

**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. 21-1130-EL-RDR
Edison Company for Review of Rider)	
AMI.)	

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene¹ in this case involving the 2022 audit of FirstEnergy's² Advanced Metering Infrastructure Rider ("AMI Rider"). FirstEnergy charges consumers under the Rider for costs associated with its grid modernization program.³ This proceeding is an annual audit to determine whether FirstEnergy's expenses for grid modernization investments (and therefore potential future charges to consumers) are just, reasonable, and in conformance with PUCO orders authorizing the AMI Rider. FirstEnergy claims to have incurred over \$164 million in capital and O&M expenses during 2022.⁴ OCC is filing on behalf of about 1.9 million Ohio residential utility consumers of FirstEnergy. The reasons the Public Utilities

¹ See R.C. Chapter 4911, R.C. 4903.221 and O.A.C. 4901-1-11.

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

³ *In the Matter of the Filing by Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company of a Grid Modernization Business Plan*, Case No. 16-481-EL-UNC, Opinion and Order (July 17, 2019).

⁴ *In the Matter of Staff's Review of Select Tariffs of Ohio Edison Company, the Cleveland Electric Illumination Company, and the Toledo Edison Company*, Case No. 21-1130-EL-RDR, Report in Support of Staff's 2022 Annual Review of Rider AMI (February 28, 2023) at Exhibit F.

Commission of Ohio (“PUCO”) should grant OCC’s Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers’ Counsel

/s/ William J. Michael
William J. Michael (0070921)
Counsel of Record
John Finnigan (0018689)
Assistant Consumers’ Counsel

Office of the Ohio Consumers’ Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone [Michael]: (614) 466-1291
Telephone [Finnigan]: (614) 466-9585
william.michael@occ.ohio.gov
john.finnigan@occ.ohio.gov
(willing to accept service by e-mail)

**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. 21-1130-EL-RDR
Edison Company for Review of Rider)	
AMI.)	

MEMORANDUM IN SUPPORT

The PUCO is reviewing whether expenses FirstEnergy will ultimately seek to collect from consumers associated with its grid modernization program in 2022 were appropriate. OCC has authority under law to represent the interests of the about 2 million FirstEnergy 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. This is especially so if consumers are unrepresented in a proceeding where the PUCO is reviewing FirstEnergy’s expenses for grid modernization investments (and therefore potential future charges to consumers) are just, reasonable, and in conformance with PUCO orders authorizing collection under the AMI Rider. 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 proceedings; and
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is in representing the residential consumers of FirstEnergy in this case to audit FirstEnergy's expenses for investments (and therefore potential future charges on consumers) through the advanced metering infrastructure rider. This interest is different than 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 residential consumers will include, among other things, advancing the position that expenses for investments leading to potential future charges on consumers should be no more than what is just and reasonable under Ohio law, for service that is adequate under Ohio law. OCC's position is therefore directly related to the merits of this case, which is 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 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 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 is auditing FirstEnergy’s charges to consumers under the AMI Rider.

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), which OCC already has addressed, and which OCC satisfies.

O.A.C. 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 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 (“Court”) 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.⁵

OCC meets the criteria set forth in R.C. 4903.221, O.A.C. 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.

⁵ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ William J. Michael
William J. Michael (0070921)
Counsel of Record
John Finnigan (0018689)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone [Michael]: (614) 466-1291
Telephone [Finnigan]: (614) 466-9585
william.michael@occ.ohio.gov
john.finnigan@occ.ohio.gov
(willing to accept service by e-mail)

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 16th day of May 2023.

/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:

SERVICE LIST

rhiannon.howard@ohioago.gov

thomas.lindgren@ohioago.gov

cwatchorn@firstenergycorp.com

Attorney Examiner:

megan.addison@puco.ohio.gov

greg.price@puco.ohio.gov

jacqueline.st.john@puco.ohio.gov

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

5/16/2023 4:29:32 PM

in

Case No(s). 21-1130-EL-RDR

Summary: Motion Motion to Intervene by Office of the Ohio Consumers' Counsel
electronically filed by Ms. Alana M. Noward on behalf of Michael, William J..