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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio	)	
Edison Company, The Cleveland Electric	)	
Illuminating Company, and the Toledo	)	Case No. 08-124-EL-ATA
Edison Company for Authority to Modify	)	Case No. 08-125-EL-AAM
Certain Accounting Practices and for	)	
Tariff Approvals.	)	

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**MOTION TO INTERVENE  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential utility consumers, moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant the OCC's intervention in the above-captioned proceedings involving the Applicants' requests to collect a total of \$226 million in fuel costs.<sup>1</sup> The reasons for granting the OCC's motion are further set forth in the attached Memorandum in Support.

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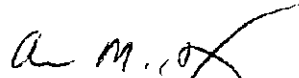
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<sup>1</sup> R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



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**MEMORANDUM IN SUPPORT**

**I. INTRODUCTION**

On February 8, 2008, the Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company (together, "FirstEnergy") filed an Application on Remand to Establish Recovery Mechanism for Deferred Fuel Costs. FirstEnergy seeks to collect from customers \$226 million in deferred fuel costs. The Commission ordered FirstEnergy to file a new application in response to the resolution of the issues involving deferred fuel costs and associated carrying costs in Case No. 07-1003-EL-ATA.<sup>2</sup>

This ATA and AAM could affect all of the approximately 1.9 million residential customers in the FirstEnergy service territory because Commission determinations regarding these issues could, *inter alia*, result in a change in the rates and charges residential customers would be required to pay for service. The Commission should grant OCC's Motion to Intervene in this proceeding so that the OCC can fully participate in these proceedings and protect the interests of residential customers.

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<sup>2</sup> *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Modify Certain Accounting Practices and for Tariff Approvals*, Case Nos. 07-1003-EL-ATA and 07-1004-EL-AAM, Finding and Order (January 9, 2008).

## **II. INTERVENTION**

OCC moves to intervene under its legislative authority to represent residential utility consumers in Ohio, pursuant to R.C. Chapter 4911. R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio’s residential consumers may be “adversely affected” by these cases, especially if the consumers are unrepresented in a proceeding regarding an increase in electric utility rates. 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 is representing all of the residential consumers of FirstEnergy. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC’s advocacy for consumers will include advancing the position that electric fuel rates should be no more than what is reasonable and permissible under Ohio law, for service that is adequate under Ohio law. This interest includes that the rates for fuel costs should be no more than what is reasonable and lawful. OCC’s position is

therefore directly related to the merits of these cases that are pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceeding. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

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 these cases where FirstEnergy has asked for an increase in rates.

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 in that it uniquely has been 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. OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention.<sup>3</sup> On behalf of Ohio's residential consumers, the Commission should grant OCC's Motion to Intervene.

### **III. CONCLUSION**

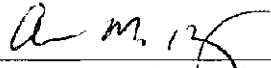
This ATA and AAM could impact residential customers, *inter alia*, through increases in electricity rates. For the reasons stated above, the PUCO should grant OCC's Motion to Intervene on behalf of the approximately 1.9 million residential customers who have an interest in the outcome of these cases.

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<sup>3</sup> *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20.

Respectfully submitted,

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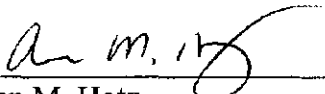
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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's *Motion to Intervene* was provided to the persons listed below via first class U.S. Mail, postage prepaid, this 26th day of February 2008.

  
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