

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company and The Toledo)
Edison Company for Authority to) Case No. 10-388-EL-SSO
Establish a Standard Service Offer)
Pursuant to R.C. § 4928.143 in the Form)
of an Electric Security Plan.)

PUCO

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

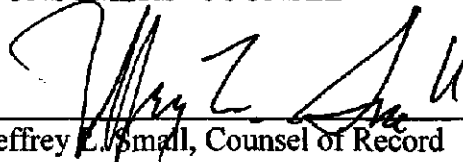
The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential utility customers, moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant the OCC's intervention in this proceeding where an application by Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for the approval of their proposed Electric Security Plan could result in unjustified rate increases and change other matters related to the service provided to residential customers.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 "Jeffrey L. Small", is written over a horizontal line.

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On March 23, 2010, Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company ("Companies") filed their application ("Application"), including an attached Stipulation and Recommendation ("Stipulation"), for the approval of their proposed Electric Security Plan ("ESP"). The Application proposes a process for procuring standard service offer ("SSO") electric generation service that would begin on June 1, 2011, and proposes significant other changes in rates that customers would have to pay. The Stipulation also proposes to settle a number of cases that are pending before the Commission in which the OCC has been an active participant.

The approval of the Application would permit the Companies to increase rates paid by their approximately 1.9 million residential customers, including increases in distribution rates,² and would change the conditions under which electric service is provided to customers. The OCC is the state agency that represents Ohio's residential

² Stipulation at 13-17.

utility consumers. The Commission should grant the OCC's Motion to Intervene in this proceeding so that it can fully participate in the proceeding and protect the interests of the Companies' residential customers.

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 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 this proceeding, especially if the customers are unrepresented in a proceeding where the Companies' standard service offer rates, distribution rates, and other charges paid by residential customers would increase. 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 the Companies regarding rates paid by residential customers and the terms for obtaining that service, both of which are likely to be important topics in the above-captioned case. 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. Furthermore, the Commission's processes for hearing its cases should provide opportunities for the participation of interested parties such as the OCC, and for the participation of the public under circumstances where the public has expressed considerable interest in ratemaking for FirstEnergy.³ These legal positions directly relate to the merits of the case.

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 that deals with several pending cases before the Commission. The OCC, with its longstanding expertise and experience in PUCO proceedings that include the Companies' last proceedings to determine standard service offers and cases cited in the Stipulation, will duly allow for the efficient processing of this proceeding with consideration of the public interest.

³ See, e.g., *In re FirstEnergy 2009 MRO Proceeding*, Case No. 09-906-EL-SSO, docketed letters; and *In re FirstEnergy All-Electric Rates*, Case No. 10-176-EL-ATA, et al., docketed letters.

Fourth, the OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. This case significantly relates to the enactment of Sub. S.B. 221 and the standard service offer proceedings after enactment of Sub. S.B. 221.⁴ This case will also be affected by uncertainties over a bidding procedure that is affected by FirstEnergy's efforts to switch to PJM Interconnection ("PJM") related to transmission service rather than use the services of the Midwest Independent System Operator ("MISO").⁵ The Stipulation proposes to settle all or most of several cases to which the OCC is an active party.⁶ The OCC has extensive knowledge concerning all 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.

⁴ *In re Initial SSO Cases After S.B. 221*, Case Nos. 08-935-EL-SSO, et al., Application (July 31, 2008); also *In re FirstEnergy 2009 MRO Proceeding*, Case No. 09-906-EL-SSO, Application (October 20, 2009).

⁵ The Companies' application before the Federal Energy Regulatory Commission (Docket ER09-1279-000) to transfer American Transmission System Inc. ("ATSI") facilities from the MISO to the PJM footprint is closely related to a pending case before the PUCO. *In re FirstEnergy Proposal to Switch to PJM*, Case No. 09-778-EL-UNC, cited in Stipulation at 31 ("should close Case No. 09-778-EL-UNC"). The Stipulation contains provisions regarding the proposal, and approval of the Stipulation would require the Commission to withdraw from the FERC docket. *Id.*

⁶ See, e.g., Stipulation at 22-23 (reference to Case No. 09-1820-EL-ATA regarding FirstEnergy's "Smart Grid" proposal); and *id.* at 30 (reference to Case No. 09-462-EL-UNC, the "Companies corporate separation plan").

In addition, the 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 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 recently 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.⁷

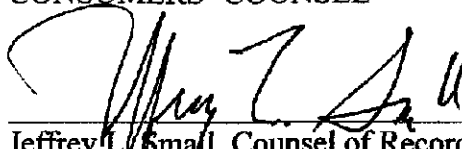
III. CONCLUSION

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.

⁷ *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

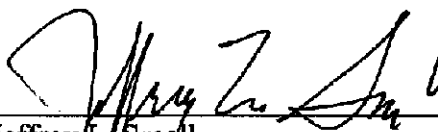
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CERTIFICATE OF SERVICE

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 24th day of March 2010.



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