



**Proponent Testimony of Ryan Augsburger
Senate General Government and Agency Review Committee
The Honorable Kirk Schuring, Chairman
May 1, 2019**

Chairman Schuring, Ranking Member O'Brien, I appreciate this opportunity to present testimony in support of the proposed budget of the Office of the Ohio Consumers' Counsel (OCC).

My name is Ryan Augsburger and I am Vice President of The Ohio Manufacturers' Association (OMA). The OMA is Ohio's largest statewide business association comprised solely of manufacturers advocating to protect and grow manufacturing. Manufacturing contributes more to Ohio's economy than any other sector, and is responsible for 17% of the state's gross domestic product.

Energy policy can enhance or hinder Ohio's ability to attract business investment, sustain economic growth and enhance job creation, especially in manufacturing because manufacturing is a significant consumer of energy. The OMA routinely advocates on energy policy at the Statehouse and before the Public Utilities Commission of Ohio (PUCO). Legal proceedings frequently also take our cases before the Supreme Court of Ohio, as well as before other legal venues including federal agencies and courts.

Advocacy activity before an adjudicatory body is commonly referred to as *intervening* or being an *intervenor organization*. Interventions in utility cases are costly legal proceedings but they are a necessary check and balance to utility applications, supplier proposals, PUCO audits and investigations, and PUCO rulemakings.

The OMA is commonly referred to as a commercial and industrial intervenor group because most of our members participating in the intervening body - the OMA Energy Group - are customers who pay pursuant to the commercial and industrial rate classes. We are one of dozens of intervenors before the PUCO day in and day out. Other intervenors represent diverse interests, however, only the Ohio Consumers' Counsel has the statutory authority and recognized credibility to protect all of Ohio's residential customers.

OCC has been providing invaluable technical expertise that is important to the PUCO, the process, and to other intervenors. Without the data collected and presented by OCC's experts, the PUCO, the Court, and others may not be aware of the significant overcharges customers have been required to pay over the past decade. These data are useful in describing the scale of the problem to the public, lawmakers, and other regulatory agencies. While OMA and others may not always agree with OCC on rate design or allocation of costs among customer classes, we frequently agree on the need for customer protections from the many utility proposals that raise customers' rates without offsetting benefits.

Over the past few years, the OMA has joined the OCC and others in appeals to the Supreme Court of Ohio regarding unlawful charges assessed to all customers. Business customers benefit from working with an expert and principled residential customer advocate. We have also partnered with the OCC in some matters before the Federal Energy Regulatory Commission, or FERC. Absent a willing partner in the OCC, other intervenor groups may not have the funding available to hire experts and litigate to the extent that OCC does in the numerous regulatory proceedings. Can you imagine the risk to all facets of Ohio if Ohio customers were not duly represented?

More recently, OCC's involvement in the FirstEnergy Solutions bankruptcy case (see attached) has been critical to defending the interests of Ohio residents and businesses alike. OCC stands in the stead of customer groups that are not able for one reason or another to intervene in cases.

Finally, OCC staff professionals possess expertise needed in PUCO investigations and rulemakings that other groups simply don't have.

Mr. Chairman, in closing, the Ohio energy marketplace today is more dynamic, and riskier, than ever for customers. We are all customers and customer costs directly impact Ohio's competitiveness. For these reasons, the OMA supports the important work for Ohioans this agency is performing and we urge the Senate to fully fund OCC at its requested level so that the agency can continue being effective in protecting the interests of Ohio's residential consumers.

That concludes my testimony. I would be happy to try to respond to any questions you may have. Thank you.

FES and FE have created a ‘scheme’ that is an ‘abuse of the bankruptcy system’: Feds say

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The Plain Dealer

Federal authorities have charged in bankruptcy court that the deal struck between FirstEnergy and FirstEnergy Solutions absolving FE of any future responsibilities for power plant environmental problems is a "scheme" and "abuse of the bankruptcy system." The charges come a year after FES filed for Chapter 11 bankruptcy protection.

By [John Funk, The Plain Dealer](#)

CLEVELAND, Ohio -- Federal regulators have jumped into the FirstEnergy Solutions bankruptcy case with charges that FES and its parent FirstEnergy Corp., with a nod from "favored creditors," have cooked up a "scheme" that is an "abuse of the bankruptcy system."

The issue is on the court's docket for Tuesday morning.

In furious filings at the start of this past weekend, attorneys for federal and state Environmental Protection Agencies tore apart the arrangement that FE and FES made last fall in which the parent promised nearly \$1 billion in cash and commitments in exchange for FES absolving FE from future environmental damages.

The companies want to include the settlement in the bankruptcy case.

The Ohio Consumers' Counsel also objected, arguing that under the plan before the court that "FirstEnergy would be shielded from any claims or causes of action related in any way to the

Debtors' businesses and property, including from any liability for the costly decommissioning of its power plants."

The OCC also suggested that if the court were to approve a restructuring deal with the FE-FES settlement included the ruling would shield FirstEnergy and "leave Ohioans with too little protection.

"Were funds for decommissioning to be inadequate, for example, consumers or taxpayers might be (unfairly) called upon to fund FirstEnergy and FES's power plant decommissioning liabilities to federal and state governments."

Bankruptcy Judge Alan Koschik approved that inter-company settlement in September but did not give the FirstEnergy blanket protection from all future liabilities.

That's exactly what FES is trying to obtain now in a document the court must approve before creditors can vote on the the FES restructuring plan. And court approval would make future lawsuits or enforcement against FE over coal ash or nuclear pollutions difficult if not impossible.

Speaking from the bench the judge a week ago said, "I need to really decide the issue that's been raised by the Government" before he would approve a document known as the "disclosure agreement" which, once approved, will be mailed to every creditor which FES owes.

Given the gravity and significance of the charges, Koschik further wondered if sending out the statement before the court resolves the issue of FE indemnity would not only be a waste of time, but would also create a lot of confusion.

That led to a rush of court filings late last week from all of the parties, including arguments from the companies that the release of future responsibilities for FE was narrow in scope -- an argument immediately rejected by the government.

"If [FirstEnergy Solutions and FirstEnergy] would like to clarify that the Governments are not bound by the FE Non- Debtor Release, that clarification may solve many of the most difficult issues in this case; otherwise, the Court should reject this disingenuous explanation implying that the Governments may or may not be bound," the government lawyers responded.

They also then filed demands known as "discovery" with the court seeking every communication concerning environmental problems and potential environmental problems within and between FirstEnergy, FirstEnergy Solutions and all other FE subsidiaries.

The governments are also demanding internal company documents going back as far as 1967 explaining the ownership and operating structure of every power plants and coal ash disposal site.