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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

In the Matter of the Complaint of Gerald Giesler,)
)
Complainant,)
)
v.) Case No. 07-498-EL-CSS
)
Toledo Edison Company,)
)
Respondent.)

In the Matter of the Complaint of Lester L. Lemke,)
)
Complainant,)
)
v.) Case No. 07-514-EL-CSS
)
Toledo Edison Company,)
)
Respondent.)

In the Matter of the Complaint of Brian A. and)
Christy G. Malott,)
)
Complainant,)
)
v.) Case No. 07-525-EL-CSS
)
Ohio Edison Company,)
)
Respondent.)

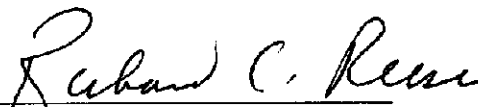
MOTION TO CONSOLIDATE, MOTION FOR A PREHEARING
CONFERENCE AND MOTION FOR A PROCEDURAL SCHEDULE
INCLUDING A HEARING DATE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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The Office of the Ohio Consumers' Counsel ("OCC") moves to consolidate, moves for a prehearing conference, and moves for the Public Utilities Commission of Ohio ("PUCO" or "Commission") to set a procedural schedule in the above-captioned dockets in order to further the interests of the complainants and the more than 1.2 million residential electric customers of Ohio Edison Company ("OE") and The Toledo Edison Company ("TE"). The issues include OE's and TE's¹ decision not to sign valid interconnection agreements with the complainants' regarding the use of their respective windmill generators. The inability of the complainants to obtain interconnection agreements with OE and TE also prevents them from benefiting from the net metering provisions of Ohio Adm. Code 4901:1-10-28. The reasons for granting OCC's Motions are set forth in the attached Memorandum in Support.

Respectfully submitted,

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¹ OE and TE will be referred to jointly as "FirstEnergy".

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

OCC, on behalf of Ohio's residential electric customers, moves the Commission, pursuant to Ohio Adm. Code 4901-1-12, Ohio Adm. Code 4901-1-26 and Ohio Adm.

Code 4901-9-01(G) to schedule a prehearing conference in this case. OCC also moves the Commission to consolidate the above-captioned proceedings, pursuant to Ohio Adm. Code 4901-1-12 and Ohio CivR 42(A)(1). The concerns in the three above-captioned cases all relate to the failure of OE and TE, respectively, to execute interconnection agreements with the complainants. The complaints were filed between April 27, 2007 and May 1, 2007. Two of the complaints were filed against TE and one of the complaints was filed against OE². The complainants in the TE complaints against FirstEnergy had originally signed interconnection agreements with FirstEnergy which the Company subsequently terminated via correspondence sent to the complainants.³

Hearings were scheduled by three separate Commission Entries issued on January 23, 2009⁴. On March 2, 2009, immediately prior to the initial hearing, the Malotts, OCC, and OE mutually requested that the attorney examiner permit the parties additional time to enter settlement discussions. The request was granted and the parties to the initially-scheduled complaint hearing discussed very broad settlement parameters at that time. The complainants in all three complainant cases, FirstEnergy, and OCC subsequently filed a joint motion for a continuance in all three complaint cases in order to gather more information for a possible settlement of the issues in the case. The motions were granted

² The Complainants against FE are Gerald Giesler and Lester Lemke. The Complainants against OE are Brian A. Malott and Christy. G. Malott.

³ TE's letter to Mr. Giesler dated April 30, 2007, demanded that his wind turbine generator "be immediately disconnected" from TE facilities until "testing" was conducted on the generator. According to the April 30th letter, the testing was necessary to ensure that the generator is in compliance with IEEE standards and "necessary so as to avoid harm" to TE's workers and the Company's network. The Company claimed that the "authorization" to interconnect with TE's network was done in error. TE's letter to Mr. Lemke was also dated April 30, 2007, and made essentially the same claims as the letter sent to Mr. Giesler.

⁴ The Entries scheduled the hearing for the Malotts' complaint for March 2, 2009, while the Giesler complaint was set for hearing on March 9, 2009, and the hearing for Mr. Lemke was set for March 16, 2009.

and the AE was given a status update of the settlement discussions on May 4, 2009. Several settlement discussions have taken place between FirstEnergy, the complainants, and OCC but ultimately no progress was made in reaching settlement on the net metering and interconnection issues at the heart of the complaints. OCC, therefore, requests that the Commission move forward with the hearing of these cases by consolidating the complaints and by adopting OCC's proposed dates, provided below, for the remaining procedural aspects of the case.

II. CONSOLIDATION IS NECESSARY IN ORDER TO ENSURE COMPLETE RESOLUTION OF THE ISSUES AND TO PROMOTE JUDICIAL EFFICIENCY.

Ohio CivR 42(A)(1) allows for the consolidation of cases that have a similar subject matter:

When actions involving a common question of law or fact are pending before a court, that court after a hearing may order a joint hearing or trial of any or all the matters in issue in the actions; it may order some or all of the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

The three complaint proceedings regarding OE and TE are eligible for consolidation. The issues involved in the three proceedings would best be addressed as a whole. The complaints each concern windmill generators with identical inverters. In each complaint, FirstEnergy has claimed that the complainants could not enter into interconnection agreements with TE and OE because the inverters installed by the

complainants are in noncompliance with the applicable Institute of Electric and Electronics Engineers (“IEEE”) and Underwriters’ Laboratory (“UL”) standards⁵.

The relief sought by the three complainants is the same. The complainants merely seek the successful implementation of interconnection and net metering agreements with OE and TE. The PUCO's rules contemplate that residential electric 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. A joint resolution of the complaints will be a move towards ensuring that Ohio's residential electric customers can benefit from the availability of net metering. Consolidation of the three proceedings would promote judicial efficiency and would be in the public interest.

III. A PREHEARING CONFERENCE IS ESSENTIAL FOR DETERMINING REMAINING PROCEDURAL ISSUES AND FOR ATTEMPTING TO CLARIFY OR SETTLE THE ISSUES INVOLVED IN THE PROCEEDING.

Ohio Adm. Code 4901-9-01(G) provides, subject to limited exceptions, that the PUCO “shall schedule a settlement conference to attempt to resolve the issues in the case prior to hearing.” Ohio Adm. Code 4901-1-26 provides for prehearing conferences. The three complaints have been pending now for more than two years⁶, an expanse of time that warrants the scheduling of a prehearing conference for addressing procedural issues in advance of hearing. Moreover, the prehearing conference provides an opportunity for setting a hearing schedule, including the order of witnesses and a briefing schedule.

⁵ See, e.g., *In re the Complaint of Lester L. Lemke Case v The Toledo Edison Company*, Case No. 07-514-EL-CSS, Answer of the Toledo Edison Company, Ex 1 (May 18, 2007).

⁶ As noted above, the parties asked for a continuance of the hearings scheduled for March in order to pursue settlement opportunities.

Because the complaints are being consolidated it is essential that the Commission ensure that all of the parties' interests are properly represented. A prehearing conference, therefore, is essential to protect the public interest in the consolidated complaint case.

IV. THE PROCEDURAL SCHEDULE SHOULD PERMIT AMPLE TIME FOR DISCOVERY LEADING TO A HEARING DATE.

OCC requests that the Commission establish a procedural schedule which permits adequate time for exploring all of the issues in this consolidated proceeding, pursuant to R.C. 4903.082. Therefore, OCC proposes the following procedural schedule, which should allow the needed time for discovery while also moving the cases toward resolution:

- | | |
|-----------------------------------|--------------------|
| ▪ Expert Testimony | September 1, 2009 |
| ▪ Discovery Requests | September 3, 2009 |
| ▪ Responses to Discovery Requests | September 8, 2009 |
| ▪ Prehearing Conference | September 15, 2009 |
| ▪ Hearing | September 22, 2009 |

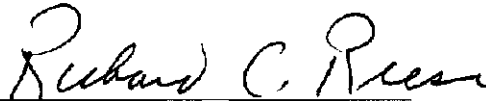
The procedural schedule permits essential but limited discovery after expert testimony is filed and consolidates the remaining procedural timeline to a three-week period in September.

V. CONCLUSION

The complainants, OCC, and FirstEnergy will all benefit from a final resolution to the interconnection and net metering issues raised in these complaints. Therefore, OCC respectfully requests that the Commission grant OCC's Motion to Consolidate, Motion for a Prehearing Conference, and Request for a Procedural Schedule Including a Hearing Date.

Respectfully submitted,

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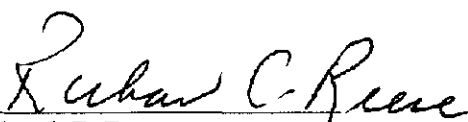
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing The Office of the Ohio Consumers' Counsel's Motion to Consolidate, Motion for a Prehearing Conference, and Request for a Procedural Schedule Including a Hearing Date has been served upon the below-stated counsel, via regular U.S. Mail, postage prepaid, this 14th day of July, 2009.



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