

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Complaint of Brian A. and
Christy G. Malott

Complainant,

v.

Ohio Edison Company,

Respondent.

PUCO

Case No. 07-525-EL-CSS

MOTION FOR A PREHEARING AND SETTLEMENT CONFERENCE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

The Office of the Ohio Consumers' Counsel ("OCC") moves¹ the Public Utilities Commission of Ohio ("PUCO" or "Commission") to schedule a prehearing and settlement conference in this case, where the issues include Ohio Edison Company's ("OE" or "Company") decision to not sign an interconnection agreement for the Complainants' use of a windmill and OE's decision to not provide the Complainants with the proper credit for the surplus power their windmill generates and feeds back to OE's system. The reasons for granting OCC's motion are further set forth in the attached Memorandum in Support.

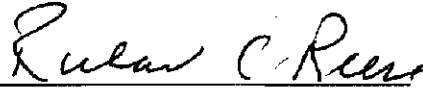
¹ This motion is filed pursuant to Ohio Adm. Code 4901-1-12, 4901-1-26 and 4901-9-01(G).

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Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The interconnection rules of the PUCO are intended to "Establish uniform requirements for offering nondiscriminatory technology-neutral interconnection to customers who generate electricity."² The Malotts--whose complaint has been pending for thirteen months and whose windmill issues with Ohio Edison predate the complaint--should be afforded the due process and consideration that the PUCO commendably contemplates in its rules. It does not appear that there is progress toward either a litigated or negotiated result.

The Malotts' complaint raises issues that, while of great concern to themselves, are also of concern to the PUCO for purposes of its rules and whether residential consumers in Ohio Edison's service area are afforded the opportunity to develop and benefit from new technology for generating electricity and whether interconnection to the

² Ohio Adm. Code 4901:1-22-02(A)(2).

electricity grid is “unduly burdensome” for Ohio Edison’s customers.³ The issues include Ohio Edison’s decision to not sign an interconnection agreement for the Complainants’ use of a windmill and OE’s decision to not provide the Complainants with the proper credit for the surplus power their windmill generates and feeds back to OE’s system.⁴ In order to assist the Commission with an opportunity for the Malotts to obtain a fair and timely resolution of their complaint and for any other party to be heard, OCC moves the Commission to schedule a settlement or prehearing conference, to be held in July of 2008.

On June 12, 2007, OCC moved to intervene in the above-captioned docket in order to represent the interests of the more than 990,000 residential electric customers of Ohio Edison.

II. ARGUMENT

In Ohio Adm. Code 4901-9-01(G) and subject to limited exceptions, the PUCO provided that it “shall schedule a settlement conference to attempt to resolve the issues in the case prior to hearing.” Ohio Adm. Code 4901-1-26(F) underscores this requirement. The Malotts’ complaint has been pending for thirteen months, an expanse of time that warrants the immediate scheduling of the settlement conference required by rule.

Also, Ohio Adm. Code 4901-1-26(A)(6) provides for “clarifying and/or settling the issues involved in the proceeding” at a prehearing conference. Moreover, the prehearing conference provides an opportunity for setting a hearing schedule, which is a

³ Ohio Adm. Code 4901:1-22-02(A)(1).

⁴ Surplus generation is that electricity produced by the customer generator that is greater than what is needed by the customer generator for their household use during a billing period.

process that needs to be addressed for the Malotts whose complaint has been pending for thirteen months.

The Malotts began generating electricity in October of 2006 with a wind generator. The Malotts state that OE employees visited their property, inspected their equipment, and told them "everything was fine." OE, however, contacted the Malotts on April 19, 2007, and told them to "shut down" their generator. On May 22, 2007, OE filed its Answer to the complaint. OE admits that it has asked the Malotts to shut down their generator "because Complainants did not comply with interconnection procedures."⁵ The PUCO's rules require only that an EDU file tariffs "for uniform interconnection service with the commission that are *consistent with*" certain technical requirements rather than requiring strict compliance with the technical standards set forth.⁶ (Emphasis added.) Finally, Ohio Adm. Code 4901:1-22-04(C)(3) requires that an EDU's interconnect tariffs be consistent with the "appropriate criteria" concerning the technology used by the customer "so as not to impose technical and economic barriers to new technology or the development, installation, and interconnection of an applicant's facilities."

In addition, the Malotts stated that OE is not providing proper reimbursement for their net metering. Net metering is the arrangement whereby the electric utility credits a customer's bill for the receipt of electricity generated by the customer (here, by windmill) including power produced in excess of what the customer uses for his or her own electricity. OE is accepting, without any compensation to the Malotts, the power provided to OE's distribution system that is in excess of what the Malotts use. In its

⁵ Answer at 3.

⁶ Ohio Adm. Code 4901:1-22-04(C).

Answer, OE states that the Malotts have not yet applied for net metering and therefore, are not entitled to any credits for self generation.⁷

Pursuant to Section 1251 of Environmental Policy Act of 2005 (EPACT 2005), Ohio has enacted a state energy policy concerning interconnection and net metering. The PUCO found that policy considerations relevant to the Malotts' complaint include ensuring diversity of electricity supplies and suppliers and giving consumers effective choices over the selection of those supplies and suppliers by "encouraging the development of distributed and small generation facilities." R.C. 4928.02(C). The PUCO stated that encouraging the deployment of new distributed generation and net metering is a priority. In addition, the PUCO stated that discouraging or inhibiting the same is inconsistent with this policy.⁸

The PUCO's rules contemplate that customers such as OE's customers may benefit from new technology for generating electricity and that interconnection of such generation to the network should be facilitated by Ohio's electric distribution utilities.⁹ A resolution of the Malotts' complaint will be a move towards ensuring that Ohio's residential electric customers can benefit from the availability of net metering.

The Commission's rules mandate that the provision of interconnection be nondiscriminatory and that tariffs provide uniform minimum requirements.¹⁰ OCC has

⁷ Id. at 4.

⁸ *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 Order (March 28, 2007) at page 3.

⁹ R.C. 4928.11(A). "The rules regarding interconnection shall seek to prevent barriers to new technology and shall not make compliance unduly burdensome or expensive."

¹⁰ Ohio Adm. Code 4901:1-22.

long advocated that Ohio's net metering and interconnection processes be made more comprehensive, streamlined, transparent, and accessible to interconnection service customers. A prehearing and settlement conference will provide an opportunity for all parties to resolve the Malotts' complaint so that the benefits of net metering and interconnection can be made available to them as soon as possible.

III. CONCLUSION

The Malotts, with their windmill generator, are serving the policy of Ohio and the PUCO's encouragement of distributed generation. Thirteen months have passed since the Malotts filed their complaint, without any formal process in this case. The PUCO's involvement in the case process is now needed to move this case forward.

The PUCO, the Malotts, and other parties can benefit from the holding of the settlement and prehearing conferences that are prescribed by PUCO rules. In any event, the settlement conference is required by rule in these circumstances and should be scheduled immediately. Therefore, the Commission should grant OCC's Motion to hold a prehearing and settlement conference, and schedule the conference to be held on or about the week of July 7, 2008. In arranging the conference, consideration should also be given to the Malotts' schedule and travel needs.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

A handwritten signature in cursive script that reads "Richard C. Reese".

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Motion* has been served upon the below-stated counsel, via regular U.S. Mail, postage prepaid, this 16th day of May, 2008.



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Assistant Consumers' Counsel

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