

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the Distribution )  
Modernization Rider of Ohio Edison ) Case No. 17-2474-EL-RDR  
Company, The Cleveland Electric Illuminating )  
Company, and The Toledo Edison Company. )

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

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On December 30, 2020, the Public Utilities Commission of Ohio (Commission) directed the Staff of the Commission (Staff) to issue a request for proposal (RFP) to solicit the services of an independent auditor to assist Staff with a full audit of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's (collectively, FirstEnergy Utilities or Utilities) Distribution Modernization Rider (Rider DMR).<sup>1</sup> Specifically, the audit will ensure that Rider DMR revenues were only used to support grid modernization and not to support Am. Sub. H.B. 6 (H.B. 6) or oppose the subsequent referendum effort.<sup>2</sup>

Pursuant to R.C. 4903.221 and Ohio Adm. Code 4901-1-11, the Ohio Manufacturers' Association Energy Group (OMAEG) respectfully moves the Commission to intervene in this matter with the full powers and rights granted to intervening parties. As detailed 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.

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<sup>1</sup> Entry at ¶ 23 (December 30, 2020).

<sup>2</sup> Id.

Therefore, OMAEG respectfully requests that the Commission grant this timely motion to intervene and make OMAEG a full party of record in these proceedings.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT**

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On March 31, 2016, the Commission approved FirstEnergy Utilities’ Fourth Electric Security Plan (ESP IV).<sup>3</sup> Thereafter, on rehearing, the Commission authorized the Utilities to implement Rider DMR.<sup>4</sup> The Commission further ordered that Staff will review the expenditure of Rider DMR revenues to ensure that they are used, directly or indirectly, to support grid modernization.<sup>5</sup> Subsequently, in the above-captioned proceeding, the Commission directed Staff to issue a RFP for an independent auditor to assist staff with the Rider DMR audit.<sup>6</sup> An independent auditor was selected on January 24, 2018.<sup>7</sup>

OMAEG and others appealed the implementation of Rider DMR in the ESP IV Case and on June 19, 2019, the Supreme Court of Ohio held that Rider DMR was unlawful and must be removed from the Utilities’ ESP IV.<sup>8</sup> Subsequently, the Commission ordered FirstEnergy Utilities

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<sup>3</sup> *In the Matter 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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order (March 31, 2016) (hereinafter, ESP IV Case).

<sup>4</sup> ESP IV Case, Fifth Entry on Rehearing at ¶ 185 (October 12, 2016).

<sup>5</sup> Id. at ¶ 282.

<sup>6</sup> Entry at ¶ 1 (December 13, 2017).

<sup>7</sup> Entry at ¶ 1 (January 24, 2018).

<sup>8</sup> *In re Application of Ohio Edison Co. v. Pub. Util. Comm.*, 157 Ohio St.3d 73, 2019-Ohio-2401, 131 N.E.3d 906 at 14-219, ¶¶ 14-29.

to file proposed revised tariffs removing Rider DMR from ESP IV and the Utilities complied with that directive.<sup>9</sup> On February 26, 2020, the Commission determined that when the provisions of Rider DMR were removed, so too was the requirement of a final review of the rider.<sup>10</sup> Consequently, the Commission dismissed and closed the case of record and the auditor never submitted a final report.<sup>11</sup>

On September 8, 2020, the Office of the Ohio Consumers' Counsel (OCC) filed a motion in the above-captioned proceeding requesting Commission action in response to a federal criminal complaint alleging that former Ohio House Speaker Larry Householder and others orchestrated a corrupt enterprise to enact H.B. 6 and oppose the subsequent referendum effort. Specifically, OCC requested, among other actions, that the Commission reopen the audit of FirstEnergy Utilities' Rider DMR.<sup>12</sup>

On December 30, 2020, the Commission determined that “given the unique circumstances at this time and in the interests of both transparency and state policy...good cause exists to grant OCC’s motion and initiate an additional review of the entire duration of Rider DMR.”<sup>13</sup> Accordingly, the Commission directed Staff to issue a RFP to solicit the services of an independent auditor to assist Staff with a full audit of Rider DMR to ensure that Rider DMR revenues were only used to support grid modernization and not used to support H.B. 6 or oppose the subsequent referendum effort.<sup>14</sup> For the reasons articulated below, OMAEG has a real and substantial interest in the audit of Rider DMR and should be made a party to the case.

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<sup>9</sup> P.U.C.O. No. 11 Tariff Removal of Rider DMR (October 18, 2019).

<sup>10</sup> Entry at ¶ 9 (February 26, 2020).

<sup>11</sup> Id. at ¶ 12.

<sup>12</sup> OCC Motion at 3-6.

<sup>13</sup> Entry at ¶ 22 (December 30, 2020).

<sup>14</sup> Id. at ¶ 23.

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 others 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 a substantial interest in ensuring that any rates or charges that FirstEnergy Utilities assess their customers, which include OMAEG members, are just, lawful, and reasonable. As consumers of significant amounts of energy in FirstEnergy Utilities' service territory, OMAEG has been involved in numerous prior proceedings before the Commission involving FirstEnergy Utilities.<sup>15</sup> OMAEG has also participated in prior proceedings before the Commission involving FirstEnergy Utilities' Rider DMR<sup>16</sup> and OMAEG's members were subject to the nonbypassable Rider DMR rates. Furthermore, OMAEG has participated in several proceedings before the Commission regarding H.B. 6.<sup>17</sup> Lastly, OMAEG's intervention will not unduly delay the proceeding as the Commission has not yet selected an auditor to review Rider DMR.

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<sup>15</sup> See, e.g., *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; *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, et al..

<sup>16</sup> See, e.g., ESP IV Case (the proceeding in which the Commission authorized Rider DMR); *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.

<sup>17</sup> See, e.g., *In the Matter of Establishing the Nonbypassable Recovery Mechanism for Net Legacy Generation Resource Costs Pursuant to R.C. 4928.148*, Case No. 19-1808-EL-UNC; *In The Matter Of The Application Of Ohio Power Company For Approval Of Its Energy Efficiency And Peak Demand Reduction Program Portfolio Plan for 2017 Through 2020*, Case Nos. 17-1398-EL-POR, et al.; *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.; *In the Matter of the Application of Ohio Power Company for Approval of a Decoupling Mechanism*, Case Nos. 20-1099-EL-ATA, et al.; *In the Matter of Establishing the Clean Air Fund Rider Pursuant to R.C. 3706.46*, Case No. 20-1143-EL-UNC; *In the Matter of*

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 proceeding. OMAEG's interest will not be adequately represented by other parties and its timely intervention will not unduly delay or prolong these proceedings.

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 timely motion for leave to intervene and make OMAEG a full party of record.

Respectfully submitted,

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*the Review of the Political and Charitable Spending by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, Case No. 20-1502-EL-UNC.*

## 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 March 19, 2021 upon the parties listed below.

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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