

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Toledo Edison Company for Approval of)
Modifications to Existing Interconnection)
Tariff.)

Case No. 07-1289-EL-ATA

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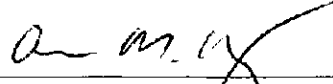
**MOTION TO INTERVENE
AND
MOTION TO AMEND TARIFFS
OR IN THE ALTERNATIVE, MOTION FOR HEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of all residential utility consumers of Toledo Edison Company ("Applicant"), moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in this case where the Applicant proposes to modify its existing Interconnection Tariff that affects the ability of Ohioans to connect distributed generation to the power grid. OCC actively participated in Case Nos. 05-1500 EL COI and 07-648 EL-UNC, the predecessor cases to this proceeding, as well as the workshops conducted by the PUCO Staff. OCC's Motion should be granted because OCC satisfies the legal standards for intervention, as explained in the attached Memorandum in Support.

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Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On December 21, 2007, the Applicant¹ filed an application requesting the PUCO approve modifications to its existing Interconnection Tariff. This filing follows an extensive investigation by the PUCO as required by the Energy Policy Act of 2005 ("EPAAct 2005"), Case No. 05-1500 EL-COI ("05-1500"). At the conclusion of 05-1500 the PUCO opened Case No. 07-648 EL-UNC ("07-648") to implement the policy decisions relating to the interconnection of customers and co-generators with Applicant's system. OCC actively participated in 05-1500 and 07-648, the predecessor cases to this proceeding.

¹ All three of the FirstEnergy utilities filed similar Applications on the same day. See, *In the Matter of the Application of The Cleveland Electric Illuminating Company for Approval of Modifications to Existing Interconnection Tariff*, PUCO Case No. 07-1288-EL-ATA; and *In the Matter of the Application of Ohio Edison Company for Approval of Modifications to Existing Interconnection Tariff*, PUCO Case No. 07-1290-EL-ATA, both filed December 21, 2007.

II. INTERVENTION

OCC moves to intervene under its legislative authority to represent residential utility consumers in Ohio.² In addition, R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding may 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 where the PUCO approves the implementation of the policies in EPAct 2005 via modifications to Applicant’s Tariffs concerning interconnection. Such decisions by the PUCO have a direct effect on residential consumers. 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 the policies in EPAct 2005 are properly implemented by the Applicant, and that residential customers do not pay unjust and unreasonable costs and have reasonable and lawful standards and conditions for interconnection. This interest is different than that of any other party and

² R.C. Chapter 4911.

especially different than that of the utility that advocates for the financial interest of its shareholders.

Second, OCC will advocate a legal position that the Applicant's Tariffs should be limited to assessing costs that are no more than what is reasonable and permissible under Ohio law and that the standards for interconnection are reasonable and lawful. OCC's position is therefore directly related to the merits of this case pending before the PUCO.

Third, OCC's intervention will not unduly prolong or delay the proceeding. OCC has longstanding expertise and experience in PUCO proceedings, and will contribute to the process of the case. As previously stated OCC was a party to and actively participated in the predecessor cases 05-1500 and 07-648, as well as the PUCO workshops regarding interconnection tariff modifications.

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.

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 Applicant proposes to implement the policies of EPart 2005 that effect the terms and conditions of interconnection tariffs as well as the tariffs and charges of interconnection to be borne by customers, including residential customers.

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 because it has been uniquely 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.³

OCC meets the criteria set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11. Additionally, granting OCC intervention is consistent with the intervention standards explained by the Supreme Court of Ohio. On behalf of all the Applicant’s residential consumers, the Commission should grant OCC’s Motion to Intervene.

III. MOTION TO AMEND TARIFFS OR, IN THE ALTERNATIVE, MOTION FOR HEARING

Applicant’s proposed Tariffs do not comply with the PUCO’s Finding and Order of March 28, 2007 in the 05-1500 case. The Tariffs, as filed, impede interconnection with FirstEnergy and must be rejected. The PUCO should require FirstEnergy to file amended Tariffs that are conformed to the PUCO’s decisions regarding interconnection.

³ *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶13-20.

A. Applicant Did Not Meet its Burden of Proof by Showing the Tariffs are Just and Reasonable as Required By R.C. 4909.18.

The Applicant's Interconnection Tariffs do not comply with the PUCO's determinations regarding interconnection requirements, and in fact, undermine the PUCO's goal to make interconnection a clear, easily understood, and easily implemented process.⁴ The PUCO should order the Applicant to amend its Interconnection Tariffs, with a further opportunity for parties to respond to potential non-compliances in the amended Tariffs (which opportunity may be via further pleadings or, if appropriate, a hearing for parties to contribute to the record that the PUCO will consider).

Applicant's filing does not meet the statutory burden of proof. R.C. 4909.18 requires that an Applicant filing for a change or amendment to a rate to demonstrate to the PUCO that the change is just and reasonable: "If it appears to the commission that the proposals in the application may be unjust or unreasonable, the commission shall set the matter for a hearing...At such hearing the burden of proof to show that the proposals in the application are just and reasonable shall be upon the public utility." (Emphasis added)

In the 05-1500 and 07-648 cases, the predecessor cases to the instant case, the PUCO determined what terms and conditions of interconnection would be just and reasonable. Applicant ignored the PUCO's determinations when it made this filing.

Ohio Administrative Code 4901-01-06 provides that any party for good cause can move to amend any application that violates the PUCO's orders, etc. By this filing, OCC moves that the PUCO require Applicant to amend and thereby conform its filing to the

⁴ In the Matter of the Commission's Response to Provisions of the Federal Energy Policy Act of 2005 Regarding Net Metering, Smart Metering and Demand Response, Cogeneration and Power Production Purchase and Sale Requirements, and Interconnection, March 28, 2007 Order ("Order").

policies, terms and conditions enunciated by the PUCO in the 05-1500 and 07-648 cases. Even if the Applicant amends and re-files its Tariffs, there must be a further opportunity for parties to respond to potential non-compliances in the amended Tariffs, which may be via further pleadings or, if appropriate, a hearing for parties to contribute to the record that the PUCO will consider in making its findings, opinions, and decisions under R.C. 4903.09 and other statutes.⁵

B. The Applicant's Tariffs Must Include Technical Requirements for Interconnection.

In 05-1500 the PUCO considered the five new PURPA standards and made a determination to adopt the new standards pursuant to the requirements of EPAct 2005.⁶ The new standards included net metering, fuel diversity, fossil fuel generation efficiency, time-based metering and communications, and interconnection standards. By Order dated March 28, 2007, the PUCO streamlined Ohio's interconnection requirements by ruling that such requirements be standardized.

The PUCO also determined that electric distribution utility prices charged to customers for interconnection are based upon costs. The PUCO found that these charges would "encourage lower production costs of manufacturing distributed generation equipment, lower prices for new owners of customer generators, and increase the use of renewable energy and secondary clean fuel technologies."⁷ The PUCO also determined that the interconnection rules should be modified to allow a multi-level review of

⁵ OCC does not waive any right to a hearing under these circumstances.

⁶ Utility Regulatory Policy Act of 1978, as amended by the Energy Policy Act of 1992.

⁷ Order at 1, 2.

applications for interconnection based on the size and complexity of the customer's system.

In addition, the PUCO updated the rules to include certification of equipment packages under IEEE 1547 standards, interconnection fees for each review path, recognition of combined heat and power or waste heat from industrial processes, application processing times and screening processes to shorten the review paths.

In the Tariffs filed by the Applicant the standards for interconnection are not defined by clearly identified IEEE standards. In fact, the IEEE standards are not even included in the Tariffs:

The Company shall maintain a copy of the Technical Requirements for Interconnection at its place of business such that the Technical Requirements are readily available to the public.⁸

The Applicant does not identify the "Technical Requirements" applicable to interconnections, as required by the PUCO. Nor does the Applicant provide any information that demonstrates its technical requirements conform to the IEEE standards for interconnection.

A goal in the 05-1500 case was to make interconnection in Ohio a clear and easily understood process: "the Commission's current interconnection rules should be revised in order to make the Commission's interconnection process more comprehensive, streamlined, transparent, and accessible to interconnection service customers."⁹

From the Applicant's Tariff filing, it is impossible for the public to determine any of the technical requirements the Applicant would impose for interconnection. Moreover, it

⁸ In the Matter of the Application of The Toledo Edison Company for Approval of Modifications to Existing Interconnection Tariff, Case No. 07-1288-EL-ATA, Exhibit B, Original Sheet 76 Page 3 of 7.

⁹ Order at 8; *see also*, Ohio Administrative Code 4901:1-22-02.

cannot be determined from the Tariff whether Applicant's "Technical Requirements" are limited to or in addition to the IEEE standards.

C. The Applicant Cannot Charge Customers for Interconnection Unless the Charges are Specified in the Tariffs.

The Applicant must file all proposed interconnection charges with the PUCO for approval. R.C. 4909.18 provides "Any public utility desiring to establish any rate,.....or modify, amend, change , increase or reduce any existing rate.....shall file a written application..." with the PUCO.¹⁰ The Applicant's Interconnection Tariffs specify that actual costs will be assessed when the need for system upgrades is caused by the interconnection. However, regarding other cost aspects of interconnection, including for example studies, no fees or charges were specified, except by reference to the PUCO's simplified and standard form for interconnection, referenced in its Tariffs as "Part A" and "Part B."¹¹

The PUCO required that fees and charges for interconnection and interconnection studies be specified in tariffs:

The interconnection service standard fee schedules are to be included in the electric distribution company tariff to be approved by the Commission for each type of interconnection service study required.¹²

This language is consistent with the later-adopted PUCO interconnection rule 4901:1-22-05(F)(2):

The EDU's review processing fee levels will apply in accordance with the EDU's tariff to all interconnections, including those for

¹⁰ See also, R.C. 4905.32, requiring that public utilities can only charge according to their schedules filed with the PUCO.

¹¹ In the Matter of the Application of The Toledo Edison Company for Approval of Modifications to Existing Interconnection Tariff, Case No. 07-1288-EL-ATA, Exhibit B, Original Sheet 76 Page 3 of 7.

¹² Order at 9.

the purposes of net metering, combined heat and power or waste heat from industrial processes, as well as any customer-generator used for energy efficiency or the promotion and utilization of renewable or clean secondary fuels. (Emphasis supplied).

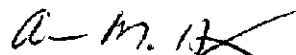
The Applicant's Tariff identifies no fees or charges for interconnection other than for costs of system upgrades. The Application (and the Tariffs therein) must be amended to propose for PUCO consideration what, if any, charges customers will pay. Otherwise, no fees or charges other than for system upgrades may be assessed against customers who desire to interconnect.

IV. CONCLUSION

For the reasons stated above, the Commission should grant OCC's Motion to Intervene, on behalf of residential consumers in the Applicant's service area. The PUCO should also grant OCC's Motion to amend the Application so that the proposed Tariffs are compliant with the PUCO's requirements for interconnection. If the Applicant does not become compliant with PUCO standards for Tariffs, then OCC's Motion for a hearing should be granted to resolve the matter in the public interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's forgoing *Motions* was provided to the persons listed below via first class U.S. Mail, postage prepaid, this 18th day of January, 2008.



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