

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison and Johnny Appleseed)	
Broadcasting For Approval of a Special)	Case No. 09-1226-EL-EEC
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 Johnny Appleseed Broadcasting ("Johnny Appleseed" or "Customer") (collectively with Ohio Edison, "Applicants") seek joint approval of a special arrangement under Ohio Adm. Code 4901:1-39-08(B). Approval of this arrangement would exempt Johnny Appleseed from paying its share of Ohio Edison's Rider DSE2, which is the Rider that customers pay for energy efficiency programs and demand reduction programs. Approval would also allow Ohio Edison to attribute the energy reductions associated with Johnny Appleseed's project to the Company's energy efficiency and demand reduction achievements required for Ohio Edison to meet its benchmarks under S.B. 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.

Respectfully submitted,

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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 Johnny Appleseed not paying its share of energy efficiency and demand reduction 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. Ohio Edison's Rider DSE2 recovers costs from customers for programs that allow it to meet its energy efficiency and demand reduction benchmarks under R.C. 4928.66. R.C. 4928.143(B)(i) and R.C. 4928.142(D)(3) permit

electric utilities to collect the costs of energy efficiency programs from generation customers.

For the same reason, the application could also result in consumers having to pay additional costs toward Ohio Edison's Rider DSE2, if Johnny Appleseed's project does not result in the energy efficiency and/or demand reduction level promised. In that case Ohio Edison would not gain the energy efficiency and/or demand reduction level expected and would be required to collect from customers additional amounts for additional energy efficiency programs to make up for what Johnny Appleseed's project does not deliver. 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 Johnny Appleseed'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).

If this application is approved, the Company will be permitted to rely on Johnny Appleseed's opt-out of Rider DSE2 to meet its benchmarks under law. The General Assembly established those benchmarks. Additionally, the General Assembly allows the Company to collect the costs of meeting those benchmarks from residential customers. If Johnny Appleseed is credited with contributing an amount of energy efficiency savings or demand reduction that does not actually result in the amount for which it is credited, the other customers will have to pay an additional amount to assist the Company with meeting the benchmarks. Otherwise, the benchmarks will not actually be met and the benefits associated with the energy efficiency will not be fully met. The benefits of energy efficiency include: a least cost source of energy supply, jobs and economic development, less transmission congestion, and environmental protection, among others.

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 Johnny Appleseed from paying the energy efficiency rider is justified by the energy savings achieved under the special arrangement. This interest of OCC is different than that of any other party, and especially different than that of the utility, as a joint applicant, 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.

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 compliance with S.B. 221 benchmarks in a cost-effective manner is 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,

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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 the foregoing *Motion to Intervene by the Office of the Ohio Consumers' Counsel*, was served on the persons stated below by regular U.S.

Mail, postage prepaid, on this 17th day of March 2010.

/s/ Ann M. Hotz
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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Mrs. Mary V. Edwards on behalf of Hotz, Ann M. Ms. and Office of the Ohio Consumers' Counsel