

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. 09-1820-EL-ATA
Illuminating Company and The Toledo)	Case No. 09-1821-EL-GRD
Edison Company for Approval of Ohio Sit)	Case No. 09-1822-EL-EEC
Deployment of the Smart Grid)	Case No. 09-1823-EL-AAM
Modernization Initiative and Timely)	
Recovery of Associated Costs.)	

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

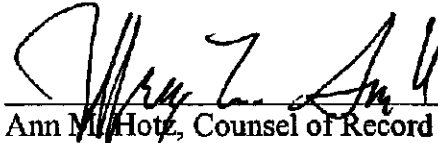
The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential utility customers, moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant the OCC's intervention in these proceedings where an application by Ohio Edison Company ("OE"), the Cleveland Electric Illuminating Company ("CEI"), and the Toledo Edison Company ("TE," and collectively with OE and CEI, "FirstEnergy" or "Company") was filed for the approval of their proposal for Smart Grid improvements and associated increases in rates.¹ The OCC's Motion should be granted because the OCC meets the legal standards for intervention, as further explained in the attached Memorandum in Support.

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

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Ann M. Hotz", is written over a horizontal line.

Ann M. Hotz, Counsel of Record
Jeffrey L. Small

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On November 18, 2009, FirstEnergy filed its application (“Application”) for the approval of its proposed Smart Grid improvements. The Application proposes, in principal part, to make upgrades to facilities located in CEI’s service area and charge customers located in all three service territories served by the FirstEnergy-affiliated companies for the associated costs that are not paid for by federal funding.² The approval of the Application could 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 so that it can fully participate in these proceedings and protect the interests of FirstEnergy’s residential customers.

² Application at 2.

II. INTERVENTION

Pursuant to R.C. Chapter 4911, the OCC moves to intervene under its legislative authority to represent residential utility customers of Ohio. The 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 Company 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 Company proposes to change electric facilities and charge residential customers for those changes. Thus, the OCC satisfies the intervention standard in R.C. 4903.221.

The 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 the OCC's interest is to represent the residential customers of FirstEnergy regarding facilities used to serve those customers and rates paid by residential customers that would change in association with the change in electric

facilities. 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, the 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, the OCC's intervention will not unduly prolong or delay the proceeding, but should provide insights that will expedite the PUCO's effective treatment of the Application. The OCC, with its longstanding expertise and experience in PUCO proceedings that include Smart Grid development and deployment, will duly allow for the efficient processing of this proceeding with consideration of the public interest.

Fourth, the OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. These cases significantly relate to initiatives at the state and federal levels regarding changes to improve the information communicated through and from electric distribution facilities. The OCC has extensive knowledge concerning these matters. The OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the cases in the public interest.

The OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that the 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, the 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, the 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 the OCC already has addressed and that the 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 the OCC does not concede the lawfulness of this criterion, the 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 the OCC’s right to intervene in PUCO proceedings, in ruling on an appeal in which the OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying the OCC’s intervention and that the OCC should have been granted intervention.³

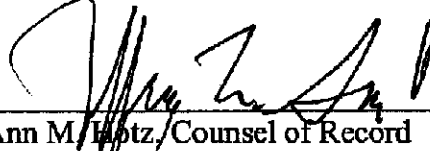
III. CONCLUSION

The 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 the OCC’s Motion to Intervene.

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

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

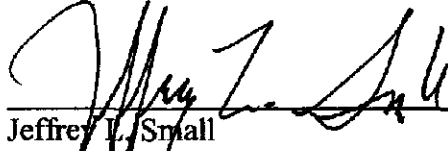
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CERTIFICATE OF SERVICE

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 30th day of November 2009.



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