

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric) Case No. 08-935-EL-SSO
Illuminating Company and The Toledo)
Edison Company for Authority to)
Establish a Standard Service Offer)
Pursuant to R.C. 4928.143 in the Form of)
an Electric Security Plan.)

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric) Case No. 08-936-EL-SSO
Illuminating Company and The Toledo)
Edison Company for Approval of a)
Market Rate Offer to Conduct a)
Competitive Bidding Process for Standard)
Service Offer Electric Generation Supply,)
Accounting Modifications Associated)
with Reconciliation Mechanism, and)
Tariffs for Generation Service.)

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

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential utility customers, moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in these proceedings where applications by Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for the approval of their proposed Electric Security Plans would result in rate increases for their customers.¹ OCC's Motion should be granted because OCC


¹ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

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meets the legal standards for intervention, as explained in detail in the attached
Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On July 31, 2008, Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company ("Companies") filed their applications ("Applications") for the approval of their proposed Electric Security Plans. The approval of the Applications would permit the Companies to increase rates paid by the Companies' approximately 1.9 million residential customers. OCC is the state agency that represents Ohio's residential utility consumers. The Commission should grant OCC's Motion to Intervene in these proceedings so that it can fully participate in the proceedings and protect the interests of the Companies' customers.

II. INTERVENTION

Pursuant to R.C. Chapter 4911, OCC moves to intervene under its legislative authority to represent residential utility customers of Ohio. OCC meets the standards for intervention found in Ohio's statutes and the PUCO's rules.

The interests of residential electric customers in areas served by the Companies are "adversely affected" by these cases, pursuant to the intervention standard in R.C. 4903.221. 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 proceedings, especially if the customers are unrepresented in proceedings where the Companies seek to increase rates paid by residential customers. Thus, OCC satisfies the intervention standard in R.C. 4903.221.

OCC also meets the criteria for intervention in R.C. 4903.221(B), which requires the PUCO, in ruling on motions to intervene, to consider the following:

- (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 to represent the residential customers of the Companies regarding rates paid by residential customers, terms for obtaining that service, and the service quality provided by the Companies--all of which

are likely to be important topics in the above-captioned cases. 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 legal positions include without limitation that the rates paid by residential customers, and the service provided for those rates, should be reasonable and lawful. This legal position directly relates to the merits of the cases.

Third, OCC's intervention will not unduly prolong or delay the proceedings, but should provide insights that will expedite the PUCO's effective treatment of the Applications. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the proceedings with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. These cases significantly relate to the recent enactment of Sub. S.B. 221, about which OCC has extensive knowledge. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the cases 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 for the State of Ohio, OCC has a real and substantial interest in this proceeding where the outcome will have an effect on the service rates paid by residential consumers.

In addition, OCC meets the criteria of Ohio Adm. Ode 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.

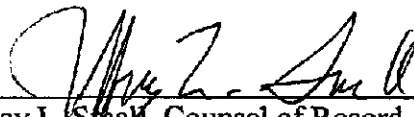
Moreover, the Supreme Court of Ohio recently confirmed OCC’s right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC’s intervention and that OCC should have been granted intervention.²

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. On behalf of Ohio’s residential consumers, the Commission should grant OCC’s Motion to Intervene.

² *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶13-20 (2006).

Respectfully submitted,

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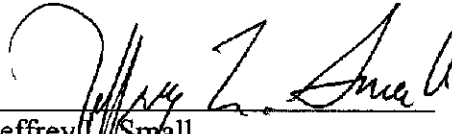
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below, via First Class U.S. Mail, postage prepaid, this 4th day of August 2008.



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