

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of Ohio Edison)
Company, The Cleveland Electric Illuminating) Case No. 17-974-EL-UNC
Company, and The Toledo Edison Company's)
Compliance with R.C. 4928.17 and the Ohio)
Adm. Code Chapter 4901:1-37.)

**MOTION FOR LEAVE TO INTERVENE OUT OF TIME
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) for leave to intervene out of time in this matter with the full powers and rights granted to intervening parties for good cause shown.

After FirstEnergy Corp. reported in a filing to the United States Securities and Exchange Commission (SEC) that it terminated certain corporate officers because of an internal investigation related to government investigations,, the Commission issued an Entry in the above-captioned proceeding requiring that a new, additional corporate separation audit of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy Utilities or Utilities) be conducted, necessarily expanding the scope of the proceeding.¹ Specifically, the Commission directed "Staff to issue the attached RFP for audit services to conduct an additional corporate separation audit for the period between November 1,

¹ Entry at ¶ 17 (November 4, 2020) ("[W]e believe that the information supplied by FirstEnergy Corp. in the Form 8-K requires that we take additional action to ensure compliance by the Companies and its affiliates with the corporate separation provisions of R.C. 4928.17 and with the Companies' Commission-approved corporation separation plans.").

2016 and October 31, 2020, which includes examination of the time period leading up to the passage of Am. Sub. H.B. 6 and the subsequent referendum.”² The new auditor was selected on January 27, 2021 and the audit report is required to be filed on June 21, 2021.

Given that this new audit was initiated and directed to be filed in the old audit case and given the procedural posture of the case, including the fact that the previously-established intervention date has passed, OMAEG respectfully moves for leave to intervene out of time under the Commission’s rules as extraordinary circumstances warrant such intervention.

Ohio Adm. Code 4901-1-11(F) authorizes the Commission to grant motions to intervene out of time under extraordinary circumstances. As further demonstrated below, several unforeseeable and extraordinary circumstances have occurred prompting OMAEG to seek intervention now. OMAEG has real and substantial interests that may be adversely affected by the outcome herein, and which cannot be adequately represented by any other existing parties. Accordingly, OMAEG satisfies the standard for intervention set forth in Ohio statutes and regulations.

² Id.

Therefore, OMAEG respectfully requests that the Commission grant this Motion for Leave to Intervene Out of Time, and that OMAEG be made a full party of record in these proceedings.

Respectfully submitted,

/s/ Kimberly W. Bojko

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MEMORANDUM IN SUPPORT

The above-captioned proceeding was initiated on May 17, 2017, when the Commission directed Staff to issue a RFP for audit services to review FirstEnergy Utilities' compliance with the corporate separation rules established in Ohio Adm. Code Chapter 4901:1-37, R.C. 4928.17, and FirstEnergy Utilities' corporate separation plan.³ The auditor filed the final audit report on May 14, 2018⁴ and the Commission subsequently established a deadline of October 9, 2018 to intervene.⁵

More recently, FirstEnergy Corp. reported in a filing to the SEC that it terminated certain corporate officers because of an internal investigation related to government investigations.⁶ Subsequent to the disclosure, on November 4, 2020, the Commission issued an Entry in the above-captioned proceeding stating that due to the SEC filing, a new corporate separation audit of FirstEnergy Utilities is necessary.⁷

³ Entry at ¶ 1 (May 17, 2017).

⁴ See Compliance Audit of the FirstEnergy Operations Companies with the Corporate Separation Audit of the PUCO (May 14, 2018).

⁵ Entry at ¶ 18 (September 20, 2018).

⁶ Entry at ¶ 1 (November 4, 2020).

⁷ Id. at ¶ 17 (“[W]e believe that the information supplied by FirstEnergy Corp. in the Form 8-K requires that we take additional action to ensure compliance by the Companies and its affiliates with the corporate separation provisions of R.C. 4928.17 and with the Companies’ Commission-approved corporation separation plans.”).

While OMAEG recognizes that the Commission’s deadline for intervention has passed based on the procedural posture of the prior audit, Ohio Adm. Code 4901-1-11(F) authorizes the Commission to grant motions to intervene out of time under extraordinary circumstances. Since the Commission established an initial intervention deadline of October 9, 2018, a series of extraordinary circumstances have occurred prompting the Commission to expand the scope of the proceeding and order a new audit of FirstEnergy Utilities’ compliance with corporate separation laws “to ensure compliance by the Companies and its affiliates with the corporate separation provisions of R.C. 4928.17 and with the Companies’ Commission-approved corporate separation plans.”⁸

The backdrop of the new audit consists of various proceedings regarding the enactment of H.B. 6 and what the United States Attorney for the Southern District of Ohio has characterized as “likely the largest bribery, money laundering scheme ever perpetrated against the people of the state of Ohio.”⁹ On July 17, 2020, the United States Attorney’s Office for the Southern District of Ohio filed a criminal complaint alleging that numerous unlawful acts were committed to promote the Ohio General Assembly’s enactment of H.B. 6.¹⁰ Guilty pleas by three of the criminal defendants engaged in that corruption enterprise have been entered.¹¹ Subsequently, the State of Ohio and other government entities filed civil lawsuits alleging that FirstEnergy Corp. and its

⁸ Id.

⁹ WSYX ABC 6, *U.S. Attorney Update on Arrest of Ohio House Speaker Larry Householder and Four Associates*, YouTube (Streamed live on July 21, 2020) (statement starting at 00:48), <https://www.youtube.com/watch?v=mYTY9GUnHMM>.

¹⁰ *United States of America v. Larry Householder, Jeffrey Longstreth, Neil Clark, Matthew Borges, Juan Cespedes, and Generation Now*, Case No. 1:20-MJ-00526 (S.D. Ohio).

¹¹ Matt Kovac, THE COLUMBUS DISPATCH, *Federal Judge Accepts Guilty Plea from Dark Money Group Generation Now in HB 6 Scandal*, (February 19, 2021) <https://www.dispatch.com/story/news/politics/state/2021/02/19/federal-judge-accepts-guilty-plea-dark-money-group-generation-now-house-bill-6/4506601001/>.

subsidiaries, FirstEnergy Service Company, and FirstEnergy Solutions (now Energy Harbor), engaged in a pattern of corruption to enact H.B. 6.¹²

Furthermore, the Commission opened a proceeding to review FirstEnergy Utilities' political and charitable spending in support of H.B. 6.¹³ As referenced above, the Commission also expanded the scope of this proceeding, directing that a new audit be conducted in the above-captioned proceeding because FirstEnergy Corp. stated in a SEC filing that it terminated certain corporate officers due to the results of an internal investigation related to the H.B. 6 events.¹⁴ Additionally, the Commission opened a review of the FirstEnergy Utilities' Distribution Modernization Rider to ensure that revenues collected through the mechanism were not used to support H.B. 6 or for any other improper purpose.¹⁵ More recently, the Commission expanded the scope of the audit of FirstEnergy Utilities' Delivery Capital Recovery Rider in response to certain FirstEnergy Corp. federal disclosures and described the audit as the fourth Commission investigation related to allegations against FirstEnergy Corp.¹⁶

Accordingly, OMAEG seeks leave to intervene out of time in the above-captioned proceeding due to the new corporate separation audit of FirstEnergy Utilities and the occurrence

¹² *State ex rel. Yost v. FirstEnergy Corp.*, Case No. 20-CV-006281, Complaint (September 23, 2020); *City of Columbus v. FirstEnergy Corp.*, Case No. 20-CV-107005, Complaint (October 27, 2020); *State ex rel. Yost v. Energy Harbor Corp.*, Case No. 20-CV-07386, Complaint (November 13, 2020).

¹³ *In the Matter of the Review of the Political and Charitable Spending by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Pub. Util. Comm. No. 20-1502-EL-UNC, Entry at ¶ 5 (September 15, 2020);

¹⁴ *Id.* at ¶ 16.

¹⁵ *In the Matter of the Review of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Compliance with R.C. 4928.17 and the Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-2474-EL-RDR Entry at ¶¶ 22, 23 (December 30, 2020).

¹⁶ *In the Matter of the 2020 Review of the Delivery Capital Recovery Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 20-1629-EL-RDR, Entry at ¶¶ 8, 9 (March 10, 2021).

of several H.B. 6-related events to protect customers and ensure that customer dollars were not utilized improperly or unlawfully and that Ohio's corporate separation laws were not violated.

R.C. 4903.221 and Ohio Adm. Code 4901-1-11 establish the standards for intervention in Commission proceedings. R.C. 4903.221 provides, in pertinent 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. Ohio Adm. Code 4901-1-11 permits intervention to a party who demonstrates a real and substantial interest in the proceeding and who is so situated that the disposition of the proceeding may impair or impede its ability to protect that interest and whose interest is not adequately represented by an existing party.

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.

OMAEG has been a participant in several cases before the Commission, including other proceedings related to H.B. 6.¹⁷ As consumers of significant amounts of energy in FirstEnergy

¹⁷ 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*

Utilities' service territory, OMAEG has also participated in numerous FirstEnergy Utilities cases regarding rates that they charge customers.¹⁸ OMAEG has a substantial interest in ensuring that any costs incurred by its members for utility services are just, reasonable, and consistent with Ohio's laws, including those governing corporate separation. Furthermore, OMAEG has an interest in promoting market competition in Ohio and ensuring that regulated utilities, such as the FirstEnergy Utilities, are not directly or indirectly subsidizing their unregulated affiliates. Lastly, OMAEG's intervention will not unduly delay the proceeding as the Commission directed the auditor to file the final audit report on or before June 21, 2021.¹⁹

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 these proceedings 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

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 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.

¹⁸ 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.; *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; *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.

¹⁹ Entry at ¶ 15 (January 27, 2021).

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

As discussed above, several unforeseeable and extraordinary circumstances have occurred, including the Commission's expansion of the scope of this proceeding, which authorize the Commission to grant OMAEG's Motion for Leave to Intervene Out of Time pursuant to Ohio Adm. Code 4901-1-11(F). OMAEG satisfies the criteria for intervention set out in R.C. 4903.221 and Ohio Adm. Code 4901-1-11. OMAEG, therefore, respectfully requests that the Commission grant this motion, allow OMAEG to intervene out of time with the full powers and rights granted by the Commission to intervening parties, 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 March 19, 2021 upon the parties listed below.

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