

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the 2020 Review of the)
Delivery Capital Recovery Rider of Ohio) Case No. 20-1629-EL-RDR
Edison Company, the Cleveland Electric)
Illuminating Company, and the Toledo)
Edison Company.)

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

This case was already important for consumer protection when it was initiated as an annual audit of FirstEnergy Utilities' so-called Delivery Capital Recover Rider ("DCR Charge"). Under the DCR Charge, the FirstEnergy Utilities charge consumers hundreds of millions of dollars, including a return on and of their distribution-related capital investments. This case has become all the more significant given recent admissions by FirstEnergy that, through its internal H.B. 6 investigation, it has uncovered vendor payments charged to the FirstEnergy Ohio Utilities (and potentially their customers) that were improper.¹ The U.S. Attorney has described the events giving rise to tainted House Bill 6 as "likely the largest bribery, money-laundering scheme ever perpetrated against the people in the state of Ohio."²

¹ See PUCO Staff's Request to Expand Audit Scope in the Matter of the 2020 Review of the Delivery Capital Recovery Rider of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (March 8, 2021) ("Staff Request").

² 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>

Based on a filing in this case by the Public Utilities Commission of Ohio’s Staff (“PUCO Staff”),³ and an Entry by the Public Utilities Commission of Ohio (“PUCO”) itself,⁴ this annual audit will be expanded to examine these issues.

Specifically, PUCO Staff has asserted that after its review of the 10Q filed by FirstEnergy Corporation on February 18, 2021, it sent a data request to the FirstEnergy Utilities “for additional records related to a disclosure [in the 10Q] of ‘certain transactions . . . that were either improperly classified, misallocated . . . or lacked supporting documentation.’”⁵ Apparently, the FirstEnergy Utilities responded to the Staff’s inquiry, providing them with information from the FirstEnergy internal investigation – information that OCC has repeatedly sought but been denied on the basis that the information its subject to attorney-client privilege

After reviewing the FirstEnergy Utilities’ response to the data request, PUCO Staff concluded that the independent auditor in this proceeding should “review these transactions to determine whether funds collected from ratepayers were used to pay these vendors and if so, whether or not the funds associated with those payments should be returned to ratepayers as part of the Commission’s review of the Utilities’ delivery capital recovery rider.”⁶ Accordingly, PUCO Staff requested that the PUCO expand the scope of the annual audit of the DCR Charge.⁷

The PUCO granted PUCO Staff’s request.⁸ In its Entry doing so, the PUCO explained: “Expansion of the scope of the review by the independent auditor in this case to include the disclosed vendor payments is consistent with our commitment to act in a reasoned and methodical

³ See Staff Request.

⁴ See Entry (March 10, 2021) (granting PUCO’s Staff’s request to expand the audit).

⁵ Staff Request.

⁶ *Id.*

⁷ *Id.*

⁸ See Entry.

manner, based upon facts rather than speculation, in light of the recent allegations surrounding FirstEnergy Corp.” related to House Bill 6.⁹

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

Respectfully submitted,

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Ohio Consumers’ Counsel

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⁹ Entry at para. 8.

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MEMORANDUM IN SUPPORT

Under the DCR Charge, the FirstEnergy Utilities charge consumers hundreds of millions of dollars, including a return on and of their distribution-related capital investments. OCC has long opposed such single-issue ratemaking, which allows utilities to charge their captive customers hundreds of millions of dollars without the consumer protections involved in a rate case. As such, this annual audit of the DCR Charge is important to protecting consumers by making sure that they are not paying too much for their electric service. This is especially so here because this annual audit may involve issues arising out of tainted House Bill 6, as indicated by the PUCO Staff.

OCC has authority to represent the interests of the 1.9 million residential utility customers the FirstEnergy Utilities, 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 Ohio’s residential customers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding where the FirstEnergy Utilities have charged them hundreds of millions of dollars under the DCR Charge. 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 FirstEnergy Utilities' residential consumers in a case potentially involving payments in furtherance of an allegedly corrupt law (H.B. 6), with the potential that consumers were charged for some of the corrupt activity to enact tainted H.B. 6 through the DCR Charge. This interest is different than that of any other party and especially different than that of the FirstEnergy Utilities, 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 pay only just and reasonable rates. OCC will also advance the position, if warranted, that consumers should receive a refund for any charges under the DCR Charge used in connection with tainted H.B. 6. 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 paid hundreds of millions of dollars under the DCR Charge, potentially in connection with 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.¹⁰

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.

¹⁰ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

Respectfully submitted,

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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 22nd day of March 2021.

/s/ William J. Michael _____
William J. Michael
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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