

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, the Cleveland Electric)	
Illuminating Company, and the Toledo)	Case No. 22-704-EL-UNC
Edison Company for Approval of Phase)	
Two of Their Distribution Grid)	
Modernization Plan.)	

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

OCC moves to intervene¹ in this case on behalf of residential consumers. They need help. FirstEnergy² is asking for PUCO approval to charge consumers \$750 million³ more for grid modernization in addition to the \$460 million charged for the infamous distribution modernization rider and the \$600 million authorized for the first phase of grid modernization. Over the first four years of FirstEnergy's proposal, it projects charging consumers more than \$400 million.⁴

The PUCO should require FirstEnergy to use for grid modernization the funds from its infamous distribution modernization rider ("DMR") that it collected from consumers until the Ohio Supreme Court threw out the charge as unlawful. Indeed, in a private report to the PUCO Staff, auditor Oxford informed that it was likely to

¹ See R.C. Chapter 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.

³ Application (July 15, 2022) at 66, para. 21 ("The Companies request authorization to recover in Rider AMI their actual Grid Mod II capital costs, up to \$626.4 million, and incremental O&M expenses associated with Grid Mod II up to an aggregate of \$144.1 million over the deployment period.").

⁴ FirstEnergy Witness McMillan Testimony, Ex. A.

recommend in a public report that some of FirstEnergy's DMR collections be applied to real grid modernization.⁵

Of course, Oxford never filed the final audit report that was expected under the PUCO's Order⁶ calling for the audit (despite Oxford apparently being paid the full audit contract fee). Infamously, a FirstEnergy text message between its executives referenced "burning" Oxford's final report.⁷

At this time of soaring energy prices, inflation and a resurgent pandemic, FirstEnergy's proposed build-out is ill-timed. It will impose a financial burden on consumers.

To protect consumers, the PUCO should proceed with caution before authorizing FirstEnergy to make this expensive build-out for so-called Grid Mod II. For one thing, the jury is still out on the purported benefits of the build-out's first phase, Grid Mod I. It is still being deployed. And a mid-term operational benefits assessment will not even be filed by Daymark Energy Advisors until September 15, 2022.⁸

Second, there are consumer protections that FirstEnergy has failed to propose and that the PUCO should require for this second phase of the build-out. We already mentioned using DMR funds. Additional consumer protections should include not

⁵ *In the Matter of the Review of the Distribution Modernization Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 217-2474-EL-RDR, Third Interim Quarterly Report at 2 (October 16, 2018).

⁶ *In the Matter of the Review of the Distribution Modernization Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 17-2474-EL-RDR, Entry (December 13, 2017), Attachment at 1, 4.

⁷ See, e.g., *In the Matter of the Application of Suvon, LLC d/b/a FirstEnergy Advisors for Certification as a Competitive Retail Electric Service Power Broker and Aggregator in Ohio*, Case No. 20-103-EL-AGG, Motion to Withdraw the Certification Application of Suvon, Exhibit A (November 2, 2021) (attached).

⁸ *In the Matter of the Filing by Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company of a Grid Modernization Plan*, 16-481-EL-UNC, Entry (April 20, 2022).

charging consumers for grid-modernization unless it is “used and useful” under Ohio law⁹ for consumers’ utility service. And the modernization should create significant utility operational savings, energy savings, and reliability benefits that will be used to moderate the rates for electricity that consumers pay.

The reasons the Public Utilities Commission of Ohio (“PUCO”) should grant the Ohio Consumers’ Counsel’s Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

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/s/ William J. Michael
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⁹ R.C. 4909.15.

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MEMORANDUM IN SUPPORT

FirstEnergy¹⁰ is asking for PUCO approval to charge consumers \$750 million¹¹ more for grid modernization in addition to the \$460 million charged for the infamous distribution modernization rider and the \$600 million authorized for the first phase of grid modernization. Over the first four years of FirstEnergy’s proposal, it projects charging consumers more than \$400 million.¹² It projects that residential consumers by the fourth year would be charged \$1.72 per month for Toledo Edison consumers, \$2.70 for Ohio Edison consumers, and \$3.33 per month for Cleveland Electric Illuminating consumers.¹³

OCC has authority under law to represent the interests of FirstEnergy’s 1.9 million residential electric utility consumers under R.C. Chapter 4911.¹⁴ OCC’s

¹⁰ Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company.

¹¹ Application (July 15, 2022) at 66, para. 21 (“The Companies request authorization to recover in Rider AMI their actual Grid Mod II capital costs, up to \$626.4 million, and incremental O&M expenses associated with Grid Mod II up to an aggregate of \$144.1 million over the deployment period.”).

¹² FirstEnergy Witness McMillan Testimony, Ex. A.

¹³ FirstEnergy Witness McMillan Testimony, Ex. A.

¹⁴ R.C. Chapter 4911.

intervention should be granted to protect FirstEnergy's consumers from being charged unjust and unreasonable rates.

R.C. 4903.221 provides, in part, that any person "who may be adversely affected" by a PUCO proceeding may seek to intervene in that proceeding. The interests of Ohio's residential consumers may be "adversely affected" by this case, especially if the consumers were unrepresented, because residential consumers will be asked to pay increased charges in order for FirstEnergy to implement its grid modernization plan. 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 FirstEnergy's residential consumers who will see significant increases to their electric bills to pay for this major "Grid Mod II" build-out. These charges cannot be more than what is just and reasonable under law. Further, FirstEnergy's investment in grid modernization should result in benefits for consumers that offset the significant cost. OCC's interest is different from that of any other party and especially different than that of the utility, whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for consumers will include, among other things, advancing the position that FirstEnergy's consumers should receive adequate service at a just and reasonable rate under Ohio law.¹⁵ 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 to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a very real and substantial interest in this case in which the PUCO must address whether FirstEnergy's Grid Mod II will provide residential consumers adequate service at a just and reasonable rate, under Ohio 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) that OCC already has addressed and that OCC satisfies.

¹⁵ *E.g.*, R.C. 4905.22.

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.” While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that OCC 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.¹⁶

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.

¹⁶ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20 (2006).

Respectfully submitted,

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Ohio Consumers' Counsel

/s/ William J. Michael

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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 electric transmission this 26th day of July 2022.

/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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Short Message Report

Conversations: 1	Participants: 2
Total Messages: 1	Date Range: 3/3/2020

Outline of Conversations



NODISPLAY 1 message on 3/3/2020 • Charles Jones • Dennis Chack

Messages in chronological order (times are shown in GMT -04:00)



NODISPLAY

DC

Dennis Chack

3/3/2020, 11:23 AM

Any luck on talking with Sam on energy license we just received request for additional comments

Short Message Report

Conversations: 1	Participants: 2
Total Messages: 5	Date Range: 3/4/2020

Outline of Conversations



NODISPLAY 5 messages on 3/4/2020 • Charles Jones • Dennis Chack

Messages in chronological order (times are shown in GMT -05:00)



NODISPLAY

- CJ Charles Jones** 3/4/2020, 2:57 PM
He will get it done for us but cannot just jettison all process. Says the combination of over ruling Staff and other Commissioners on decoupling, getting rid of SEET and burning the DMR final report has a lot of talk going on in the halls of PUCO about does he work there or for us? He'll move it as fast as he can. Better come up with a short term work around.
- DC Dennis Chack** 3:05 PM
Ok thanks for discussing with him. How are you feeling
- CJ Charles Jones** 3:09 PM
[REDACTED]
[REDACTED] Stopped by Sam's today on my walk. He has friends down and has been busy but he was out doing some yard work. Walking about 3 miles a day right now. A little bored since I cant golf or even get in the pool. But better than sitting in Ohio. Weather has been beautiful last 3 days.
- DC Dennis Chack** 3:14 PM
It was not the best the days we were there
- CJ Charles Jones** 3:14 PM
I know. Pretty chilly and windy.

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in

Case No(s). 22-0704-EL-UNC

Summary: Motion Motion to Intervene by Office of the Ohio Consumers' Counsel
electronically filed by Mrs. Tracy J. Greene on behalf of Michael, William J.