

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the)	
Distribution Modernization Rider of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company, and The Toledo)	Case No. 17-2474-EL-RDR
Edison Company.)	

In the Matter of the 2020 Review of the)	
Delivery Capital Recovery Rider of Ohio)	
Edison Company, The Cleveland Electric)	Case No. 20-1629-EL-RDR
Illuminating Company, and The Toledo)	
Edison Company.)	

**NORTHEAST OHIO PUBLIC ENERGY COUNCIL’S
MOTION TO INTERVENE AND
MOTION TO INTERVENE OUT OF TIME TO THE EXTENT NECESSARY**

Pursuant to R.C. 4903.221, and O.A.C. 4901-1-11, the Northeast Ohio Public Energy Council (“NOPEC”) respectfully requests that the Public Utilities Commission of Ohio (“PUCO”) grant NOPEC’s motion to intervene in these consolidated proceedings. NOPEC has a real and substantial interest in these cases, and the PUCO’s disposition of them may impair or impede NOPEC’s ability to protect that interest. NOPEC’s participation in these cases will not unduly prolong or delay the proceedings, and NOEPC will contribute to the full development and equitable resolution of the issues presented. NOPEC’s interests also will not be adequately represented by other parties to these proceedings.

The reasons supporting NOPEC’s motion to intervene are contained in the accompanying Memorandum in Support.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Northeast Ohio Public Energy Council (“NOPEC”) is a regional council of governments established under R.C. Chapter 167, and is the largest governmental retail energy aggregator in Ohio. It is made up of approximately 240 member counties, townships and municipalities in nineteen (19) Ohio counties. NOPEC is a large-scale governmental aggregator that provides service to approximately 900,000 residential and small business retail customers in the state. It provides retail electric aggregation service to over 480,000 retail electric customers located primarily in the Cleveland Electric Illuminating Company and Ohio Edison Company (the “Companies”) service territories. NOPEC has intervened and actively participated in all of the Companies’ standard service offer (“SSO”) cases. The riders that are the subject of these

consolidated cases¹ were approved and/or modified in the SSO cases.² NOPEC has a vital interest that the funds its customers have paid and are paying under the riders are used for their intended purposes and, if not, to have those funds returned.

Regrettably, recent events have cast considerable doubt as to the Companies' proper use of the funds—the most recent event being the State of Ohio's February 12, 2024, indictment of a former Commission Chair ("Former Chair") and two former senior executives of the Companies' parent, FirstEnergy Corp ("Former Executives").³ The indictment includes allegations that the Former Chair and Former Executives engaged in a pattern of corrupt activities from January 18, 2010 through January 22, 2021, that provided them (individually) and the Companies with undue benefits—including the misappropriation of millions of dollars ratepayer funds.

NOPEC appreciates the current Commission's ongoing vigilance and transparency in its investigations of the potential misuse of consumers' funds related to the alleged corrupt practices of the Former Chair and Former Executives. The current Commission's diligence extends to two other cases, as well. The Commission is investigating the Companies' political and charitable donations in Case No. 20-1502-EL-UNC (the "Donations Case")⁴ and the Companies' compliance

¹ Case No. 17-2472-EL-RDR (the "DMR Rider Case") and Case No. 20-1629-EL-RDR (the "DCR Rider Case") (collectively, the "Rider Cases").

² The Commission approved and/or modified the Delivery Capital Recovery Rider ("Rider DCR") in *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and the Toledo Edison Co. for Authority to Establish a Std. Serv. Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Security Plan*, Case No. 10-388-EL-SSO, Opinion and Order (Aug. 25, 2010) (ESP II Case); *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and the Toledo Edison Co. for Authority to Provide for a Std. Serv. Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) (ESP III Case); and *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and the Toledo Edison Co. for Authority to Provide for a Std. Serv. Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) (ESP IV Case). The Commission approved the Distribution Modernization Rider ("Rider DMR") in the ESP IV Case, Fifth Entry on Rehearing (Oct. 12, 2016).

³ See <https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/St-vs-Randazzo-et-al-Indictment-2024-02-12.aspx>; see, also *United States of America v. FirstEnergy Corp.*, Case No. 1:21-cr-00086-TSB, *Deferred Prosecution Agreement* (S.D. Ohio) (Jul. 22, 2021).

⁴ NOPEC has filed a separate motion to intervene in this case because it has not yet been consolidated with these rider cases.

with corporate separation laws and regulations in Case No. 17-974-EL-UNC (the “Corporate Separation Case”).

NOPEC already has been granted intervention in the Corporate Separation Case. Indeed, it was in that case that NOPEC raised the specter of alleged corruption not only between FirstEnergy Corp executives and their subsidiary executives, but also with the Former Chair. In a joint motion with the Office of the Ohio Consumers’ Counsel,⁵ NOPEC requested a supplemental audit in the Corporate Separation Case based on an email exchange that the Companies’ filed in a related certification case that raised corporate separation issues. The filing disclosed an email exchange between FirstEnergy Corp’s CEO and the President of the affiliate that was seeking PUCO certification.⁶ The exchange revealed the following discussion concerning securing the affiliate’s PUCO certificate. The exchange now forms part of the allegations of corruption of the Former Chair:

Dennis Chack [President Ohio Utilities and Manager of FirstEnergy Advisors]:
Any luck on talking with Sam on energy license we just received request for additional comments

Charles Jones [CEO/President Ohio Utilities and Director, FE Ohio EDUs]: He will get it done for us but cannot just jettison all process. Says the combination of overruling 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.

Dennis Chack: Ok thanks for discussing with him. ***

The Corporate Separation Case involves issues related to those in the Rider Cases—whether ratepayer funds approved in the SSO cases were misused, *i.e.* used in the Corporate

⁵ See Corporate Separation Case, Motion for Supplemental Audit (Nov. 5, 2021) (“Joint Motion”).

⁶ See *In re Suvon, LLC d/b/a FirstEnergy Advisors*, Case No. 20-103-EL-AGG.

Separation Case to advance the interests of its affiliates including the successor to FirstEnergy Solutions. As a result, NOPEC already has participated in significant discovery in the Corporate Separation Case, much of which is germane to the issues in these Rider Cases. Indeed, the Attorney Examiner has recognized that discovery obtained in one of these four investigatory cases may be presented in the other cases (with admissibility subject to rules of evidence) to avoid the need for duplicative discovery requests. See *Rider Cases, et al.* (Entry, Aug. 24, 2022), ¶ 4.

NOPEC has a real and substantial interest that its customers' funds paid under these DRM and DCR riders be used for their intended purposes. NOPEC seeks intervention on behalf of its customers to protect those interests.

II. LAW & ARGUMENT

NOPEC moves to intervene in these proceedings. R.C. 4903.221(B) and O.A.C. Rule 4901-1-11(A)(2) govern intervention in Commission proceedings. Substantially similar, these provisions provide that the Commission may consider the following in determining whether to grant intervention:

- (1) The nature and extent of the person's interest;⁷
- (2) The legal position of the person seeking intervention and its relation to the merits of the case;⁸
- (3) Whether intervention would unduly delay the proceeding or unjustly prejudice any existing party;⁹
- (4) The person's potential contribution to full development and equitable resolution of the issues involved in the proceeding;¹⁰ and
- (5) The extent to which the person's interest is represented by existing parties.¹¹

⁷ R.C. 4903.221(B)(1) and O.A.C. 4901-1-11(B)(1).

⁸ R.C. 4903.221(B)(2) and O.A.C. 4901-1-11(B)(2).

⁹ R.C. 4903.221(B)(3) and O.A.C. 4901-1-11(B)(3).

¹⁰ R.C. 4903.221(B)(4) and O.A.C. 4901-1-11(B)(4).

¹¹ R.C. 4903.221(B)(5) and O.A.C. 4901-1-11(B)(5).

NOPEC has a real and substantial interest in these proceedings in which the Commission is investigating whether ratepayer funds collected under the riders approved the Companies SSO cases were used for their intended purposes. NOPEC was a party to each of the Companies' SSO cases that approved the riders and has a vital interest that its customers fund the riders only for their intended purposes.

NOPEC's legal position is directly related to the merits of the case and consistent with the purpose of the PUCO's investigation—if the rider funds were not used for their intended purposes they should be returned to customers through an adjustment to the riders or through other avenues.¹²

NOPEC's intervention would not unduly delay these proceedings. NOPEC already has engaged in discovery in the Corporate Separation Case that is germane to these proceedings. Discovery and other activities have been stayed since August 24, 2022, and have only restarted effective February 26, 2024, pursuant to the Attorney Examiner's Entry issued that same date. NOPEC accepts the state of record as it stands in these consolidated proceedings and will abide by the procedural schedule prescribed by the Attorney Examiner's February 26, 2024 Entry. NOPEC notes that no intervention deadline has been established in the DCR Case and that its motion to intervene in that case is timely filed. A deadline for intervention was set and has passed in the DMR Case. If leave is required to file a motion to intervene out of time in the DMR Case, NOPEC submits that extraordinary circumstances¹³ warrant granting the motion: (1) the DMR case has been consolidated with the DCR Case, for which NOPEC's intervention is timely, (2) activity in

¹² See, e.g., DMR Case, Entry (Dec. 30, 2021) at ¶ 23 (An audit is to be conducted “in order to ensure funds collected from ratepayers through Rider DMR were only used for the purposes established in ESP IV. ESP IV Case, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶282”); see, also, e.g., DCR Case, Entry (Mar. 10, 2021) at ¶ 8 (“In this case, a focused investigation will ensure that any funds which should be returned to ratepayers are returned as expeditiously as possible.”).

¹³ O.A.C. 4901-1-11(F).

the cases both cases has been stayed since August 24, 2022, and (3) the recent indictment of the Former Chair and Former Executives present new and additional allegations that support intervention and discovery.

NOPEC's party status and participation in each of the Companies' SSO cases, its involvement and discovery in the Corporation Separation Case, and its experience in regulatory matters related to the Companies demonstrate that it will contribute to the full development of the issues involved in these proceedings. NOPEC will work cooperatively with others in the case in order to maximize case efficiency, where practical, to reach an equitable resolution of all issues.

Finally, no existing party to these proceedings adequately represents NOPEC's interests and the pecuniary interests of its customers. Disposition of this proceeding without its participation will impair or impede NOPEC's ability to protect those interests.

III. CONCLUSION

Based on the foregoing, NOPEC respectfully request that its motion to intervene be granted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

In accordance with O.A.C. 4901-1-05, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Motion to Intervene* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 4th day of March, 2024.



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Summary: Motion of Northeast Ohio Public Energy Council to Intervene and Motion to Intervene Out of Time to The Extent Necessary and Memorandum in Support electronically filed by Teresa Orahoad on behalf of Dane Stinson.