweetheart deal on decoupling. When decoupling is allowed (and OCC does not favor it), it usually is intended to encourage the utility to accept energy efficiency programs, by allowing the utility to charge customers for money that the utility allegedly would have made but for its energy efficiency programs.<sup>5</sup> Decoupling for FirstEnergy made no sense for charging to consumers. That’s because the legislature had just gutted the energy efficiency mandates, and because the decoupling was tied to making consumers guarantee one of the highest revenue levels in FirstEnergy’s history. The government (legislature and PUCO) should stop using decoupling to make consumers guarantee utility revenues and profit.

OCC has authority to represent the interests of 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

---

<sup>5</sup> R.C. 4928.471.

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 has charged them millions of dollars for decoupling. 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 FirstEnergy’s residential consumers in a case involving an allegedly corrupt law, with an anti-consumer decoupling charge. This interest is different than that of any other party and especially different than that of FirstEnergy, whose advocacy includes the financial interest of shareholders.

Second, OCC’s advocacy for residential customers will include, among other things, advancing the position that residential customers should receive a refund for the decoupling charges collected by FirstEnergy under tainted H.B. 6. FirstEnergy has inexplicably and inappropriately proposed to remove the existing refund provision from its tariff. 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 customers have already paid \$27 million in decoupling charges under a scandal-ridden law.

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." OCC does not concede the lawfulness of this criterion But 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>6</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.

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

/s/ John Finnigan  
John Finnigan (0018689)  
Counsel of Record  
Christopher Healey (0086027)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
65 East State Street, 7th Floor  
Columbus, Ohio 43215-4213  
Telephone: [Finnigan] (614) 466-9585  
Telephone: [Healey] (614) 466-9571  
[john.finnigan@occ.ohio.gov](mailto:john.finnigan@occ.ohio.gov)  
[Christopher.healey@occ.ohio.gov](mailto:Christopher.healey@occ.ohio.gov)  
(willing to accept service by e-mail)

---

<sup>6</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 2nd day of February 2021.

/s/ John Finnigan  
John Finnigan  
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**

[John.jones@ohioattorneygeneral.gov](mailto:John.jones@ohioattorneygeneral.gov)

[bknipe@firstenergycorp.com](mailto:bknipe@firstenergycorp.com)

Attorney Examiner:

[Megan.addison@puco.ohio.gov](mailto:Megan.addison@puco.ohio.gov)



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**2/2/2021 12:45:45 PM**

**in**

**Case No(s). 21-0101-EL-ATA**

Summary: Motion Motion to Intervene by Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Finnigan, John