

FirstEnergy

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*Via Federal Express
and Facsimile (614-466-0313)*

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

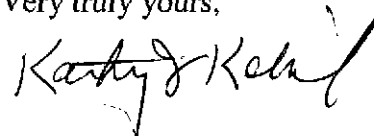
Dear Ms. Jenkins:

**Re: *Memorandum Contra OCC's Motion to Intervene
Gerald Giesler v. The Toledo Edison Company
Case No. 07-498-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,



kag
Enclosures
cc: Parties of Record

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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

| | | |
|-----------------------------------|---|------------------------|
| In the Matter of the Complaint of |) | |
| Gerald Giesler, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | CASE NO. 07-498-EL-CSS |
| |) | |
| The Toledo Edison Company, |) | |
| |) | |
| Respondent. |) | |

**THE TOLEDO EDISON COMPANY'S
MEMORANDUM CONTRA OCC's MOTION TO INTERVENE**

I. Introduction

On April 27, 2007, Complainant, Gerald Giesler filed a complaint in which he alleges (i) that he is not being credited for self generation in accordance with The Toledo Edison Company's net metering tariff; and (ii) that he was wrongfully asked by The Toledo Edison Company to temporarily disconnect his wind turbine until the unit was brought into compliance with state regulations. (Complaint, p. 1.)

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 [Toledo 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 Toledo 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 Toledo Edison’s request for Complainant to temporarily disconnect from the network until Complainant’s wind generation system complied with state regulations was reasonable; and (ii) whether Complainant is being billed consistent with Toledo Edison’s current net metering tariff already approved by the Commission.

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 Toledo Edison's properly approved net metering tariff.¹

Given OCC's stated agenda, OCC is in the wrong forum. The instant proceeding involves Toledo 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 ("EPAct 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 EPAct 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 ("IEES") 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)]

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

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.

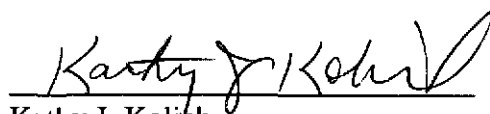
parties to submit Reply Comments by October 6, 2006. * * * In addition to the comment periods, the Staff held four technical conferences addressing [among other issues] net metering and fuel diversity.... [Id. at 4.]

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 Toledo 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 Toledo 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 MTI, p. 5.) Moreover, as indicated in the Commission's March 28, 2007 Order in the EAct 2005 Case, Toledo 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 EPAct 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 Toledo 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, Toledo Edison Company respectfully asks the Commission to deny OCC's request to intervene.

Respectfully submitted,



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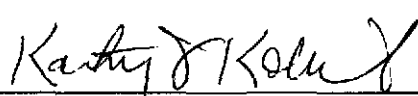
On behalf of
The Toledo Edison Company

CERTIFICATE OF SERVICE

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

Gerald Giesler
16454 West Yeasting Road
Elmore, Ohio 43416

Richard C. Reese, Esquire
Office of The Ohio Consumer's Counsel
Suite 1800
10 West Broad Street
Columbus, OH 43215-3485



Kathy J. Kolich