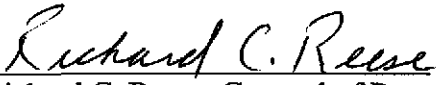


Respectfully submitted,

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of Lester L. Lemke,)	
)	
Complainant,)	
)	
v.)	Case No. 07-514-EL-CSS
)	
Toledo Edison Company,)	
)	
Respondent.)	

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Pursuant to R.C. Chapter 4911, R.C. 4903.221, Ohio Adm. Code 4901-1-11 and 4901-1-12, the Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential utility consumers, moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in the above-captioned formal complaint filed by a residential customer of the Toledo Edison Company ("TE" or "Company"). The complaint was filed on April 30, 2007. TE filed an Answer to the complaint on May 18, 2007.

The Complainant claims that TE sent representatives to his property who inspected his meter.¹ Mr. Lemke states that these employees claimed that "everything was good" after inspecting the "feed" into TE's system and that now the Company wants

¹ Complaint at 1.

him to shut down his generator². The Complainant also states that the credit to his bill is not what TE agreed it would be.³

TE sent a letter to Mr. Lemke dated April 30, 2007, demanding that his wind turbine generator “be immediately disconnected” from TE facilities until “testing” was conducted on the generator⁴. According to the April 30th letter, the testing was necessary to ensure that the generator is in compliance with IEEE standards and “necessary so as to avoid harm” to TE’s workers and the Company’s network⁵. The Company claimed that the “authorization” to interconnect with TE’s network was done in error⁶.

In a subsequent letter to the Complainant from the Company, dated May 4, 2007, TE acknowledged that the generators did not pose “a significant risk to First Energy workers or damage to First Energy’s distribution system⁷.” However, the Company continued to demand in the letter of May 4th that the Complainant’s generator be tested within sixty days to demonstrate that the units are in compliance with “state regulations⁸.”

As demonstrated from the letter, the Company has moved dramatically from the position it took as recently as April 30, 2007, when it demanded that the Complainant disconnect his generators from the network immediately. Based on this Complaint, it is incumbent upon the Commission to determine if the provisions of the Company’s tariffs

² Id.

³ Id.

⁴ Letter of April 30, 2007, from Toledo Edison to Mr. Lemke attached to Answer.

⁵ Id.

⁶ Id.

⁷ Letter of May 4, 2007, from Toledo Edison to Mr. Lemke attached to Answer.

⁸ Id.

are reasonable and are reasonably applied. The Commission should also review the lawfulness of TE's interconnection agreements.

II. INTERVENTION

OCC moves to intervene under its legislative authority to represent residential utility consumers in Ohio, pursuant to 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 the consumers are unrepresented in a proceeding regarding net metering and interconnection. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission 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 proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest lies in ensuring that TE's customers may benefit from new technology and that interconnection to the network should be facilitated by Ohio's electric distribution utilities.⁹ This interest is different than that of

⁹ R.C. 4928.11(A). "The rules regarding interconnection shall seek to prevent barriers to new technology and shall not make compliance unduly burdensome or expensive."

any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

The Commission's rules mandate that interconnection be nondiscriminatory and that tariffs provide uniform minimum requirements.¹⁰ The complainant is a residential customer of TE. OCC has long advocated that Ohio's net metering and interconnection processes be made more comprehensive, streamlined, transparent, and accessible to interconnection service customers. Net metering allows an electric customer to provide to the electric distribution company electricity generated by the customer on his site. Additionally, Governor Strickland has promoted the development of "next-generation energies" such as wind.¹¹ OCC's legal position, therefore, directly relates to the merits of the case.

Second, OCC's advocacy for consumers will include advancing the position that electric rates should be no more than what is reasonable and permissible under Ohio law, for service that is adequate under Ohio law. This interest includes that residential consumers should receive the appropriate credit on their bill for net metering at a rate that is reasonable and lawful. OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceeding. 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.

¹⁰ Ohio Adm. Code 4901:1-22.

¹¹ State of the State Address, <http://governor.ohio.gov/Multimedia/Speeches/2007StateoftheState/tabid/216/Default.aspx>, March 14, 2007.

Fourth, OCC's intervention will significantly contribute to the 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 particularly regarding policies that concern net metering and interconnection to its grid.

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 to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a very real and substantial interest in this case where the Commission's rules and policies concerning net metering and interconnection are at issue.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission 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 recently confirmed OCC's right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in

denying OCC's intervention and that OCC should have been granted intervention.¹²

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio's residential consumers, the Commission should grant OCC's Motion to Intervene.

III. CONCLUSION

As set forth herein, OCC satisfies the criteria set forth in R.C. 4903.221 and the Commission's rules for intervention. Therefore, on behalf of TE's approximately 274,000 residential customers, OCC respectfully requests that the Commission grant OCC's Motion to Intervene. OCC's participation will contribute to a just resolution of the serious issues involved in this proceeding and will not cause undue delay.

Respectfully submitted,

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¹² *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20 (2006).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing The Office of the Ohio Consumers' Counsel's *Motion to Intervene* has been served upon the below-stated counsel, via regular U.S. Mail, postage prepaid, this 12th day of June, 2007.



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