

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.

The Ohio Environmental Council (“OEC”) respectfully moves for leave to intervene out of time in the above-captioned case, opened by the Public Utilities Commission of Ohio, regarding the Commission’s review of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company’s compliance with R.C. § 4928.17 and Ohio Admin. Code 4901:1-37. Pursuant to R.C. § 4903.221 and Ohio Administrative Code 4901-1-11, the Public Utilities Commission of Ohio (“the Commission”) should grant the OEC’s Motion.

The OEC acknowledges that the procedural schedule originally set forth in this proceeding set the deadline for intervention as October 20, 2018.¹ However, R.C. § 4903.221 grants the Commission broad discretion when evaluating motions to intervene. The statute additionally provides the Commission authority to grant a motion to intervene filed after procedural deadlines when good cause is shown. Similarly, Ohio Admin. Code 4901-1-11

1

authorizes the Commission to grant motions to intervene out of time under extraordinary circumstances.

The OEC has a real and substantial interest in these proceedings, represents interests separate from those of the already existing parties, and will contribute to a just and expeditious resolution of the issues involved in the proceedings without causing undue delay. In addition, there is good cause to grant the OEC's intervention out of time in these extraordinary circumstances.. The OEC has provided a detailed explanation of its intervention in the accompanying Memorandum in Support.

Respectfully Submitted,

/s/Miranda Leppla

Miranda Leppla (0086351)

Counsel of Record

Trent Dougherty (0079817)

Chris Tavenor (0096642)

1145 Chesapeake Avenue, Suite I

Columbus, Ohio 43212-3449

(614) 487-7506 - Telephone

mleppla@theOEC.org

tdougherty@theOEC.org

ctavenor@theOEC.org

April 28, 2021

*Counsel for the Ohio Environmental
Council*

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.

I. Introduction

² Entry, ¶17 (November 4, 2020). (“Audit Entry”).

money collected from consumers or violate any utility regulatory laws, rules or orders in its activities regarding Am. Sub. H.B. 6.³

Following the opening of the new investigation, new details about the operation of FirstEnergy emerged through SEC filings, including its Form 8-K filing made on October 29, 2020.⁴ The Commission has made clear that once an auditor was selected and the audit completed, any conclusions, results, or recommendations made by the auditor may be examined by any participant to this proceeding.⁵ And on December 2, 2020 the Commission selected Marcum LLP as the auditor, reiterating that the final audit will be available for examination to any participant in this proceeding.⁶

As a non-profit environmental advocacy organization that focuses heavily on the environmental impacts of energy usage, the OEC has a special interest in the outcome of these proceedings. The new, extraordinary audit of FirstEnergy's corporate governance and management, and its relationship to House Bill 6, directly relate to Ohio's clean energy future. If ratepayer funds are going to mismanaged public utilities, that mismanagement will have a significant impact on how efficiently Ohio is able to move toward that future. Accordingly, OEC's interest in this proceeding arises from the direct and indirect impacts of the Commission's review of FirstEnergy, its management, and its governance, the subject of the audit begun September 8, 2020. Due to the new proceeding and circumstances created causing the September 8, 2020 investigation, the OEC should be permitted to intervene in this proceeding out of time.

II. Ohio law permits intervention of parties in cases before the PUCO.

³ Entry ¶11 (December 2, 2020).

⁴ Audit Entry ¶16.

⁵ Id. ¶21.

⁶ Entry ¶17 & ¶23 (December 2, 2020).

The Ohio Revised Code permits parties “who may be adversely affected by a public utilities commission proceeding [to] intervene in such proceeding.” R.C. § 4903.221. The Commission may permit intervention under a balancing test based on the following five factors:

- (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.
- (5) The extent to which the person’s interest is represented by existing parties.

Ohio Admin. Code 4901-1-11(B). The OEC satisfies this balancing test. In addition, R.C. 4903.221(A) permits intervention out of time if good cause is shown. And Ohio Admin. Code 4901-1-11(F) expands on the standard to allow for intervention out of time under extraordinary circumstances. The OEC can also illustrate the extraordinary circumstances warranting intervention out of time.

III. The OEC satisfies the PUCO’s permissive intervention standard.

The OEC’s mission is to protect Ohio’s environment and ensure clean energy for all of the State’s citizens, and that interest will assist the Commission decisions made as part of this docket. Further, the Ohio Supreme Court has emphasized that “intervention ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the [Commission].”⁷ For the following reasons, the OEC requests that the Commission grant its Motion to Intervene in the above-captioned proceedings.

⁷ *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940, ¶ 20.

- a. The OEC has real and substantial interests related to the merits of the case that may be adversely affected by the outcome of the proceedings.**

The OEC is a not-for-profit organization incorporated in Ohio under Section 501(c)(3) of the U.S. Internal Revenue Code, with approximately 3,000 individual members. Its main office is located at 1145 Chesapeake Avenue, Suite I, Columbus, Ohio 43212. The OEC's principal purpose is to protect the natural resources and environment of the citizens of the State of Ohio. The OEC actively works in Ohio on environmental policies, including smart power, energy efficiency, natural gas fracking, and sustainable agriculture. The OEC also supports state energy policies that reduce greenhouse gas emissions, supporting efforts to mitigate the causes of climate change.

The OEC's members may be adversely affected by the outcome of the Commission's audit of FirstEnergy. In addition, many of the OEC's members are ratepayers in FirstEnergy territory, their energy bills directly supporting FirstEnergy. If FirstEnergy has been mismanaged and its corporate governance is not in compliance with Ohio law, that directly impacts Ohio's energy markets, and in turn, OEC's membership. Because the OEC protects Ohio's environment by reducing air pollution coming from the electric power sector and ensuring Ohioans' money is spent in a cost-effective manner, it has a real and substantial interest in the issues and outcome of the Commission's review. The OEC's legal position in support of clean energy policy directly relates to the merits of the case, for FirstEnergy and other utility companies should be spending their funds in part to support a clean energy future that mitigates the causes of climate change. If Ohio's public utilities are not properly managed or in compliance with Ohio law, efforts to

ensure a transition toward a renewable energy future are severely undercut. The OEC therefore satisfies the first two prongs of the OAC's balancing test for permissive intervention before the Commission.

b. The intervention of the OEC will not cause undue delay.

The OEC has timely filed this Motion to Intervene to pursue fair adjudication of the merits of the above-captioned proceedings. The OEC's long time participation in cases and experience in matters before the Commission illustrates its ability to participate without causing undue delay in any type of proceeding. The OEC's intervention will not unduly prolong or delay the proceedings; to the contrary, it will add value to the developments in this case.

c. The OEC will contribute to a just and expeditious resolution of the issues involved in the proceedings.

The OEC will contribute to a just and expeditious resolution of the issues involved in the proceedings regarding the Commission's audit of FirstEnergy because of our expertise in presenting relevant factors for the Commission's review of adjudicatory matters. The OEC has consistently contributed to just resolutions in efficiency portfolio cases, rulemakings, electric utility ratemaking cases, grid modernization proceedings, and a host of other docketed cases before the Commission. The OEC's participation and perspective will assist in the just and expeditious resolution of the issues and will not detract or confuse that process.

d. The OEC has different interests than those of existing parties, and can represent those interests more effectively than existing parties.

The OEC intervenes in these proceedings with a particular focus on the clean energy and environmental needs of Ohioans. The OEC represents different interests and different constituents than those already existing parties, and thus the interests of the OEC are vital to the

Commission’s adjudication of its audit of FirstEnergy. The OEC also notes that the Commission’s stated policy encourages “the broadest possible participation in its proceedings.”⁸ The Commission should not apply its intervention criteria in a manner that would favor one environmental or consumer advocate to the exclusion of others.

e. Both good cause and extraordinary circumstances exist to justify OEC’s intervention out of time.

While the original deadline for intervention in this case was October 20, 2018, the extraordinary circumstances surrounding HB 6, and the subsequent opening of a new audit of FirstEnergy’s activities, illustrate extraordinary circumstances warranting intervention out of time. When the original procedural schedule was established back in 2017 and 2018, HB 6 wasn’t even a piece of legislation before the General Assembly. Given the drastic change of circumstances following the revelations regarding HB 6 during July 2020 and in the following months, the extraordinary circumstances required by R.C. 4903.221 and O.A.C. 4901-1-11(F) have occurred.

Most importantly, the Office of Ohio Consumers’ Counsel’s motion to open a new and independent audit, and the PUCO Staff decision to issue an RFP for a new, additional corporate separation audit exemplifies the extraordinary circumstances in this case. The choice to reopen an audit ostensibly completed previously illustrates the significance of the House Bill 6 scandal, and the need for new perspectives and approaches to the audit. New questions have arisen, and organizations like the OEC should have the opportunity to participate in each of the dockets where investigations related to House Bill 6 occur.

IV. Conclusion

⁸ *Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2.

The OEC respectfully requests that the Commission grant its Motion to Intervene in the Commission's docketed case auditing FirstEnergy's compliance with Ohio's laws regarding corporate governance. The OEC has a real and substantial interest in Ohio's clean energy future, and an important legal perspective in these proceedings. The OEC's intervention will not cause undue delay in the Commission's review, and the OEC will contribute to a just and expeditious resolution of the issues involved, while representing its interests more effectively than already-existing parties. Finally, the Ohio Supreme Court has emphasized the liberal nature of the legal standard at play for intervention into Commission proceedings.⁹ Because the OEC meets all of the criteria established by R.C. 4903.221 and O.A.C. 4901-1-11(B), and has shown good cause and extraordinary circumstances justifying intervention out of time, it respectfully requests that the Commission grant its Motion to Intervene in the above-captioned proceedings.

Respectfully Submitted,

/s/Miranda Leppla
Miranda Leppla (0086351)
Counsel of Record
Trent Dougherty (0079817)
Chris Tavenor (0096642)
1145 Chesapeake Avenue, Suite I
Columbus, Ohio 43212-3449
(614) 487-7506 - Telephone
mleppla@theOEC.org
tdougherty@theOEC.org
ctavenor@theOEC.org

April 28, 2021

*Counsel for the Ohio Environmental
Council*

⁹ See *Ohio Consumers' Council*, at ¶ 20.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon all parties of record via electronic mail on April 28, 2021.

/s/Chris Tavenor

Chris Tavenor (0096642)

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/28/2021 4:29:42 PM

in

Case No(s). 17-0974-EL-UNC

Summary: Motion to Intervene Out of Time electronically filed by Chris Tavenor on behalf of
The Ohio Environmental Council