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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Matter of the Complaint of Brian A. and)
Christy G. Malott)

Complainant,)

v.)

Ohio Edison Company,)

Respondent.)

Case No. 07-525-EL-CSS

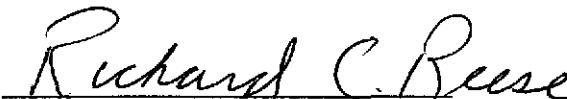
**MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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 Ohio Edison Company ("OE" or "Company"). The complaint was filed on May 1, 2007. The reasons for granting OCC's motion are further set forth in the attached Memorandum in Support.

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Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

A handwritten signature in cursive script that reads "Richard C. Reese". The signature is written in dark ink and is positioned above a horizontal line.

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I. INTRODUCTION

The Malotts began generating electricity in October of 2006 with a wind generator¹. The Complainants state that OE employees visited their property, inspected their equipment, and told them “everything was fine².” OE, however, contacted the Malotts on April 19, 2007, and told them to “shut down” their generator³. On May 22, 2007, OE filed its Answer to the complaint. OE admits that it has asked the Malotts to

³ Id.

shut down their generator “because Complainants did not comply with interconnection procedures.”⁴

The Malotts claim that OE has discriminated against them by operating the same generator in Lakepark in Kirtland, Ohio while ordering the Malotts to disconnect from the network.⁵ In addition, the Complainants state that OE is providing improper reimbursement for their net metering⁶. In its Answer, OE states that the Complainants have not yet applied for net metering and therefore, is not entitled to any credits for self generation.⁷

Based on this Complaint, it is incumbent upon the Commission to determine if the provisions of the Company’s tariffs 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.

⁴ Answer at 3.

⁵ Complaint at 2.

⁶ Id.

⁷ Id. at 4.

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 OE's customers may benefit from new technology and that interconnection to the network should be facilitated by Ohio's electric distribution utilities.⁸ 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.

The Commission's rules mandate that interconnection be nondiscriminatory and that tariffs provide uniform minimum requirements.⁹ The complainant is a residential customer of OE. 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

⁸ 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."

⁹ Ohio Adm. Code 4901:1-22.

energies” such as wind.¹⁰ 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.

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.

¹⁰ State of the State Address, <http://governor.ohio.gov/Multimedia/Speeches/2007StateoftheState/tabid/216/Default.aspx>, March 14, 2007.

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.¹¹

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

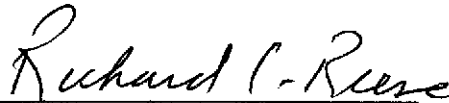
As set forth herein, OCC satisfies the criteria set forth in R.C. 4903.221 and the Commission’s rules for intervention. Therefore, on behalf of OE’s approximately 990,000 residential customers, OCC respectfully requests that the Commission grant

¹¹ *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20 (2006).

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,

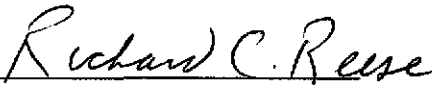
JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

A handwritten signature in dark ink, reading "Richard C. Reese". The signature is written in a cursive style with a large initial "R".

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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.


Richard C. Reese
Assistant Consumers' Counsel

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