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June 15, 2007

Ms. Renee J. Jenkins
Director, Administration Department
Secretary to the Commission
Docketing Division
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215-3793

PUCO

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RECEIVED-DOCKETING DIV

Dear Ms. Jenkins:

Re: *Memorandum Contra OCC's Motion to Intervene*
Brian A. and Christy G. Malott v. Ohio Edison Company
Case No. 07-525-EL-CSS

Enclosed for filing, please find the original and twelve (12) copies of the *Memorandum Contra OCC's Motion to Intervene* regarding the above-referenced case. Please file the enclosed *Memorandum Contra*, time-stamping the two extras and returning them to the undersigned in the enclosed envelope.

Thank you for your assistance in this matter. Please contact me if you have any questions.

Very truly yours,

Kathy J. Kolich

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Enclosures

cc: Parties of Record

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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)	
Brian A. and Christy G. Malott)	
)	
Complainant,)	
)	
v.)	CASE NO. 07-525-EL-CSS
)	
Ohio Edison Company,)	
)	
Respondent.)	

**OHIO EDISON COMPANY'S
MEMORANDUM CONTRA OCC'S MOTION TO INTERVENE**

I. Introduction

On May 1, 2007, Complainants, Brian and Christy Malott, filed a complaint in which they allege (i) that they are not being billed consistent with Ohio Edison Company's net metering tariff; (ii) that they were wrongfully asked by Ohio Edison Company to disconnect their wind turbine until they complied with the application process and state regulations; and (iii) that the standards to which their wind turbine must adhere are different from those of a unit that is operated by FirstEnergy and became operational before the standards to which Complainants must adhere went into effect. (Complaint, pp. 1-2.)

On June 12, 2007, the Office of Consumers' Counsel moved to intervene in this complaint case on the basis that its presence in this proceeding (i) will "ensure [] that

[Ohio Edison's] customers ... benefit from new technology and that interconnection to the network [is] facilitated by Ohio's electric distribution utilities" (OCC MTI, p. 3); and (ii) will "advance[] 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." (Id. at 4.) OCC claims that its intervention "will not unduly prolong or delay the proceeding" and that it will "significantly contribute to the full development and equitable resolution of the factual issues." (Id.) Given OCC's agenda, its intervention will, indeed, prolong this proceeding by converting a case about current tariffs and processes into a public policy debate over future tariffs and processes, resulting in a duplication of significant effort expended during a recently completed two year process. Moreover, resolution of the issues in this matter simply require the Commission to interpret Ohio Edison's net metering tariff and state regulations, neither of which require the fuller development of facts not in issue. Accordingly, OCC fails to meet the four prong test for intervention and its motion to intervene should be denied.

II. Argument

This case is a relatively simple complaint case in which it must be determined (i) whether Ohio Edison's request for Complainant to disconnect from the network until Complainants' complied with the standard application process and state regulations was reasonable; (ii) whether Complainant is being billed consistent with Ohio Edison's current net metering tariff already approved by the Commission; and (iii) whether the windmill operated by FirstEnergy must adhere to the same standards to which Complainants' wind turbine must adhere.

OCC is not intervening in order to resolve these issues. Rather, based on OCC's own explanation in its memorandum in support of its motion to intervene, it is clearly seeking to convert this complaint case into a forum in which it can climb its soapbox and advocate for the future a more "comprehensive, streamlined, transparent, and accessible" interconnection process (*id.*) and new rate levels in Ohio Edison's properly approved net metering tariff.¹

Given OCC's stated agenda, OCC is in the wrong forum. The instant proceeding involves Ohio Edison's net metering tariffs and procedures *currently in effect*. OCC's issues go to net metering tariffs and processes *of the future*. The Commission, during its almost two year investigation into Energy Policy Act of 2005 recently addressed the latter, authorizing changes to net metering and interconnection rules and tariffs in its Order in Docket No. 05-1500-EL-COI ("EPA 2005 Case") – a case in which OCC actively participated. OCC had ample opportunity to voice its concerns on both issues in that docket. As OCC acknowledges in its memorandum *contra* the application for rehearing of FirstEnergy in the EPA 2005 Case:

The Commission addressed in depth the problems that it perceived with the current net-metering rules and it solicited comments on the net metering rule. ... The Commission addressed the Uniform Electric Interconnection Standards and other stipulated standards set forth in tariffs and how those standards have worked in light of the Institute of Electrical and Electronics Engineers Standards ("TEES") 1547 and requested feedback on that issue. The Commission asked for responses to very specific questions involving all of these issues. [OCC Memorandum Contra, Case No. 05-1500-EL-COI at 3. May 7, 2007])

¹ OCC also cites *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 2006-Ohio-5853, 18-20 (2006) arguing that the Court "recently confirmed OCC's right to intervene in PUCO proceedings." (OCC MTI, p. 5.) What OCC fails to grasp is that the Court in the cited case was dealing with facts totally different from those set forth in this proceeding. Nowhere in the cited case did the Court remove the prerequisites set forth in R.C. 4903.221(B) and simply give OCC blanket approval for intervention in any proceeding before the Commission. The case cited by OCC is irrelevant for purposes of this proceeding.

As OCC further explained there was significant opportunity for a party to express its views on these issues:

Both initial and reply comments were filed from January 17, 2006 through May 2, 2006. The Commission solicited the first set of reply comments through an Entry dated February 7, 2006. A Staff Report was filed on August 28, 2006 and additional comments were submitted from September 5, 2006 through September 19, 2006. On September 26, 2006, the Commission invited interested parties to submit Reply Comments by October 6, 2006. * * * In addition to the comment periods, the Staff held four technical conferences addressing [among other issues] net metering and fuel diversity.... [Id. at 4.]

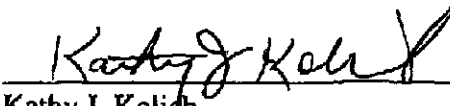
Given that OCC's interests lie in streamlining the net metering application process and redesigning net metering rates, like FirstEnergy, it had ample opportunity to voice its views in the EAct 2005 Case. Moreover, OCC's desire to modify rates in order to ensure that they are "no more than what is reasonable and permissible," is misplaced. There is a comprehensive statutory framework set forth in Title 49 of the Ohio Revised Code in which rates are established. The issue in this case is not the reasonableness of the *level* of those rates. Rather, the issue in this proceeding is simply whether Ohio Edison is crediting a particular customer for self generation consistent with the rates *already approved* and included in the Tariff. The facts are not in dispute and simply require the Commission to interpret Ohio Edison's net metering tariff and state regulations. In light of this, there is no need for OCC's "full development and equitable resolution of the factual issues." (OCC MTL, p. 5.) Moreover, as indicated in the Commission's March 28, 2007 Order in the EAct 2005 Case, Ohio Edison, along with all other Ohio electric distribution companies, is to file revised tariffs, including its net metering tariff, consistent with the Commission's findings set forth in that Order. It is in that docket that OCC's concerns should be (and have been) heard. To grant OCC intervention would convert a relatively simple complaint case into a public policy debate

- a debate that has already occurred - thus duplicating efforts and confusing issues, resulting in an undue delay in the resolution of this proceeding. Accordingly, OCC's motion to intervene should be denied.

III. Summary

In sum, OCC fails to meet the four prong test for intervention set forth in R.C. 4903.221(B). OCC's stated agenda supporting its request for intervention is a duplication of that already addressed and resolved by the Commission in the EPA Act 2005 Case in Docket No. 05-1500-EL-COI. Converting the instant proceeding into a public policy debate on net metering processes and tariffs *of the future* will unnecessarily distract from the issues surrounding Ohio Edison's *current* tariffs and processes raised in this proceeding, thus creating unnecessary delay. Moreover, given that the facts in this proceeding are not in dispute, OCC's self proclaimed ability to fully develop the facts is unnecessary. Accordingly, Respondent, Ohio Edison Company respectfully asks the Commission to deny OCC's request to intervene.

Respectfully submitted,


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On behalf of
Ohio Edison Company

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of the foregoing Answer of Ohio Edison Company was served upon the following individuals by regular U.S. Mail, postage prepaid, on this 15th day of June, 2007.

Brian A. and Christy G. Malott
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Kathy J. Kolich