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2 **BEFORE**

3 **THE PUBLIC UTILITIES COMMISSION OF OHIO**

4 IN THE MATTER OF THE APPLICATION
5 OF OHIO EDISON COMPANY, THE
6 CLEVELAND ELECTRIC ILLUMINATING
7 COMPANY, AND THE TOLEDO EDISON
8 COMPANY FOR AUTHORITY TO
9 ESTABLISH A STANDARD SERVICE
OFFER PURSUANT TO R.C. 4928.143 IN
THE FORM OF AN ELECTRIC SECURITY
PLAN.

CASE NO.: 23-301-EL-SSO

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11 **AMICUS BRIEF OF ADVOCATES FOR BASIC LEGAL EQUALITY, INC. IN**
12 **SUPPORT OF OHIO CONSUMERS' COUNSEL'S MOTION TO SCHEDULE A**
13 **VIRTUAL PUBLIC HEARING FOR CONSUMERS TO TESTIFY VIRTUALLY**
14 **REGARDING FIRSTENERGY'S PROPOSED FIFTH ELECTRICAL SECURITY PLAN**

15 The Advocates for Basic Legal Equality (ABLE) hereby submit this filing. This Amici
16 filing is for the PUCO's consideration in the context of OCC's Motion for a Virtual Public
17 Hearing. It is fairer to others who may oppose OCC's motion for a virtual hearing that the Amici
18 file now instead of waiting to file a reply under O.A.C. 4901-1-12. The Amici support the OCC's
19 motion and urge the PUCO to ensure that FirstEnergy consumers are able to participate in the
20 proceeding via a virtual "local" hearing. The Amicus Brief is regarding the specific struggles
21 related to in-person hearings that are unique to Toledo and other rural locations, as well as those
22 who are disabled.

24 Advocates for Basic Legal Equality (ABLE) is a nonprofit law firm established in 1969
25 to ensure that the most vulnerable people in our communities have the same access to justice as
26 people and companies that can afford to retain an attorney. ABLE and its partner law firm, Legal
27 Aid of Western Ohio (LAWO), are the only law firms available for comprehensive legal

1 representation in non-criminal matters for more than 385,000 people living, working, and raising
2 their families in poverty in Northwest and West Central Ohio. ABLE advocates for – and with –
3 financially disadvantaged individuals and communities to effectuate just and equitable policy
4 changes that address the structural causes of poverty and to protect their right to fairness and
5 justice in the legal system.
6

7 The proposed motion by the Ohio Consumers’ Counsel to allow for virtual hearings, in
8 addition to in person hearings, are vital to the protection and voices of Ohio citizens during the
9 utility rate increase process. Currently, no law or rule in effect provides for a right to virtual
10 testimony of consumers at utility rate increase hearings. Section 4903.083 of the Ohio Revised
11 Code states instead that one hearing shall be held “in each municipal corporation in the affected
12 service area having a population in excess of one hundred thousand persons”.¹ This law refers
13 specifically to rate increase cases, however it has been used throughout the years to determine
14 the location of hearings for security plan cases. This is widely considered to be for the protection
15 of the consumers, and so that PUCO may hear the voices of the people who will be affected by
16 the change in rates, which is one of the primary reasons why it must be held to apply to security
17 plan cases, as well as rate increase cases. The current framework of the law has four major
18 shortcomings. Firstly, as the law makes a population-based requirement it can easily overlook
19 smaller municipalities that have only in more recent years begun to qualify for the requirement
20 of a hearing in their municipality. Secondly, the law does not fully take into account the
21 difficulty in appearing in person for many Ohioans. Thirdly, the law does not take into account
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28 ¹ ORC § 4903.083.

1 the many Ohioans who live in more rural areas and are unable to make long drives to testify to
2 PUCO. Finally, a lack of virtual hearings raises concerns about accessibility for those with
3 disabilities. All of these shortcomings could be greatly improved upon by allowing for virtual
4 hearings, in addition to local hearings regarding rate changes.
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6 This amicus brief is submitted as an additional filing requested in the motion filed by
7 Ohio Consumers' Counsel pursuant to O.A.C. 4901-1-12 for an amicus brief and an additional
8 filing on September 29, 2023.

9 **1. Virtual Hearings Are Vital To Disability Accessibility**

10 Ohio has a disabled population of roughly 2.6 million people, according to the CDC.² For
11 many who are disabled, travel can be extremely problematic.³ Many of these Ohioans may still
12 wish to voice their opinions on the increased rates. The requirement for these Ohioans to go in
13 person to PUCO hearings deprives many of their ability to testify at all. Under the ADA,
14 organizations, and government agencies are required to provide reasonable accessibility
15 accommodations.⁴ During the events of COVID-19, PUCO allowed for virtual testimony to be
16 heard. To allow for the same process previously used to be enacted so that those who are
17 disabled, including disabled veterans, may properly participate in the hearing process is
18 reasonable.
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25 ² Disability & Health U.S. State Profile Data for Ohio. Center for Disease Control. May 12, 2023.
26 <https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/ohio.html>

27 ³ "Mobility and Health Impairments" The University of Washington.

28 <https://www.oswego.edu/accessibility-resources/mobility-and-health-impairments#:~:text=Mobility%20impairments,arthritis%20and%20spinal%20cord%20injury.>

⁴ 42 U.S.C. 12101

1 Many of those who are disabled to the point where they are unable to walk on their own
2 find travel to be especially taxing.⁵ These disabled people, especially after a long day at work,
3 will find it difficult to make it to a PUCO hearing, especially if the closest hearing is an hour
4 away. As the law presently stands, many disabled Ohioans are blocked from participating by
5 obstacles, obstacles that may not be within the power of PUCO to solve, such as availability of
6 public transportation,⁶ nontraditional work schedules⁷, and other difficulties. PUCO does have
7 the authority to allow these disabled Ohioans to communicate needs from home by permitting
8 virtual hearings, as shown by previous virtual hearings allowed by PUCO. These virtual hearings
9 would prevent disabled Ohioans from being deprived of their right to equally participate, as Ohio
10 is already directed to do under the ADA.⁸
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22 ⁵ “Mobility and Health Impairments” The University of Washington.
23 [https://www.oswego.edu/accessibility-resources/mobility-and-health-](https://www.oswego.edu/accessibility-resources/mobility-and-health-impairments#:~:text=Mobility%20impairments,arthritis%20and%20spinal%20cord%20injury)
24 [impairments#:~:text=Mobility%20impairments,arthritis%20and%20spinal%20cord%20injury](https://www.oswego.edu/accessibility-resources/mobility-and-health-impairments#:~:text=Mobility%20impairments,arthritis%20and%20spinal%20cord%20injury).

25 ⁶ Kathiann M. Kowalski “Ohio’s Paradox Prize projects offer transit solutions for car-dependent
26 communities”. Energy News Network. August 4, 2022. [https://energynews.us/2022/08/04/ohios-](https://energynews.us/2022/08/04/ohios-paradox-prize-projects-offer-transit-solutions-for-car-dependent-communities/#:~:text=One%20in%2013%20Ohio%20households,our%20society%2C%20McManus%20said)
27 [paradox-prize-projects-offer-transit-solutions-for-car-dependent-](https://energynews.us/2022/08/04/ohios-paradox-prize-projects-offer-transit-solutions-for-car-dependent-communities/#:~:text=One%20in%2013%20Ohio%20households,our%20society%2C%20McManus%20said)
28 [communities/#:~:text=One%20in%2013%20Ohio%20households,our%20society%2C%20McManus%20said](https://energynews.us/2022/08/04/ohios-paradox-prize-projects-offer-transit-solutions-for-car-dependent-communities/#:~:text=One%20in%2013%20Ohio%20households,our%20society%2C%20McManus%20said).

⁷ “WORKFORCE NO. 1 ISSUE FACING RESTAURATEURS ... SOLUTIONS?” Ohio
Restaurant Association. July 2, 2019. [https://www.ohiorestaurant.org/blog/post/workforce-no-1-](https://www.ohiorestaurant.org/blog/post/workforce-no-1-issue-facing-restaurateurs-...-solutions)
[issue-facing-restaurateurs-...-solutions](https://www.ohiorestaurant.org/blog/post/workforce-no-1-issue-facing-restaurateurs-...-solutions)

⁸ 42 U.S.C. 12101

2. Municipalities That Meet Population Requirements For A Hearing That Are Still Overlooked

Toledo is a municipality with a population of over 260,000 people, according to US Census Data.⁹ This is well over the population requirement that would require a hearing to be held in the Toledo municipal area.¹⁰ This would require a hearing for every proposal to increase rates, an important statutory requirement, which provides consumers the chance to testify as to the effects the rate change would have upon their lives and is therefore vital to the protection of the rights of Toledo Citizens. While this law specifically applies to rate changes, it has been used as a basis for determining where to hold hearings for security plans, and should be applied to the application of security plans. Security plans, and other requests before PUCO that increase what consumers pay, effect consumers in a practical sense as much as a rate increase would. This requirement is vital to the protection of consumers, as it allows personal testimony and the ability to look the representatives of PUCO in the eye while telling their story and answering follow up questions. This requirement, however, has been inconsistently applied to Toledo.

In PUCO Case Number 21-637-GA-AIR, in which Columbia Gas requested a rate increase, Toledo had to fight for its statutory right to receive a public hearing. In a motion filed by the Ohio Consumers' Counsel on September 1, 2022 it was argued that a hearing in Toledo is required by law.¹¹ This became a point of contention as Columbia Gas would argue that their

⁹ <https://www.census.gov/quickfacts/fact/table/toledocityohio/PST045222>

¹⁰ ORC § 4903.083.

¹¹ Please see PUCO Case Number 21-637-GA-AIR “MOTION PURSUANT TO O.R.C. 4903.083 FOR A LOCAL PUBLIC HEARING IN TOLEDO, OHIO ON COLUMBIA’S PROPOSED RATE INCREASE BY OFFICE OF THE OHIO CONSUMERS’ COUNSEL”

1 prior hearing in Bowling Green should suffice to meet the statutory requirements.¹² Bowling
2 Green is, according to Google Maps, roughly thirty minutes from Toledo. While this may not
3 seem like a substantial burden, for those who have no car, have a complex work schedule, or
4 have child care concerns an hour round trip drive during a weekday can be much to ask.
5

6 Toledoans had a right to have a hearing within their municipality, which would be
7 affected by the rate change. While other cities had local hearings that could easily be attended by
8 those living in the municipality, residents of Toledo were forced to fight for something that was
9 legally provided for them by right. Eventually, in October, a Hearing would be held in Toledo.
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11 On April 13, at a hearing in Findlay, an hour and a half round trip from Toledo according
12 to Google Maps, for AEP's requested Electrical Security Plan a representative of Advocates for
13 Basic Legal Equality (ABLE) from Toledo commented publicly regarding the fact that PUCO
14 had not provided Toledoans an attempt to testify.¹³ Toledo was once again forgotten by the
15 system, even though it met the population requirements. PUCO would later allow for virtual
16 testimony to be given.
17

18 Above are just two examples of how Toledo has, at times, been forgotten. Virtual
19 Testimony does not excuse a failure to comply with Ohio law. It does, however, improve the
20 situation for those who are most affected, especially when added to the existing in-person
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24 ¹² Please see PUCO Case Number 21-637-GA-AIR "COLUMBIA GAS OF OHIO, INC.'S
25 MEMORANDUM CONTRAMOTION OF OFFICE OF THE OHIO CONSUMERS' COUNSEL
FOR A LOCAL PUBLIC HEARING IN TOLEDO, OHIO"

26 ¹³ Please see PUCO Case Number 23-0023-EL-SSO. ranscript for Hearing held April 13, 2023 at
27 6:01 p.m. before Commissioner Daniel Conway and Attorney Examiner David Hicks at 3200
28 Bright Road, Findlay, Ohio 45840 electronically filed by Litigation Support on behalf of Public
Utilities Commission of Ohio. (Dated April 19, 2023).

1 hearing requirement. Toledo is one city, and as populations continue to grow throughout the
2 years more and more cities are at risk of being affected. A virtual hearing does not fix this
3 problem, but it does lessen the impact when a city is overlooked. It would allow for residents of
4 that city to still have a voice and supply personal testimony with their voice. It gives the
5 members of PUCO a chance to look those they represent in the eye and to hear what the people
6 have to say. It does not fix violations of ORC § 4903.083, but, if they should occur in the future,
7 it would lessen the damage to the rights of the people. This does not decrease the need for local
8 hearings, as local hearings are vital for those without ease of access to the internet, including
9 those who have difficulty with new technology. A virtual hearing would, however, assist in
10 decreasing the damage done when cities are overlooked.
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13 **3. Ohioans Unable To Travel To Hearings**

14 According to Energy News Network, one in every thirteen Ohioans are without a car.¹⁴
15 According to the Children's Defense Fund of Ohio, the cost of childcare throughout the state
16 averages “11% of the median income of a married couple and 40% of a single mother’s income
17 in the state.”¹⁵ According to the Ohio Restaurant Association, restaurants in Ohio employ over
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24 ¹⁴ Kathiann M. Kowalski “*Ohio’s Paradox Prize projects offer transit solutions for car-dependent*
25 *communities*”. Energy News Network. August 4, 2022. <https://energynews.us/2022/08/04/ohios-paradox-prize-projects-offer-transit-solutions-for-car-dependent-communities/#:~:text=One%20in%2013%20Ohio%20households,our%20society%2C%20McManus%20said.>

26 ¹⁵ Kelly Vyzral. “Ohio Ranks 29th in Child Well-Being and Inaccessible, Unaffordable Child Care
27 is Pushing Parents to the Breaking Point” The Ohio Children’s Defense Fund. June 14, 2023.
28 <https://cdfohio.org/2023/ohio-ranks-29th-in-child-well-being-and-inaccessible-unaffordable-child-care-is-pushing-parents-to-the-breaking-point/>

1 half a million Ohioans and account for 10 percent of Ohio employment.¹⁶ And according to a
2 Center for Law and Social Policy report, low-income workers, such as those at restaurants, are
3 facing unstable schedules with constantly shifting hours. These statistics raise a very specific
4 issue regarding the need for virtual hearings. Many hard-working Ohioans simply lack the means
5 to attend in-person meetings due to their hectic schedules.
6

7 This is especially true for many living in low-income areas, who simply do not have the
8 means to make the trip to an in-person hearing. Allowing for a virtual hearing would allow for
9 anyone, anywhere in Ohio to have a chance to voice their opinions on rate changes that affect
10 them. These low-income and fixed-income people are those that are most vulnerable to a
11 potential rate increase, many can simply not afford it. These low-income and fixed-income
12 people need a way to communicate effectively with PUCO, to tell their stories and their needs. A
13 virtual hearing would help them access the system appropriately and would allow them to tell
14 their stories for PUCO consideration.
15

16 A virtual hearing may seem like a trifling matter, but to the Ohioans who have difficulty
17 with transportation, work schedules, and child care, they are a way to meaningfully participate in
18 the important PUCO processes. Many want their voices to be heard but simply do not have the
19 capability of physically traveling to a location. These people do have the option of supplying a
20 written testimony, but that simply isn't enough. The ability to write to PUCO is important, but it
21 is not as important as being able to look members of PUCO in the eye, tell a story in person, and
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27 ¹⁶ “WORKFORCE NO. 1 ISSUE FACING RESTAURATEURS ... SOLUTIONS?” Ohio
28 Restaurant Association. July 2, 2019. <https://www.ohiorestaurant.org/blog/post/workforce-no-1-issue-facing-restaurateurs-...-solutions>

1 be available for follow-up questions. These are needed parts of a very important system. A
2 virtual hearing would return to many hard-working Ohioans a voice in this process. This does not
3 decrease the need for the accessibility of in person hearings, but many of the barriers to in person
4 hearings are problems which PUCO cannot solve. PUCO can decrease the damage of
5 inaccessibility by allowing virtual hearings.
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7 **4. Ohioans Living In Rural Areas**

8 Rural Ohio is home to more than 75,000 farms across nearly 14 million acres.¹⁷ In total,
9 only six of the 1,263 Ohio Municipalities have a population over 100,000, which triggers a duty
10 for a hearing. That leaves 1,257 Municipalities whose citizens are forced to travel to the nearest
11 hearing.¹⁸ This is an enormous amount of the Ohio population, which is directly affected by the
12 decisions of PUCO. These Ohioans may not have an easy time traveling to participate in a
13 PUCO hearing. As discussed above, many Ohioans do not have cars,¹⁹ have trouble finding
14 childcare,²⁰ or have nontraditional schedules.²¹ These Ohioans have every right to have their
15 voices heard at PUCO hearings, yet many of them are unable to participate.
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20 ¹⁷ “Ohio’s Urban, Suburban, and Rural Connection”. The Ohio State University. <https://urban-extension.cfaes.ohio-state.edu/about-us/urban-ohio>

21 ¹⁸ “Ohio’s Urban, Suburban, and Rural Connection”. The Ohio State University. <https://urban-extension.cfaes.ohio-state.edu/about-us/urban-ohio>

22 ¹⁹ Kathiann M. Kowalski “Ohio’s Paradox Prize projects offer transit solutions for car-dependent
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25 <https://cdfohio.org/2023/ohio-ranks-29th-in-child-well-being-and-inaccessible-unaffordable-child-care-is-pushing-parents-to-the-breaking-point/>

26 ²¹ “WORKFORCE NO. 1 ISSUE FACING RESTAURATEURS ... SOLUTIONS?” Ohio
27 Restaurant Association. July 2, 2019. <https://www.ohiorestaurant.org/blog/post/workforce-no-1-issue-facing-restaurateurs-...-solutions>
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1 Virtual hearings would allow hard-working rural Ohioans to meaningfully participate in
2 the system. Farm workers could have a chance to have their voices heard, without the need to
3 leave their farms in the middle of important work. These voices have been silent for too long.
4 The need to travel can keep many of them unable to discuss concerns related to the increase in
5 utility costs and how that may affect the food supply of Ohio. These and other important
6 considerations have not easily made it to PUCO's attention. By allowing for virtual hearings, the
7 farms of our rural communities would more easily have a voice. While those in rural areas may
8 prefer more accessibility of in-person hearings, PUCO cannot solve this problem. PUCO can
9 decrease the damage of inaccessibility by allowing for virtual hearings.
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12 **Conclusion**

13 Virtual hearings, in addition to the statutorily required in-person hearings, are vitally
14 important to the equity of the hearing process. There are many reasons why a virtual hearing may
15 be extremely important in mitigating violations of the law, protecting disability rights, protecting
16 low-income working citizens, and protecting those in rural areas. PUCO should not ask who
17 would benefit from virtual hearings, but instead who wouldn't benefit from virtual hearings.
18 Ohioans throughout the state need the ability to more easily access PUCO hearings, and the
19 technology now exists to make it happen. These virtual hearings are necessary for the continued
20 protection of civil rights throughout the state. We urge PUCO to consider all of the important
21 information, from all of the different sources, that this body will not hear without virtual
22 hearings. How many voices of farmers, parents, low-income families, fixed-income individuals,
23 disabled people, and disabled veterans are going unheard without the power of a virtual hearing?
24 Many Ohioans may prefer in person hearings, but the barriers to accessibility are not barriers
25 which PUCO is equipped to solve. PUCO does have the power to alleviate some of the damage
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1 of these barriers by allowing for virtual hearings. For all of the reasons stated above, we urge
2 PUCO to rule favorably on the Ohio Consumers' Counsel's motion for virtual hearings.

3 Respectfully Submitted,

4 /s/ David Manor

5 David Manor (0100068)

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13 **CERTIFICATE OF SERVICE**

14 It is hereby certified that true copies of the foregoing Motion to Allow an Amici Curiae
15 Filing Instantly in Support of the Office of the Ohio Consumers' Counsel's Motion to Schedule a
16 Virtual "Local" Public Hearing for the Convenience of FirstEnergy Consumers to Testify
17 Remotely Regarding FirstEnergy's Proposed Rate Increases was served upon the persons listed
18 below via electronic transmission this 29th day of September 2023.

19 /s/ David Manor

20 David Manor

21 Attorney at Law

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: Memorandum AMICUS BRIEF OF ADVOCATES FOR BASIC LEGAL
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TO SCHEDULE A VIRTUAL PUBLIC HEARING FOR CONSUMERS TO TESTIFY
VIRTUALLY REGARDING FIRSTENERGY'S PROPOSED FIFTH ELECTRICAL
SECURITY PLAN electronically filed by Mr. David Manor on behalf of ABLE.