

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)
Toledo Edison Company for Approval of) Case No. 07-1292-EL-ATA
Modifications to Existing Net Energy)
Metering Rider.)

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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 275,000 residential utility consumers of The Toledo Edison Company ("TEC"), moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in the above-identified case where TEC proposes to modify its net metering tariffs ("Tariffs") for service to Ohio customers. The Tariffs affect the ability of Ohioans to install distributed generation for the purpose of generating their own electricity to offset the electricity they buy from TEC. Net metering should be allowed on reasonable terms that do not economically discourage connecting distributed generation to the power grid. Needlessly discouraging distributed generation and net metering will cause a loss of system benefits for all customers – including residential customers. 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, TEC filed an application requesting the PUCO approve modifications to its existing net metering tariffs ("Tariffs").¹ This filing follows an extensive investigation by the PUCO as required by the Energy Policy Act of 2005 ("EPAct 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 connecting customers to TEC's system for the purpose of generating their own electricity to offset the electricity they buy from TEC.

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

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 Net Energy Metering Rider*, PUCO Case No. 07-1291-EL-ATA; and *In the Matter of the Application of The Ohio Edison Company for Approval of Modifications to Existing Net Energy Metering Rider*, PUCO Case No. 07-1293-EL-ATA, both filed December 21, 2007.

² R.C. Chapter 4911.

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 EAct 2005 via modifications to TEC's Tariffs concerning net metering. 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 EAct 2005 are properly implemented by the TEC, and that residential customers do not pay unjust and unreasonable costs and have reasonable and lawful standards and conditions for net metering. This interest is different than that of any other party and 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 TEC'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 net metering 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 net metering 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 TEC proposes to implement the policies of EAct 2005 that effect the terms and conditions of net metering tariffs as well as the tariffs and charges for net metering 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 TEC's residential consumers, the Commission should grant OCC's Motion to Intervene.

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

Ohio Adm. Code 4901-01-06 provides that any party for good cause can move to amend any application that violates the PUCO's orders, etc. There is good cause to amend the Tariffs proposed in TEC's Application.

TEC's Tariffs do not meet its burden of proof and in addition should be amended to clearly define the term "generation component,"⁴ as discussed below, in addition to meeting its burden of proof required by law.

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

⁴ *In the Matter of the Application of The Toledo Edison Company for Approval of Modifications to Existing Net Energy Metering Rider*, PUCO Case No. 07-1292-El-ATA, Exhibit B, Original Sheet 93, 1st Revised Page 2 of 3.

A. TEC Bears the Burden of Proof And Has Failed to Meet it.

R.C. 4909.18 requires that when a change or amendment of a rate is proposed, TEC must demonstrate to the PUCO that the change or proposal 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). TEC has failed to meet its burden of proof that the proposed Tariffs are reasonable and lawful. In addition, the Tariffs should specifically define all terms and conditions of service.

The PUCO should order TEC to amend its Tariffs in this case. Even if TEC amends and re-files its Tariffs, a hearing may still be necessary for a fair opportunity 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. TEC Cannot Charge Customers for Standby Charges Unless the Charges are Specified in the Tariffs.

TEC must file all proposed charges and terms of service 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.⁶ This includes credits to customers for net metering. There are aspects of TEC’s Tariffs that must be clarified for consumers. For example, TEC’s Tariffs include a reference to “generation component:” “...only the unbundled

⁵ OCC does not waive any right to a hearing.

⁶ See also, R.C. 4905.32, Public utilities can only charge according to their schedules filed with the PUCO.

generation component of the appropriate rate shall be applied [as a credit]...”⁷ The language of the Tariffs gives customers no information as to what the generation component will be. The Tariffs must be amended to propose for PUCO consideration what, if any, generation-component offset customers will receive, or to eliminate the generation component reference in the Tariffs.

This issue is no small matter. The generation component is a significant portion of a customer’s rate, and it represents the customer’s incentive for undertaking net metering. A definition of what TEC considers to be the generation component as well as any riders TEC considers to be elements of generation,⁸ should be clearly spelled-out in the Tariff.

OCC proposes a clear definition of the term generation component, such as that used by American Electric Power: “generation-related energy charges of the customer’s standard service schedule, including all applicable generation-related riders.”⁹

The PUCO in its Order in the 05-1500 case did not define “generation component” to guide tariff filings of Ohio companies. For this reason alone, hearings may be necessary to take evidence and permit the PUCO to make a determination on this matter.

IV. CONCLUSION

For the reasons stated above, the Commission should grant OCC’s Motion to Intervene, on behalf of residential consumers in TEC’s service area. The PUCO should

⁷ *In the Matter of the Application of The Toledo Edison Company for Approval of Modifications to Existing Net Energy Metering Rider*, PUCO Case No. 07-1292-El-ATA, Exhibit B, Original Sheet 93, 1st Revised Page 2 of 3.

⁸ *Id.*, Page 1 of 3.

⁹ *American Electric Power, Federal Energy Policy Act of 2005 Investigation*, PUCO Case Nos. 05-1500-EL-COI, and 07-1303-El-COI, 1st Revised Sheet No 28-2.

also grant OCC's Motion to amend the Application so that the proposed Tariff terms and conditions are clear and compliant with the PUCO's requirements. If TEC does not become clear and 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 12th day of February, 2008.



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