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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

PUCO

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In the Matter of the Application of) Case No. 07-1296-EL-ATA
Toledo Edison Company for Approval of)
Modifications to Existing Partial Service)
Rider.)

**MOTION TO INTERVENE
AND
MOTION TO CONVENE TECHNICAL CONFERENCE OR WORKSHOPS
AND MOTION TO AMEND APPLICATION
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

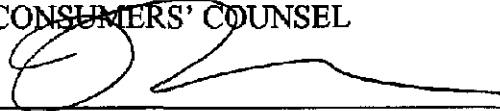
The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of all 275,000 residential utility consumers of Toledo Edison Company ("Toledo Edison"), moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in the above-identified case where Toledo Edison proposes to modify its standby tariffs ("Tariffs") to provide standby service to Ohio customers. Standby service is authorized by R.C. 4928.15 and the rules pursuant thereto promulgated by the PUCO. The Tariffs affect the ability of Ohioans to secure standby service - a service that allows customers with cogeneration or distributed generation to take power from Toledo Edison on a planned or unplanned basis - on reasonable terms that do not economically discourage connecting distributed generation and net metering 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

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should be granted because OCC satisfies the legal standards for intervention, as explained in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



Jacqueline Lake Roberts, Counsel of Record
Ann M. Hotz
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
614-466-8574 (Telephone)
614-466-9475 (Facsimile)
roberts@occ.state.oh.us
hotz@occ.state.oh.us

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On December 21, 2007, the Toledo Edison filed an application requesting the PUCO to approve modifications to its Tariffs for standby service.¹ This filing follows an extensive investigation by the PUCO as required by the Energy Policy Act of 2005 ("EPA Act 2005"), in Case No. 05-1500 EL-COI ("05-1500"). At the conclusion of 05-1500 the PUCO opened Case No. 07-647 EL-UNC ("07-647") to implement the policy decisions relating to standby service which also affects the economics of distributed generation and net metering in the service area of Toledo Edison. Standby service permits customers with cogeneration or distributed generation to take power from Toledo Edison on a planned or unplanned basis. OCC actively participated in cases 05-1500 and 07-647, and is experienced in the issues presented herein.

¹ The other FirstEnergy companies ("FE Applicants") filed similar tariffs: *In the matter of the Application of the Cleveland Electric Illuminating Company for Approval of Modifications to Existing Partial Service Rider*, Case No. 07-1294-EL-ATA; and *In the Matter of the Application of Ohio Edison Company for Approval Modifications to Existing Partial Service Rider*, Case No. 07-1295-EL-ATA.

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 cases, especially if the consumers are unrepresented in a proceeding where the PUCO approves the implementation of the policies in EPAct 2005 via modifications to Toledo Edison’s Tariffs concerning standby services. 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 Toledo Edison and that residential customers do not pay unjust and unreasonable charges and have reasonable and lawful standards and conditions for standby services. 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

² R.C. Chapter 4911.

its shareholders. OCC is also concerned that unreasonably high standby rates will not stimulate cogeneration and distributed generation which provides system benefits to all consumers. System benefits occur because system peaks can be reduced and power sources are diversified.

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

Third, OCC's intervention will not unduly prolong or delay this proceeding. OCC has longstanding expertise and experience in PUCO proceedings, and will contribute to the process of these cases. As previously stated OCC was a party to and actively participated in the predecessor cases 05-1500 and 07-647, as well as the PUCO workshops regarding standby service 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 this 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 these cases where Toledo Edison proposes to implement

policies of EPA 2005 that effect the terms and conditions of standby services and charges to be borne by customers, including residential customers. Toledo Edison's Tariffs also affect the economics of interconnection, distributed generation, and net metering in Toledo Edison's service area.

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 Toledo Edison's residential consumers, the Commission should grant OCC's Motion to Intervene.

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

III. MOTION TO CONVENE TECHNICAL CONFERENCES OR WORKSHOPS

Technical conferences or workshops are useful when addressing complex and technical issues, such as standby rates. The Tariffs filed in this case are difficult to understand and the rates are difficult to calculate, as discussed below.

The PUCO Ordered technical conferences to be held in the 05-1500 case to provide “an opportunity to share technical information, knowledge and experience” about net metering, cogeneration, net metering and standby rates.⁴ O.A.C. 4901-1-37 allows the PUCO to hold workshops, as it did regarding standby rates last year, for the purpose of receiving information and exchanging ideas about specific topics. Requests for workshops are to be made in writing as specified, in the PUCO’s Rules. OCC has submitted a request for workshops and a copy of that request is attached hereto as Exhibit A.

OCC requests technical conferences or workshops because the Tariffs concerning standby service require clarification and discussion. OCC believes they are not consistent with the PUCO’s policy decisions for standby service offerings. The PUCO and all parties would benefit from such technical conferences or workshops.

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. Pursuant to R.C. 4905.32, public utilities can only charge according to their schedules filed with the PUCO. To fulfill the intent of these statutes

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*, Case No. 05-1500-EL-COI (“05-1500 Case”), Order at 2 (March 28, 2007).

for obtaining approval of and implementing tariffs, Toledo Edison must file clear and understandable Tariffs for standby services. The inability of customers to understand utility proposals that will impact the type of services they receive and the rates charged for those services is a paramount concern. Moreover, the Commission has shared this concern as demonstrated primarily by the numerous rules it has promulgated that establish customers' rights to obtain clear and understandable information from their utilities. In addition, on many different occasions, and in various proceedings, the Commission has reinforced the importance of customer understandability through its rulings on customer notification requirements.⁵ Customer understanding of the utility application and tariffs is key. Customers must understand the substance of the document and have an opportunity to inquire further as to the proposal, object, or intervene.⁶ Toledo Edison's Tariffs are not clear and customers must be provided understandable Tariffs.

In addition to being unclear, OCC can identify instances where the Tariffs filed in Case No. 07-1296-El-ATA are not consistent with PUCO policies determined in the 05-1500 case A few examples of problems in this case follow:

- There are several references to "Qualifying Facility" ("QFs"). QFs are holdovers from the Public Utility Regulatory Policies Act of 1978. EPCRA 2005 eliminates most of the regulation of QFs. The regulatory body charged with certifying QFs, the Federal Energy Regulatory Commission no longer makes determinations as

⁵ See e.g. *In re Application of the Ohio Bell Telephone Company*, Case No. 93-487-TP-ALT, Order at 80-81. (November 23, 1994); *In re Complaint of the Office of the Consumers' Counsel*, Case No. 92-1525-TPCSS, 1994 Ohio PUC LEXIS 956,178, Order (March 30, 1994).

⁶ *Ohio Assoc. of Realtors v. Public Utilities Comm.* (1979) 60 Ohio St. 2d. 172, 178.

to what is, or is not, a qualifying facility. This language in Tariffs must be changed;⁷

- The market-based rate for standby service includes the Rate Stabilization Charge ("RSC"), which is a standard feature of provider of last resort ("POLR") service. FE Applicants are to provide standby service, not POLR service, and this charge is not appropriate;
- Tariffs require that customers opt into the most favorable standby rates. Customers should be placed in the most favorable rates and not be required to opt out of those rates and into less favorable rates;⁸
- Tariffs provide that certain rates "or its equivalent" will be charged to customers.⁹ This is not a rate specified as required by law that will inform customers of what charges will be assessed them;
- Tariffs provide that customers will be assessed a fuel charge even when they do not take service;¹⁰
- The notice requirements for existing customers are not acceptable;¹¹ and
- Tariffs contain several provisions that relate to interconnection that should be removed because they are properly located in the interconnection tariffs and inappropriate.¹²

⁷ *In the Matter of the Application of Toledo Edison Company for Approval of Modifications to Existing Partial Service Rider*, PUCO Case No. 1296-EL-ATA, Exhibit B, Original Sheet No. 52, *inter alia*, Pages 1 of 10 and 10 of 10;

⁸ *Id.* Page 1 of 10; *see also* O.A.C.4901:1-1-03 (B)(2) (Duty to Disclose Tariffs) and *White Plastics in North Hill Marble & Granite Co. v. Ohio Edison*, Case No. 84-610-EL-CSS (February 5, 1985).

⁹ *Id.*

¹⁰ *Id.* Page 4 of 10.

¹¹ *Id.* Page 6 of 10.

¹² *Id.* Page 9 of 10 (*inter alia*, ¶¶ 2, 3, 4, and 5).

The Tariffs, as filed, impede interconnection, distributed generation, and net metering within Toledo Edison's service area by imposing onerous standby rates. These issues are examples of problems and do not necessarily address all problems with the Tariffs.

The Tariffs and the concepts upon which they are based must be rejected. For all these reasons, OCC moves the PUCO to convene technical conferences or workshops to investigate and explain the rates filed by Toledo Edison in this case. At the conclusion of the technical conferences or workshops, Toledo Edison should be required to file amended Tariffs reflecting the types of standby rates deemed appropriate by the PUCO in the 05-1500 case. Once these amended Tariffs have been scrutinized, it can be determined whether formal hearings must be convened for the PUCO to determine whether the burden of proof discussed below has been satisfied.

IV. TOLEDO EDISON 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, Toledo Edison 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). The PUCO in its March 28, 2007 Order in the 05-1500 case provided policy guidance concerning the standby rates for Ohio. It is OCC's position that Toledo Edison (nor any of the other FE Applicants) has complied with the decisions in that Order. Toledo Edison has failed to meet its burden of proof.

Toledo Edison's Tariffs do not comply with several aspects of the PUCO's determinations regarding standby service requirements, including failing to provide market-based standby service. The standby service rates offered in the Tariffs are much higher than market-based rates. Because of the onerous rates proposed in Tariffs, the PUCO's goal to make interconnection, net metering and distributed generation easily implemented processes is thwarted because interconnecting customers typically require standby rates to obtain electricity to meet planned or unplanned outages.

In the 05-1500 and 07-647 cases, the predecessor cases to the instant case, the PUCO addressed the terms and conditions for standby service. Toledo Edison apparently ignored the PUCO's determinations that, for example, standby rate offerings must include market-based rates. Assuming Toledo Edison amends its Tariffs consistent with the PUCO's determinations, 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.¹³

V. CONCLUSION

For the reasons stated above, the Commission should grant OCC's Motion to Intervene, on behalf of residential consumers in Toledo Edison's service area. The PUCO should also grant OCC's Motion to convene technical conferences or workshops. Once the technical conferences or workshops are concluded, Toledo Edison can amend its filing so that the proposed Tariffs are compliant with the PUCO's requirements for standby services, and OCC moves the PUCO to order Toledo Edison to file Tariffs that comply with the PUCO's policy decisions. If the Applicant does not become compliant

¹³ OCC does not waive any right to a hearing.

with PUCO standards for Tariffs, then OCC's will request the PUCO to convene formal hearings to resolve these matters in the public interest.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



Jacqueline Lake Roberts, Counsel of Record
Ann M. Hotz
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
614-466-8574 (Telephone)
614-466-9475 (Facsimile)
roberts@occ.state.oh.us
hotz@occ.state.oh.us

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.



Jacqueline Lake Roberts
Assistant Consumers' Counsel

SERVICE LIST

Kathy Kolich
FirstEnergy Corporation
76 South Main Street
Akron, OH 44308

Duane W. Luckey
Chief, Public Utilities Section
Assistant Attorney General
180 East Broad Street, 9th Floor
Columbus, OH 43215

Samuel C. Randazzo
Lisa G. McAlister
Daniel J. Neilsen
Joseph M. Clark
McNees Wallace & Nurick LLC
21 East State St., 17th Floor
Columbus, OH 43215-4228



Office of the Ohio Consumers' Counsel

Your Residential Utility Advocate

Janine L. Migden-Ostrander
Consumers' Counsel

February 12, 2008

Hand Delivered

Steven R. Brennen, Director
Utilities Department
Doris McCarter, Director
Service Monitoring and Enforcement Department
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

Re: REQUEST FOR WORKSHOPS

FirstEnergy Companies:

Case Nos. 07-1294-EL-ATA, 07-1295-EL-ATA, and 07-1296-EL-ATA;
Case Nos. 07-1291-EL-ATA, 07-1292-EL-ATA, and 07-1293-EL-ATA;
Case Nos. 07-1297-EL-ATA, 07-1298-EL-ATA and 07-1299-EL-ATA; and
Case Nos. 07-1288-EL-ATA, 07-1289-EL-ATA, and 07-1290-EL-ATA.

Dayton Power & Light:

Case Nos. 07-1301-EL-ATA and 07-1302 EL-ATA

AEP Companies:

Case Nos. 07-1303-EL-ATA and 07-1304-EL-ATA

Duke Energy:

Case No. 05-1500-EL-COI

Dear Mr. Brennen and Ms. McCarter:

By this letter, the Office of the Ohio Consumers' Counsel ("OCC") requests that workshops be convened as soon as reasonably possible by the Public Utilities Commission of Ohio ("Commission" or "PUCO") to address the above-captioned applications pursuant to Ohio Adm. Code 4909-1-1-37. Rule 37 allows for requests for workshops by sending a letter to the PUCO department director with a copy to the PUCO Chairman.

These electric company applications purport to be in compliance with EPAct 2005 and the Commissions' Order in Case No. 05-1500-EL-COI ("05-1500 Order"). The filings contain tariffs that are confusing, if not inconsistent with the 05-1500 Order.¹ Several workshops were conducted by PUCO Staff last year to address issues related to the 05-1500 Order, including for standby service, interconnection, and net metering. It was

¹ 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, Case No. 05-1500-EL-COI ("05-1500 Case"), Order (March 28, 2007).

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anticipated that the result of the workshops would be standardized, tariffs providing services on common terms. This has not been the case.

The tariffs filed are confusing and in some instances nearly impossible to calculate. In order to provide customers with clear and consistent tariffs that provide appropriate notice of the terms and conditions available to customers, the applications and attendant tariffs must be rejected, revised and refilled. By way of example, tariffs should include explanations of the various options available to customers for standby services including examples of rates calculations for each type of rate available showing the proposed charge for the most common levels of customer use. Tariffs should be conformed to the Commissions' policies as stated in the 05-1500 Order. Workshops will also be useful in reviewing such rate calculations to see how the rates differ by electric company. These specific concerns regarding the tariffs and OCC's request to convene workshops or technical conferences are more fully discussed in OCC's Motion to Intervene in each specific electric company application.

The OCC appreciates the PUCO's interest in making the tariffs as user-friendly as possible. The PUCO's work in the 05-1500 case is important for Ohio's energy future and the OCC would like to see this process end for Ohio customers as well as it began.

Very truly yours,



Jacqueline Lake Roberts, Counsel of Record
Assistant Consumers' Counsel

cc: Alan R. Schriber, Chairman
Kathy J. Kolich, Senior Attorney, FirstEnergy Service Company
Nathan Parke, Regulatory Operations, The Dayton Power & Light Company
Paul Colbert, Associate General Counsel and Tamara R.R. McIntosh, Regulatory Liaison, DE-OH
Steven T. Nourse, Senior Attorney, American Electric Power Service Corporation