

FILE

7

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Heinz)
Frozen Food Company a division of)
H.J.Heinz Company L.P. and Ohio Edison) Case No. 09-1201-EL-EEC
Company For Approval of a Special)
Arrangement Agreement With A)
Mercantile Customer.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene¹ in this case in which Ohio Edison Company ("Ohio Edison" or "Company") and H.J. Heinz Company L.P. ("Heinz" or "Customer") (collectively "Applicants") seek joint approval of a special arrangement under Ohio Adm. Code 4901:1-39-08(B). Approval of this arrangement would permit Heinz to opt-out of paying Ohio Edison for the costs collected through Rider DSE2. Approval would also allow Ohio Edison to attribute the energy reductions associated with Heinz's project to the energy efficiency and demand reduction achievements required for Ohio Edison to meet its benchmarks under Senate Bill 221 (R.C. 4928.66). OCC is filing on behalf of over 925,000 residential utility consumers of the Company. The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion to Intervene ("Motion") are further set forth in the attached Memorandum in Support.

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

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.
Technician SM Date Processed AUG 13 2009

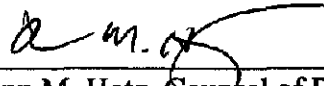
PUCO

2009 AUG 13 PM 4:22

RECEIVED-DOCKETING DIV

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



Ann M. Hotz, Counsel of Record
Assistant Consumers' Counsel

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

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Heinz)	
Frozen Food Company a division of)	
H.J.Heinz Company L.P. and Ohio Edison)	Case No. 09-1201-EL-UNC
Company For Approval of a Special)	
Arrangement Agreement With A)	
Mercantile Customer.)	

MEMORANDUM IN SUPPORT

I. INTRODUCTION

This case involves the review of the reasonableness and lawfulness of the Applicants' request for approval of their special arrangement filed under Ohio Adm. Code 4901:1-39-08(B). OCC has authority under law to represent the interests of over 925,000 residential utility customers of Ohio Edison, pursuant to R.C. Chapter 4911.

II. INTERVENTION

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 this case, especially if the consumers were unrepresented in a proceeding that results in Heinz not paying its share of environmental remediation costs either through Ohio Edison's Rider DSE2 or through a special arrangement it has with Ohio Edison that does not result in sufficient energy savings. For the same reason, the application could also result in consumers having to pay additional costs toward Ohio Edison's Rider DSE2. 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 in representing the residential consumers of Ohio Edison in this case is whether the Applicants' proposal will result in sufficient energy savings to justify Heinz's opt-out of Rider DSE2. If the energy savings are not sufficient to justify the opt-out all consumers will suffer from the economic and environmental consequences resulting from less energy savings than intended by R.C. 4928.66(A)(10). Under R.C. 4928.66(A)(10) Ohio Edison must meet certain energy savings in years 2009-2025 with money it collects from its customers through its Rider DSE2. In this regard, the issues for consideration include whether an opt-out for Heinz from paying the energy efficiency rider is justified by the energy savings achieved under the special arrangement. 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 the rates customers pay should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. OCC's position is therefore directly

related to the merits of this case that is pending before the PUCO, the authority with regulatory control of the terms under which public utilities provide their services.

Third, OCC's intervention will not unduly prolong or delay the proceedings. 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, consistent with any matters that OCC determines to be issues for PUCO consideration and for 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 this case in which environmental mediation results are at issue.

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 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

III. CONCLUSION

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

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



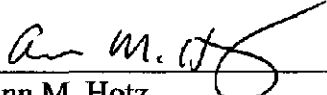
Ann M. Hotz, Counsel of Record
Assistant Consumers' Counsel

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

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

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below by regular U.S. Mail, postage prepaid, on this 13th day of August 2009.



Ann M. Hotz
Assistant Consumers' Counsel

SERVICE LIST

Duane Luckey
Attorney General's Office
Public Utilities Commission of Ohio
180 E. Broad St., 9th Fl.
Columbus, OH 43215

Kathy Kolich
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308

Michael Parks
Plant Manager
Heinz Frozen Food Company
1301 Oberlin Road S.W.
Massillon, OH 44647