

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

7  
RECEIVED-DOCKETING DIV  
2007 JUN 25 PM 4:09

**PUCO**

In the Matter of the Complaint of Lester L. Lemke )  
Complainant, )  
v. )  
Toledo Edison Company, )  
Respondent. )

Case No. 07-514-EL-CSS

---

**REPLY TO THE TOLEDO EDISON COMPANY'S  
MEMORANDUM CONTRA MOTION TO INTERVENE  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

**I. INTRODUCTION**

On June 12, 2007, the Office of the Ohio Consumers' Counsel ("OCC") moved to intervene in the above-captioned case, pursuant to R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11, on behalf of all residential utility consumers served by The Toledo Edison Company ("TE" or "Company"). OCC provided the context for these cases, set out the criteria that the Public Utilities Commission of Ohio ("PUCO" or "Commission") must consider (pursuant to the applicable statutory and rule provisions) regarding intervention, and applied those sources of law to the OCC's circumstances. OCC is specifically authorized by Ohio law to participate in complaint cases.<sup>1</sup>

---

<sup>1</sup> The Consumers' Counsel "[m]ay take appropriate action with respect to residential consumer complaints concerning quality of service, service charges, and the operation of the public utilities commission." R.C. 4911.02(B)(2)(b).

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.

Technician 78 Date Processed 6.25.07

Furthermore, OCC satisfies the criteria for intervention in these cases set out by statute and in the Commission's rules.

On June 15, 2007, TE filed a Memorandum Contra OCC's Motion to Intervene ("Memo Contra"). The Company's Memo Contra did not cite any legal authority for the Commission to deny OCC's intervention. Instead, TE asserts that OCC has a particular "agenda"<sup>2</sup> that does not include an interest in the merits of the Mr. Lemke's Complaint. In reference to a brief recitation of the facts of the Complaint, the Company also makes the bold claim that "OCC is not intervening in order to resolve these issues."<sup>3</sup> TE's assertions against OCC's intervention are without merit, and OCC responds to those assertions in this Reply.

## **II. ARGUMENT**

### **A. The Commission Must Apply the Applicable Standard for Intervention.**

The applicable statutory and rule provisions that set the standards for the PUCO to judge the OCC's Motion to Intervene are R.C. 4903.221 and Ohio Adm. Code 4901-1-11. While TE's Memo Contra fails to cite any legal authority, the Company's arguments appear to address the first, third, and fourth criteria regarding intervention that are stated in Ohio's intervention statute and the Commission's rules. The applicable statute and rule both state that the PUCO shall consider:

- (1) The nature and extent of the prospective intervenor's interest;

\* \* \*

- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.

---

<sup>2</sup> Memorandum Contra at 2.

<sup>3</sup> Id.

- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.<sup>4</sup>

As stated in the OCC's Motion to Intervene<sup>5</sup> and in this Reply, OCC meets the above-quoted criteria and the other criteria set forth in R.C. 4903.221, the Commission's rules, and Ohio Supreme Court precedent.<sup>6</sup> The Commission should, therefore, grant the OCC's Motion to Intervene.

**B. OCC's Interest Lies in Ensuring That the Complainant, as Well as the Company's Other Residential Customers, Benefit From the Proper Application of TE's Interconnection and Net Metering Tariffs.**

OCC's Motion to Intervene thoroughly applies the intervention criteria cited above to the facts of the Complaint case, including a statement regarding the "nature and extent" of the OCC's interest.<sup>7</sup> TE argues that OCC's interests lie solely in the generic application of the proper rates and tariffs regarding interconnection and net metering rather than in the merits of Mr. Lemke's Complaint.<sup>8</sup> The Company asserts that this complaint case is not the appropriate forum for pursuing such interests.<sup>9</sup> OCC does, of course, represent all residential customers of TE. OCC believes, however, that the proper application of TE's interconnection and net metering tariffs will benefit Mr. Lemke as well as other TE customers. The fact that the Company's other residential customers

---

<sup>4</sup> R.C. 4903.221(B) and Ohio Adm. Code 4901-1-11(B).

<sup>5</sup> OCC Motion to Intervene at 3-5.

<sup>6</sup> See, e.g., *Ohio Consumers' Counsel v. Public Util. Comm.*, 111 Ohio St. 3d 384, 2006-Ohio-5853 at ¶¶18-23.

<sup>7</sup> R.C. 4903.221(B)(1) and Ohio Adm. Code 4901-1-11(B)(1).

<sup>8</sup> Memorandum Contra at 4.

<sup>9</sup> Id.

may benefit from OCC's participation in this Complaint case is hardly an adequate reason to deny intervention under the first criterion for intervention.

**C. The OCC's Participation in These Proceeding Will Not *Unduly* Prolong or Delay the Proceedings.**

TE argues that granting OCC's Motion to Intervene "would convert a relatively simple complaint case into a public policy debate," thus causing an "undue" delay in the case.<sup>10</sup> The involvement of the statutory representative of TE's residential customers will help ensure a timely and fair resolution of the issues in the case. The Company fails to support its argument that taking the time to consider OCC's informed perspective would amount to "duplicating efforts and confus[e] issues," causing undue delay to the resolution of the Complaint. OCC's expertise and knowledge regarding the issues of interconnection and net metering may in fact result is a *more* timely resolution of this Complaint.

The criterion regarding timeliness, however, is satisfied even in the event that a more complete exploration of the issues results in some additional time to resolve the issues in this case. The criterion for intervention states that the Commission shall consider whether the intervention would cause "*undue* delay,"<sup>11</sup> not any delay. The Company fails to make this distinction, and OCC satisfies the third criterion for intervention.

---

<sup>10</sup> Memorandum Contra at 4.

<sup>11</sup> R.C. 4903.221(B)(3) and Ohio Adm. Code 4901-1-11(B)(3).

**D. OCC's Intervention Will Ensure the Fair and Equitable Resolution of the Factual Issues Involved.**

The Complainant's concerns cannot be addressed in generic "future" proceedings that deal with net metering and interconnection as suggested by TE.<sup>12</sup> The Complaint case is a proper forum to decide the applicability of TE's net metering and interconnection tariffs to Mr. Lemke. For example, a generic proceeding will not address the appropriate rate that a customer engaged in net metering is entitled to. The facts of Mr. Lemke's Complaint are specific to his interconnection agreement with TE and the proper application of TE's net metering tariff to his account. Contrary to the Company's assertions, however, the facts are in dispute in this case. OCC's intervention will lend considerable expertise to a fair resolution of both the net metering and interconnection-related aspects of the Complaint.<sup>13</sup>

**III. CONCLUSION**

TE's Memo Contra provides no legal or factual rationale for denying OCC's intervention in this Complaint case. The Company's convoluted argument is that the OCC's Motion to Intervene should be denied because OCC has the statutory duty and authority to represent all residential electric consumers. TE's Memo Contra has no basis under Ohio law. The implications of denying intervention to OCC *because* it represents

---

<sup>12</sup> Memorandum Contra at 3.


<sup>13</sup> OCC has previously represented individuals in complaint cases before the Commission: *In re the Office of the Consumers' Counsel on behalf of Jim and Helen Heaton, et al., and Certain Other Unnamed Individuals v. Columbus and Southern Ohio Electric Company*, Case No. 83-1279-EL-CSS. OCC has also been granted intervention in complaint cases: *In re Dominion Retail, Inc. v. The Dayton Power and Light Company*, Case No. 03-2405-EL-CSS, Entry (February 18, 2004).

all residential consumers would be to deny OCC intervention in virtually every formal complaint filed with the Commission.

The resolution of this Complaint will impact Mr. Lemke and could impact other current and future TE residential customers. For the reasons stated in the OCC's Motion to Intervene and as stated above, the Commission should grant the OCC's Motion to Intervene.

Respectfully submitted,

Janine L. Migden-Ostrander  
Consumers' Counsel

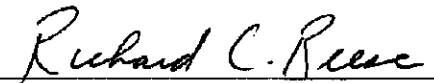
A handwritten signature in cursive script, reading "Richard C. Reese", is written over a horizontal line.

Richard C. Reese, Counsel of Record

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
614-466-8574 (Telephone)  
[reese@occ.state.oh.us](mailto:reese@occ.state.oh.us)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's *Reply to The Toledo Edison Company's Memorandum Contra Motion to Intervene* was provided to the persons listed below via first class U.S. Mail, postage prepaid, this 25<sup>th</sup> day of June 2007.

  
Richard C. Reese  
Assistant Consumers' Counsel

**PERSONS SERVED**

Duane Luckey  
Attorney General's Office  
Public Utilities Section  
180 East Broad Street, 9<sup>th</sup> Floor  
Columbus, OH 43215

Kathy J. Kolich  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308

Lester L. Lemke  
3270 State Route 590  
Elmore, OH 43416