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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

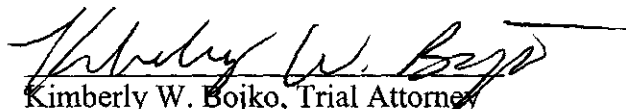
In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company, and The Toledo) Case No. 06-1335-EL-ATA
Edison Company for Approval of)
Adjustment to Shopping Credit Adder)
Rider.)

MOTION TO INTERVENE AND COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

Pursuant to R.C. Chapter 4911, R.C. 4903.221, and Ohio Adm.Code 4901-1-11,
the Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential utility
consumers, hereby moves the Public Utilities Commission of Ohio ("Commission") to
grant OCC's intervention in the above-captioned proceeding. The reasons for granting
OCC's intervention are further set forth in the attached Memorandum in Support.

Respectfully submitted,

Janine L. Migden-Ostrander
Consumers' Counsel


Kimberly W. Bojko, Trial Attorney
Assistant Consumers' Counsel

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On November 8, 2006, Ohio Edison Company ("OE"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("TE"), operating companies of FirstEnergy Corp., (collectively, "FirstEnergy") filed an Application to adjust OE's and TE's Shopping Credit Adder Rider based on increased fuel costs that were incurred during the prior year. Application at Exhibit C-3. FirstEnergy is also requesting to adjust CEI's Shopping Credit Adder Rider based on fuel deferrals booked for CEI during the prior year. Id.

FirstEnergy's filing is an annual revision to its Shopping Credit Adder Rider pursuant to the Rate Certainty Plan ("RCP") approved by the Commission in Case No. 05-1125-EL-ATA, et. al.¹ Additionally, the Commission required that FirstEnergy provide Staff of the Commission with "all information needed (including access to source documents) to perform an effective and efficient review of their fuel costs so that the amounts of excess increased fuel costs to be capitalized under the revised stipulation can

¹ *In the Matter of the Joint Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Modify Certain Accounting Practices and for Tariff Approvals*, Case Nos. 05-1125-EL-ATA, 05-1126-EL-AAM, 05-1127-EL-UNC, Opinion and Order at 7 (January 4, 2006) ("RCP Order"); also see RCP Stipulation at 9-10 (September 9, 2005).

be contemporaneously reviewed.”² The information was to be provided to Staff monthly and was to be used to determine the actual fuel cost increase to establish the deferral amount and to determine the shopping credits for the following year.³ The Commission further stated that “[t]he result of those reviews will then be available for consideration as part of the reviews conducted in the next distribution rate case of each of the Companies.”⁴

II. INTERVENTION

Pursuant to R.C. Chapter 4911, OCC moves to intervene under its legislative authority to represent the interests of the approximately 1.9 million residential electric utility customers in FirstEnergy’s service territories.⁵ Pursuant to the intervention standard in R.C. 4903.221, the interests of residential electric customers in areas served by FirstEnergy may be “adversely affected” by this proceeding.

OCC satisfies the following criteria set forth in R.C. 4903.221(B) for the Commission’s consideration in deciding whether to grant a request for intervention:

- (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;

² Id., RCP Order at 7 (citations omitted).

³ Id.

⁴ Id.

⁵ For example, R.C. 4911.15 provides:

The consumers’ counsel * * * may represent those [residential] customers or [municipal] corporations whenever an application is made to the public utilities commission by any public utility desiring to establish, modify, amend, charge, increase, or reduce any rate, joint rate, toll, fare, classification, charge, or rental.

- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

R.C. 4903.221(B).

The nature and extent of OCC's interest lies in preventing excessive, unjustified, unreasonable, or unlawful rates and charges for residential electric service and in the provision of services that will effectively and efficiently serve the energy needs of residential customers. OCC's legal position will advance OCC's interest on behalf of residential customers and, as such, is directly related to the merits of the case. OCC's intervention will not unduly prolong or delay the proceedings, but should provide insights that will expedite the Commission's effective treatment of the Application. OCC will significantly contribute to the full development and equitable resolution of the issues herein. OCC brings its statewide, residential consumer perspective to this proceeding that is different than that of FirstEnergy. OCC's interest in the case is consistent with its statutory role as the representative of residential consumers of public utility service.

For the reasons expressed above regarding the criteria of R.C. 4903.221, OCC also meets the Commission's required showing for a party that has a "real and substantial interest" according to Ohio Adm.Code 4901-1-11(A)(2), and should therefore be permitted to intervene in these proceedings. Ohio Adm.Code 4901-1-11(B) states that the Commission may consider: (1) the "nature of the person's interest;" (2) the "extent to which the person's interest is represented;" (3) the person's "potential contribution to a just and expeditious resolution of the issues;" and (4) whether the intervention "would unduly delay the proceeding."

III. COMMENTS

Although not a signatory to the initial RCP Stipulation, OCC was an active participant in the RCP proceeding, and did become a signatory party to the RCP Supplemental Stipulation filed in the same proceeding on November 4, 2006, both of which were approved by the Commission on January 4, 2006.⁶ As explained previously, it was the RCP Order that established the review process for the instant proceeding and future proceedings. OCC's understanding of the RCP Order and the review process established therein is that Commission approval of the proposed Shopping Credit Adder in this case does not necessarily approve the reasonableness of FirstEnergy's deferred fuel costs or recovery of such deferred fuel costs through customers' distribution rates. The determination of the reasonableness and amounts to be recovered from customers will be determined at a later time. Any approval of FirstEnergy's instant Application to adjust its Shopping Credit Adder Rider should be based on this understanding. Accordingly, OCC requests that the Commission clarify that its approval of said Application is neither a judgment as to the reasonableness of FirstEnergy's deferred fuel costs nor approval of the recovery of such deferred fuel costs through customers' distribution rates.

OCC also intends to be an active participant in future filings that propose to adjust the Shopping Credit Adder Rider, as well as the distribution rate cases referenced by the Commission in its RCP Order, which will consider the results of the fuel costs reviews.⁷ To that end and to help expedite the review process, OCC respectfully requests that the

⁶ Supra n.1.

⁷ Id., RCP Order at 7.

monthly reports and documentation regarding FirstEnergy's actual fuel costs currently provided to Staff also be simultaneously provided to OCC.

IV. CONCLUSION

As set forth herein, OCC satisfies the criteria set forth in R.C. 4903.221, the Commission's rules, and precedent of the Supreme Court of Ohio.⁸ Therefore, on behalf of FirstEnergy's approximately 1.9 million residential customers, the OCC respectfully requests that the Commission grant its Motion to Intervene and provide OCC with the monthly reports and documentation for the actual fuel costs incurred by FirstEnergy in order to assist in the review process of these cases.

Respectfully submitted,

Janine L. Migden-Ostrander
Consumers' Counsel



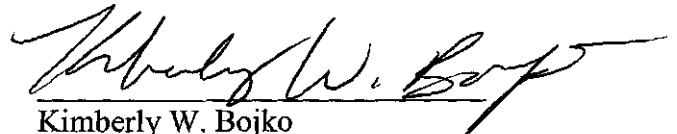
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⁸ *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 11 Ohio St.3d 384, 2006-Ohio-5853 at ¶15-16.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's *Motion to Intervene and Comments* was provided to the persons listed below via first class U.S. Mail, postage prepaid, this 14th day of December 2006.


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