

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

|                                      |   |                         |
|--------------------------------------|---|-------------------------|
| In the Matter of the Application for | ) | Case No. 21-1205-EL-AEC |
| Established of a Unique Arrangement  | ) |                         |
| for Toshi CMC, LLC                   | ) |                         |

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**MOTION OF INDUSTRIAL ENERGY USERS-OHIO TO INTERVENE**

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Industrial Energy Users-Ohio (“IEU-Ohio”) respectfully moves the Public Utilities Commission of Ohio, pursuant to R.C. § 4903.221 and Ohio Adm. Code § 4901-1-11, to intervene in the above-captioned matter to address matters described in the Toshi CMC, LLC’s September 2, 2022 Motion for Clarification<sup>1</sup> and the Commission’s November 2, 2022 Entry granting that Motion.<sup>2</sup>

The grounds for IEU-Ohio’s motion to intervene are set forth more fully in the accompanying memorandum in support, which is incorporated herein by reference. As explained therein, IEU-Ohio respectfully submits that it has a real and substantial interest in these issues raised in Toshi’s Motion and the Commission’s Entry, and that IEU-Ohio is so situated that the disposition of the proceeding without its participation may, as a practical matter, impair or impede its ability to protect that interest. IEU-Ohio further submits that its participation in the proceeding will not cause undue delay, will not unjustly prejudice any existing party, and will meaningfully contribute to the development of the record. IEU-Ohio’s interests will not be adequately represented by other parties to the proceeding, and therefore, IEU-Ohio should be entitled to intervene.

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<sup>1</sup> See Toshi CMC, LLC’s Unopposed Motion for Clarification and Memorandum in Support, *In the Matter of the Application for Establishment of a Unique Arrangement for Toshi CMC, LLC*. (Sept. 2, 2022).

<sup>2</sup> See Entry, *In the Matter of the Application for Establishment of a Unique Arrangement for Toshi CMC, LLC*. (Nov. 2, 2022).

Accordingly, IEU-Ohio respectfully requests that its motion to intervene in this proceeding be granted.

Date: November 14, 2022

Respectfully submitted,

/s/ David F. Proaño

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**MEMORANDUM IN SUPPORT OF MOTION OF INDUSTRIAL ENERGY USERS-  
OHIO TO INTERVENE**

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**I.     INTRODUCTION**

IEU-Ohio seeks to intervene in this proceeding to defend its real and substantial interest in the issues raised in Toshi’s Motion for Clarification and the Commission’s Entry granting that motion. In that Entry, the Commission directed Toshi and FirstEnergy to work with Commission Staff “to implement the most cost-effective option of the proposed alternatives” for the manual billing process under FirstEnergy’s Non-Market Based (NMB) transmission pilot billing outcome. *See Entry, In the Matter of the Application for Establishment of a Unique Arrangement for Toshi CMC, LLC.*, ¶¶ 26 (Nov. 2, 2022).

A number of of IEU-Ohio’s members have been participating in FirstEnergy’s NMB transmission pilot billing program, but they have recently moved or will soon move to the standard service offer (SSO). Like Toshi, those members require manual billing services from FirstEnergy to participate in the NMB transmission pilot program while on SSO. They have a real and substantial interest in, and will be directly impacted by, the method that the parties and Staff select for that billing process.

IEU-Ohio should be permitted to intervene to protect those interests, which cannot be adequately represented or protected by any other party. IEU-Ohio’s intervention will not unduly prolong or delay the proceedings, nor will it unjustly prejudice any existing party. IEU-Ohio’s

intervention will meaningfully contribute to the development of the record and is in the public interest. For these reasons, IEU-Ohio's motion should be granted.

## **II. BACKGROUND**

On June 1, 2022, the Commission approved a joint stipulation and recommendation entered into by Commission Staff and Toshi CMC, LLC for a reasonable arrangement between Toshi and the Ohio Edison Company pursuant to R.C. § 4905.31 and Ohio Adm. Code § 4901:1-38-05 for a rate structure mirroring FirstEnergy Corp.'s non-market-based services rider opt-out pilot program. *See Entry, In the Matter of the Application for Establishment of a Unique Arrangement for Toshi CMC, LLC*, ¶¶ 4-11 (Nov. 2, 2022). Toshi filed its agreement for established of a reasonable arrangement with Ohio Edison on July 21, 2022. *Id.* at ¶ 12.

Toshi then filed a motion for clarification on September 2, 2022 seeking the Commission's confirmation that "FirstEnergy can and should manually bill Toshi directly or through an assignment of costs to a Competitive Retail Electric Service (CRES) provider for transmission service consistent with the [Non-Market Based (NMB)] transmission pilot billing outcome while Toshi remains on the standard service officer (SSO)" and "that manual billing be authorized until such time that FirstEnergy determines if an automated process can reasonably be implemented." *Id.* at ¶ 16; *see also id.* at ¶¶ 17-19.

FirstEnergy moved for limited intervention in order to file a memorandum contra to Toshi's Motion for Clarification, in which FirstEnergy stated it did not oppose "Toshi's requested relief that the Commission direct FirstEnergy to provide a manual billing alternative under the NMB transmission pilot, but that it seeks a Commission order to support exceptions to the Sarbanes-Oxley Act (SOA) controls necessitated by a manual billing solution." *Id.* at ¶ 20; *see also id.* at ¶¶ 21-23.

The Commission granted Toshi's motion on November 2, 2022, holding that "FirstEnergy can and should manually bill Toshi directly or through an assignment of costs to a CRES provider for transmission service consistent with the NMB transmission pilot billing outcome while Toshi remains on the standard service officer (SSO)." *Id.* at ¶ 25. Noting that the parties had provided different recommendations for implementation of the manual billing process, the Commission directed the parties "to work with Staff to implement the most cost-effective option of the proposed alternatives" for the implementation of the manual billing process, *id.* at ¶ 26, and also stated that First Energy "may make an appropriate filing to recovery any actual, prudently incurred incremental costs associated with the provision of this new manual billing process." *Id.*

### **III. LEGAL STANDARD**

The Commission's rules provide that a person "shall" be permitted to intervene in a proceeding upon a showing that:

- 1) A statute of this state or the United States confers a right to intervene.
- 2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

Ohio Adm. Code § 4901-1-11(A). The factors for evaluating whether to permit intervention under that rule are:

- 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 the full development and equitable resolution of the factual issues.
- 5) The extent to which the person's interest is represented by existing parties.

Ohio Adm. Code § 4901-1-11(B).

The Supreme Court of Ohio has held that intervention should “generally be liberally construed in favor of intervention.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 NE.2d 940, ¶ 16 (quoting *State ex rel. Polo v. Cuyahoga Cty. Bd. Of Elections*, 74 Ohio St.3d 143, 144, 656 NE.2d 1277 (1995)). This liberal construction applies “whether or not a hearing is held,” and a party should be granted intervention when it meets the factors articulated in the rules, absent “evidence in the record calling those claims into doubt” or establishing that intervention would cause undue delay. *Id.* at ¶ 20.

#### **IV. ARGUMENT**

All of the relevant factors support IEU-Ohio’s motion to intervene here, and therefore, IEU-Ohio should be entitled to intervene.

##### **A. The nature and extent of IEU-Ohio’s interest.**

IEU-Ohio is an association of commercial and industrial customers served by Ohio’s electric distribution utilities which has promoted fair, reasonable and transparent energy charges for more than 25 years. Collectively, IEU-Ohio’s members annually purchase more than \$3 billion in energy and related services and are major contributors to Ohio’s economy and employment sector. IEU-Ohio seeks to promote customer-driven policies that will assure an adequate, reliable, and efficient supply of energy for all consumers at competitive prices.

A number of IEU-Ohio’s members have been participating in FirstEnergy’s NMB transmission pilot billing program, but they either have recently moved or will soon move to the SSO. They will require manual billing services from FirstEnergy to participate in the NMB transmission pilot program pursuant to the Commission’s recent decision. These members will be directly impacted by the manual billing process the parties and Commission Staff decide to implement in this matter. However, the window is closing for IEU’s members to take advantage

of the manual billing processes under the NMB transmission pilot program, and IEU-Ohio must intervene now in these proceedings in order to protect its members' interests.

FirstEnergy has acknowledged that customers, like IEU-Ohio's members, will be impacted by the manual billing process implemented in this proceeding. *See* FirstEnergy's Memorandum Contra Toshi's Motion for Clarification, *In the Matter of the Application for Establishment of a Unique Arrangement for Toshi CMC, LLC.*, at 7-8 (Sept. 30, 2022). FirstEnergy claimed that "several Rider NMB pilot program participants have left the pilot program to return to the SSO." *Id.* at 7. FirstEnergy explained that participants who voluntarily leave the program are ineligible to return, and that if "Toshi's requested relief" had been available, "these customers might not have left the pilot program." FirstEnergy stated that "[i]f the Commission grants Toshi's request, the Companies are not opposed to making the direct manual processes available to customers that left the program to return to the SSO." *Id.* at 8. The current framework has created uncertainty for IEU-Ohio's members, as outlined by FirstEnergy.

**B. IEU-Ohio's legal position and its relation to the merits.**

In its September 2, 2022 Motion for Clarification, Toshi sought the Commission's confirmation that "FirstEnergy can and should manually bill Toshi directly or through an assignment of costs to a CRES provider for transmission service consistent with the NMB transmission pilot billing outcome while Toshi remains on the standard service offer ("SSO")." *See* Toshi CMC, LLC's Unopposed Motion for Clarification, *In the Matter of the Application for Establishment of a Unique Arrangement for Toshi CMC, LLC.*, at 2 (Sept. 2, 2022). FirstEnergy recommended "a third option" where "Commission would require the supplier to bill the SSO customer separately and directly for transmission-only charges while the customer receives SSO generation service under the Companies' Commission approved tariffs." *See* FirstEnergy's

Memorandum Contra Toshi's Motion for Clarification, *In the Matter of the Application for Establishment of a Unique Arrangement for Toshi CMC, LLC.*, at 6 (Sept. 30, 2022).

IEU-Ohio submits that the first option—where FirstEnergy directly bills customers—is the most efficient and economical option for manual billing. As Toshi explained, there does not appear to be any incremental costs associated with this option. *See Toshi CMC, LLC's Unopposed Motion for Clarification, In the Matter of the Application for Establishment of a Unique Arrangement for Toshi CMC, LLC.*, at 3 (Sept. 2, 2022).

Notably, FirstEnergy suggested a third option, which would require the supplier to bill the SSO customer separately and directly for transmission-only charges while the SSO customer would receive SSO generation service under FirstEnergy's approved tariffs. FirstEnergy's Memorandum Contra Toshi's Motion for Clarification, *In the Matter of the Application for Establishment of a Unique Arrangement for Toshi CMC, LLC.*, at 6 (Sept. 30, 2022). But as FirstEnergy acknowledges, this creates a dual-billing process, which places a burden on the customer. Thus, IEU-Ohio supports Toshi's first proposed option.

**C. IEU-Ohio's participation will not cause undue delay.**

IEU's participation will not unduly prolong or delay these proceedings. In its November 2, 2022 Entry, the Commission did not set a deadline for intervention or establish any other schedule for the parties and Commission Staff to implement the manual billing process. IEU-Ohio submits this motion to intervene less than two weeks after the Commission's Entry, and is fully committed to the efficient resolution of the issues raised in Toshi's Motion and the Commission's Entry.

**D. IEU-Ohio's participation is in the public interest.**

IEU-Ohio's participation is in the public interest, as IEU-Ohio has extensive experience and industry knowledge that can assist in the development of a full and complete record in this proceeding. IEU-Ohio's members are commercial and industrial customers served by Ohio's



electric distribution utilities, including FirstEnergy, who have been participating in FirstEnergy's NMB transmission pilot billing program and require manual billing processes to remain in that program as permitted by the Commission's November 2, 2022 decision. If IEU-Ohio is not allowed to participate, the Commission and its Staff will not benefit from IEU-Ohio's perspective on issues that will materially impact IEU-Ohio's members who seek manual billing processes under the NMB pilot program.

**E. IEU-Ohio's interest cannot be represented by existing parties.**

IEU-Ohio's direct interest in the outcome of this proceeding cannot be represented by other parties because IEU-Ohio has a number of members who will each be impacted by the manual billing processes implemented in these proceedings. IEU-Ohio is supportive of the positions that Toshi set forth in its Motion for Clarification. At the same time, Toshi is a distinct entity with its own interest to protect. Accordingly, IEU-Ohio should be permitted to intervene to assert the interests of its members who will be directly impacted by the manual billing process implemented by FirstEnergy.

**V. CONCLUSION**

IEU-Ohio satisfies the "liberal" standard for intervention set forth in R.C. § 4903.221 and Ohio Adm. Code § 4901-1-11. *See Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940, ¶¶ 16, 20. Accordingly, IEU-Ohio respectfully requests that the Commission grant its motion.

Date: November 14, 2022

Respectfully submitted,

/s/ David F. Proaño

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### **CERTIFICATE OF SERVICE**

I certify on this 14th day of November, 2022, that the foregoing document was filed using the Commission's Docketing Information System and was served by electronic mail on the following:

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Summary: Motion Motion to Intervene and Memorandum in Support electronically  
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