

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**MOTION FOR LEAVE TO INTERVENE OUT OF TIME OF  
THE OHIO HOSPITAL ASSOCIATION**

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Pursuant to Ohio Revised Code Section (“R.C.”) 4903.221 and Ohio Administrative Code (“OAC”) 4901-1-11, the Ohio Hospital Association (“OHA”) request issuance of an entry granting OHA leave to intervene out of time in this proceeding. The reasons supporting this motion are stated below in the Memorandum in Support.

Respectfully submitted on behalf of  
THE OHIO HOSPITAL ASSOCIATION



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**MEMORANDUM IN SUPPORT**

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**I. Introduction**

On the behalf of its hospital members served by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy”), the Ohio Hospital Association (“OHA”) respectfully requests the Public Utilities Commission of Ohio (“PUCO” or “Commission”) grant OHA leave to intervene out of time in this case.

On March 31, 2016, the Commission approved FirstEnergy Utilities’ Fourth Electric Security Plan (ESP IV Case).<sup>1</sup> Subsequently, on rehearing, the Commission authorized FirstEnergy to implement the Distribution Modernization Rider (“Rider DMR”).<sup>2</sup> Although OHA, along with a number of other parties, opposed the Rider DMR during the ESP IV Case, all of FirstEnergy’s customers (including hospitals) were required to pay the non-bypassable Rider DMR. Customers paid Rider DMR charges until the Ohio Supreme Court ruled that the Rider

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<sup>1</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>2</sup> ESP IV Case, Fifth Entry on Rehearing at ¶ 185 (October 12, 2016).

DMR was unlawful and FirstEnergy removed the Rider DMR from its tariffs.<sup>3</sup> Although the Rider DMR ceased due to the Ohio Supreme Court's ruling, customers who paid Rider DMR charges for years were not entitled to any refund even though the Rider DMR was determined to be unlawful.

Fast forward to today. The Commission recently initiated an audit to 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 to oppose the subsequent referendum effort. Although the Commission established March 26, 2021 as the intervention deadline in this audit, the Commission has yet to select an auditor in this case. Furthermore, no procedural schedule has been established. In addition, OHA and its FirstEnergy hospital members have a significant interest whether revenue obtained from Rider DMR potentially went to support H.B. 6. Therefore, the Commission should grant OHA leave to intervene out of time in this proceeding.

## **II. Applicable Law**

R.C. 4903.221 permits parties "who may be adversely affected by a public utilities commission proceeding [to] intervene in such proceeding." R.C. 4903.221(A) states parties seeking to intervene in a proceeding must file a motion to intervene no later than:

- (1) Any specific deadline established by order of the commission for purposes of a particular proceeding; or, if no such deadline is established; or
- (2) Five days prior to the scheduled date of hearing.

The public utilities commission may, in its discretion, grant motions to intervene which are filed after the deadlines set forth in divisions (A)(1) and (2) of this section for good cause shown.

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<sup>3</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; P.U.C.O. No. 11 Tariff Removal of Rider DMR (October 18, 2019).

As such, the Commission can grant intervention after an intervention deadline upon a showing of good cause. In addition, the Commission shall consider the following factors when considering the motion 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.
- (5) The extent to which the person's interest is represented by existing parties.

OAC 4901-1-11(B).

As discussed below, OHA met these standards for intervention.

### **III. OHA has established good cause for granting its motion to intervene.**

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].”<sup>4</sup> The Court has also noted that OAC 4901-1-11 is very similar to Civ.R. 24 - the rule governing intervention in civil cases in Ohio which is generally liberally construed in favor of intervention.<sup>5</sup> In exercising its discretion to grant leave to intervention after an intervention deadline, the Commission has allowed late intervention where it would not result a delay of the proceedings, there are unique circumstances in the case, intervention will not result in any prejudice to other parties, or when a potential intervenor may contribute to the full development of the record. *Pro-Tec Coating Co., LLC*, Case No. 19-124-EL-AEC, Finding and Order at ¶¶ 11-12 (Feb. 27, 2019) (the Commission stated that in the

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<sup>4</sup> *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940, ¶ 20.

<sup>5</sup> *Id* at ¶ 16, citing *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections*, 74 Ohio St.3d 143,144,656 N.E.2d 1277(1995).

absence of evidence showing that intervention would unduly prolong or delay the proceedings, intervention should be granted, even when intervention is sought after the deadline); *FirstEnergy*, Case No. 18-1818-EL-RDR, Finding and Order at ¶ 22 (Feb. 27, 2019); *Columbus Southern Power Company and Ohio Power Company*, Case Nos. 11-346-EL-SSO, *et al.*, Entry at ¶ 7 (July 8, 2011)

There can be no doubt that OHA and its FirstEnergy hospital members have a real and substantial interest in how Rider DMR funds were spent by FirstEnergy. Hospitals within FirstEnergy's territory paid Rider DMR charges until the rider was removed from FirstEnergy's tariffs. Some hospital systems that were subject to these charges are some of the largest hospital systems in Ohio, such as the Cleveland Clinic, Promedica, Summa Health, and Metro Health. After learning of the potential usage of Rider DMR funds for H.B. 6 activities, OHA determined that it was necessary to intervene in this proceeding to protect OHA's FirstEnergy hospital members' interest. Although OHA seeks intervention after the March 26, 2021 deadline, OHA did not delay when seeking to intervene in this proceeding. Furthermore, OHA's intervention in this proceeding will not delay or prejudice any party to this proceeding because an auditor has yet to be selected. OHA's participation in this case will present the unique concerns of hospital customers within FirstEnergy's territory. Therefore, good cause exist justifying OHA's motion for leave to intervene in this proceeding.

### **III. OHA satisfies the PUCO's permissive intervention standard.**

OHA is the unified voice of the hospitals serving Ohio's communities. OHA has a long-standing history of participating in PUCO cases to advocate on the behalf of OHA's members. In addition, OHA was a party to FirstEnergy's ESP IV case in which Rider DMR was

established. For the following reasons, OHA requests that the Commission grant its Motion to Intervene in this case.

**A. OHA has real and substantial interests in the merits of this case that may be adversely affected by the outcome of the proceeding.**

OHA is a private, nonprofit trade association comprised of approximately 240 Ohio hospitals, many of which are served by the FirstEnergy companies. OHA regularly intervenes in Commission proceedings to protect the interest of its members served by FirstEnergy. These FirstEnergy hospitals collectively expend significant amounts of money on electric utility rates and have financial interest in cases involving FirstEnergy's rates and charges. Therefore, OHA has a real and substantial interest in this Commission's audit of Rider DMR.

**B. OHA's intervention in this case will not cause undue delay.**

OHA has significant experience in Commission proceedings, and will participate in this case without causing undue delay. OHA's intervention will not unduly prolong or delay this proceeding. In fact, the Commission issued an Entry on April 7, 2021 directing Staff to reissue the RFP because of the insufficient number of proposals submitted. Because the Commission had to issue an Entry selecting an auditor in this case, it appears that this case is still in its infancy. As such, OHA's intervention in this proceeding at this stage will not result in any delay.

**C. OHA will contribute to a just and expeditious resolution of the issues involved in this case.**

OHA will contribute to a just and expeditious resolution of the issues involved in this case regarding the Commission's review of FirstEnergy's Rider DMR because of OHA's expertise in presenting the unique and critical concerns of hospitals. OHA has many years of experience advocating for hospitals in numerous types of electric utility cases. OHA's

participation will assist in the just and expeditious resolution of the issues and will not detract from an efficient adjudication of the issues in this case.

**D. OHA has different interests than those of existing parties, and can represent those interests more effectively than existing parties.**

OHA's interest is different from those of the existing parties because OHA is narrowly focused on the unique concerns of its hospital members. As the statewide advocate on behalf of essentially all Ohio hospitals, OHA is intimately aware of the hospital-specific energy and rate concerns of its members. Because other parties in this case do not share OHA's unique perspective, intervention by OHA is necessary to adequately protect the interest of OHA's member hospitals. OHA's goal is to ensure that the ultimate resolution of this case results in a fair and just resolution for OHA's members who are being served by FirstEnergy.

**IV. Conclusion**

Based on the foregoing, OHA respectfully requests the Commission to grant its Motion to Intervene pursuant to R.C. 4903.221 and OAC 4901-1-11.

Respectfully submitted on behalf of  
THE OHIO HOSPITAL ASSOCIATION



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## CERTIFICATE OF SERVICE

In accordance with O.A.C. 4901-1-05, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Motion to Intervene* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 28<sup>th</sup> day of May 2021 *via* electronic mail.



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

**Commission of Ohio Docketing Information System on**

**5/28/2021 4:43:15 PM**

**in**

**Case No(s). 17-2474-EL-RDR**

Summary: Motion for Leave To Intervene Out of Time of The Ohio Hospital Association electronically filed by Teresa Orahoad on behalf of Devin D. Parram