

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Updates to the)	
Advanced Metering Infrastructure /)	
Modern Grid Rider (Rider AMI) of Ohio)	Case No. 22-1042-EL-RDR
Edison Company, The Toledo Edison)	
Company and The Cleveland Electric)	
Illuminating Company.)	

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where the Public Utilities Commission of Ohio ("PUCO") Staff will review and audit what FirstEnergy spent in 2022 on grid modernization investments. The audit will review the prudence of nearly \$164 million FirstEnergy investment charged to consumers through the Advanced Metering Infrastructure / Modern Grid Rider ("Rider AMI").¹ OCC is filing on behalf of the 2.1 million residential utility consumers of FirstEnergy.² The reasons the PUCO should grant OCC's motion are further set forth in the attached memorandum in support.

¹ See Case No. 21-1130-EL-RDR, Report in Support of Staff's 2022 Annual Review of the Advanced Metering Infrastructure/Modern Grid Rider (Rider AMI) Submitted by Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (February 28, 2023) ("Annual Report"), Exhibit F.

² See R.C. Chapter 4911, R.C. 4903.221 and O.A.C. 4901-1-11.

Respectfully submitted,

Maureen R. Willis (0020847)
Ohio Consumers' Counsel

/s/ Connor D. Semple
Connor D. Semple (0101102)
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Donald J. Kral (0042091)
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MEMORANDUM IN SUPPORT

In 2022, FirstEnergy spent nearly \$164 million on grid modernization capital investments and incremental operations and maintenance expenses,³ which are being charged to consumers through the Advanced Metering Infrastructure / Modern Grid Rider (“Rider AMI”). Each year, FirstEnergy files an application for an annual PUCO review of the prudence of the costs it charges consumers through Rider AMI.⁴ In this case, the PUCO Staff will review and audit the charges that consumers have paid under this rider in 2022. OCC has authority under law to represent the interests of all the 2.1 million residential utility customers of FirstEnergy under 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 consumers are unrepresented in a proceeding where the PUCO will review charges that

³ Case No. 21-1130-EL-RDR, Annual Report (February 28, 2023), Exhibit F.

⁴ See Case No. 16-2166-EL-RDR (Staff review of 2017 charges); Case No. 17-2276-EL-RDR (Staff review of 2018 charges); Case No. 18-1647-EL-RDR (Staff review of 2019 charges); Case No. 19-1903-EL-RDR (Staff review of 2020 charges); Case No. 22-1042-EL-RDR (Staff review of 2021 charges).

consumers pay for grid modernization. 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 representing the residential consumers of FirstEnergy in this case involving an audit of 2022 charges collected from consumers for grid modernization. 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 FirstEnergy can only collect prudently incurred costs from its consumers through this rider for investment that is used and useful. Additionally, the rider rates paid by consumers must be just and reasonable. OCC's position is therefore directly related to the merits of this case before the PUCO, which has 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 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 grid modernization charges paid by residential consumers are under review.

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 customers, the PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

Maureen R. Willis (0020847)
Ohio Consumers' Counsel

/s/ Connor D. Semple
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⁵ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20.

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 5th day of October 2023.

/s/ Connor D. Semple

Connor D. Semple

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 Semple, Connor D..