

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Determination of the)	
Existence of Significantly Excessive)	
Earnings for 2021 Under the Electric)	Case No. 22-525-EL-UNC
Security Plan of Ohio Edison Company,)	
the Cleveland Electric Illuminating)	
Company, and the Toledo Edison)	
Company.)	

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene on behalf of FirstEnergy's 1.9 million residential consumers.¹ The Public Utilities Commission of Ohio ("PUCO") will be examining the FirstEnergy utilities'² 2021 profits to determine if they were "significantly excessive" and if consumers are entitled to a refund under R.C. 4928.143(F). OCC's participation will be consistent with the terms and conditions of the Stipulation in Case No. 13-2173, et al. ("Stipulation") dated November 1, 2021.

The reasons the PUCO should grant OCC's Motion are further set forth in the attached Memorandum in Support.

¹ See R.C. 4911, R.C. 4903.221, and Ohio Adm. Code 4901-1-11.

² Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively "FirstEnergy").

Respectfully submitted,

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Determination of the)	
Existence of Significantly Excessive)	
Earnings for 2021 Under the Electric)	Case No. 22-0525-EL-UNC
Security Plan of Ohio Edison Company,)	
the Cleveland Electric Illuminating)	
Company, and the Toledo Edison)	
Company.)	

MEMORANDUM IN SUPPORT

FirstEnergy provides electric service to consumers through its electric security plan approved by the PUCO in accordance with the provisions of R.C. 4928.143. As a consumer protection written into the law, R.C. 4928.143(F) requires the PUCO to annually evaluate whether a utility is earning too much as a result of rates charged under its electric security plan. Specifically, the PUCO is charged with examining a utility's profits (on a stand-alone basis) to determine whether they are "significantly excessive" when compared to the profits of comparable businesses and utilities. If the PUCO determines that the plan has allowed profits that are significantly excessive, then such significantly excessive earnings must be returned to consumers.

In this case, FirstEnergy has proposed adjustments that significantly reduce (on paper) the profits for Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for purposes of the significantly excessive profits review.³ These adjustments may be challenged under the terms and conditions of

³ FirstEnergy Direct Testimony of Tracy M. Ashton, at Schedule TMA-2.

the Stipulation and could understate FirstEnergy's profits and deny consumers refunds that they are entitled to under the law.

FirstEnergy seeks a finding that its earnings for the calendar year 2021 were not significantly excessive per R.C. 4928.143(F). If FirstEnergy's application is approved, consumers may be deprived of refunds to which they are entitled. OCC has authority under law to represent the interests of FirstEnergy's 1.9 million residential consumers, pursuant to 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 consumers may be "adversely affected" by this case, especially if they are unrepresented in a proceeding where the PUCO determining whether consumers are entitled to a refund depending upon the level of profits derived from the electric security plan rates. 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 proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is representing the residential consumers of FirstEnergy in this case where the PUCO will be determining whether FirstEnergy had significantly excessive profits in 2021 under its electric security plan and

thus under the law would owe consumers a refund. This interest is different from that of any other party, and especially different from that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential consumers will include advancing the position that consumers should pay no more than what is just and reasonable under R.C. 4928.02(A), for service that is adequate. And the PUCO should especially hear positions on any adjustments proposed by FirstEnergy that would give the appearance, on paper, that FirstEnergy's profits are lower than the level that would warrant refunds to consumers. OCC's position is therefore directly related to the merits of this case 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 the 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 O.A.C. 4901-1-11(A)(2). As the advocate for residential utility consumers, OCC has a real and substantial interest in this case where the PUCO will decide if consumers are entitled to a

refund as a result of FirstEnergy's significantly excessive profits in 2021.

In addition, OCC meets the criteria of O.A.C. 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

O.A.C. 4901-1-11(B)(5) states that the PUCO shall consider "[t]he extent to which the person's interest is represented by existing parties." While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio's residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio 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.⁴

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.

⁴ 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 July 2022.

/s/ Ambrosia E. Wilson
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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. Alana M. Noward on behalf of Wilson, Ambrosia E.