**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| --- | --- | --- |
| In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of Tariff Amendments. | )  )  )  )  ) | Case No. 22-1127-EL-ATA |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene.[[1]](#footnote-2) Here, the FirstEnergy Utilities are proposing tariffs that put limitations on governmental aggregators’ ability to re-enroll consumers (that they returned to the utilities’ standard service offer) during a minimum-stay period of 12 months. The FirstEnergy Utilities’ proposal, if clarified to apply prospectively and not retroactively, could benefit consumers by moderating electricity prices in the utilities’ standard-offer auctions through reducing uncertainty for suppliers in the auction process. That moderating effect for standard-offer prices should result by limiting the risk for suppliers bidding in the auction to later face a significant reduction in electric load from when they bid in the auction.

Importantly, the FirstEnergy Utilities’ proposed minimum stay should not alter an individual consumer’s right to switch from the utilities’ standard offer to another supplier or vice-versa. The FirstEnergy Utilities’ proposal only applies (and should only apply) to *governmental* *aggregators* by limiting their ability to re-enroll consumers from the FirstEnergy Utilities’ standard offer, within 12 months from when an aggregator returned consumers to the standard offer.

The FirstEnergy Utilities’ tariffs are of particular interest because NOPEC’s return of its consumers were to the FirstEnergy Utilities’ standard service offer. But the tariffs are unclear with respect to the applicability of those tariffs to NOPEC and to its intention to possibly serve consumers in an opt-out aggregation beginning June 1, 2023.[[2]](#footnote-3) This issue requires clarification in the tariffs, so that NOPEC is not prevented from re-enrolling consumers on June 1, 2023.

Although we are generally supportive of the FirstEnergy Utilities’ proposed tariffs, additional consumer protection is necessary. The PUCO should clarify in its order approving the electric distribution utilities’ tariffs that they are effective only after the PUCO’s formal approval of the tariffs, and those tariffs will be applied prospectively, and not retroactively. That means that, as stated, the tariffs would not prevent NOPEC from re-enrolling consumers as of June 1, 2023. In this time of soaring energy prices, NOPEC’s ability to participate in the market is important for consumers to have alternative (and possible lower-priced) choices in their energy purchases.

OCC is filing on behalf of the residential utility consumers of the FirstEnergy Utilities. The reasons the Public Utilities Commission of Ohio (“PUCO”) should grant OCC’s Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

Bruce Weston (0016973)

Ohio Consumers’ Counsel

*/s/ William J. Michael*

William J. Michael (0070921)

Counsel of Record

Ambrosia E. Wilson (0096598)

Connor D. Semple (0101102)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers' Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone: [Michael]: (614) 466-1291

Telephone: [Wilson]: (614) 466-1292

Telephone: [Semple]: (614) 466-9565

[william.michael@occ.ohio.gov](mailto:william.michael@occ.ohio.gov)

[ambrosia.wilson@occ.ohio.gov](mailto:angela.obrien@occ.ohio.gov)

[connor.semple@occ.ohio.gov](mailto:connor.semple@occ.ohio.gov)

(willing to accept service by e-mail)

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## MEMORANDUM IN SUPPORT

The FirstEnergy Utilities have applied to revise their supplier tariff to provide for a “minimum stay” requirement.[[3]](#footnote-4) Their proposal would prevent governmental aggregators that serve more than 25,000 customers or a 25-megawatt load from re-enrolling consumers they had returned to the FirstEnergy Utilities’ standard-offer service until 12 months have passed. This would prevent aggregators from frequently returning and re-enrolling consumers, potentially creating unpredictable demand for default service with potentially higher prices for standard-offer consumers. OCC has authority under law to represent the interests of the FirstEnergy Utilities’ consumers, pursuant to R.C. Chapter 4911.

The FirstEnergy Utilities’ tariffs are of particular interest because, in August 2022, NOPEC returned its consumers to the FirstEnergy Utilities’ standard service offer. Of course, these tariffs were not effective at that time. It is noteworthy that the tariffs are unclear with respect to the applicability of the tariffs to NOPEC and to its intention to possibly serve consumers in an opt-out aggregation beginning June 1, 2023.[[4]](#footnote-5) This issue requires clarification, in favor of allowing NOPEC to re-enroll consumers as of June 1, 2023.

Although we are generally supportive of the FirstEnergy Utilities’ proposed tariffs, additional consumer protection is necessary. The PUCO should clarify in its order approving the electric distribution utilities’ tariffs that they are effective only after the PUCO’s formal approval of the tariffs, and those tariffs will be applied prospectively, and not retroactively.

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” if consumers are unrepresented in this proceeding where the FirstEnergy Utilities proposed to determine how frequently consumers may be moved back and forth from standard-offer service to a governmental aggregation program. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the PUCO 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 is representing the residential consumers of the FirstEnergy Utilities in this case involving how long governmental aggregators must wait before re-enrolling consumers they returned to the FirstEnergy Utilities’ standard-offer service. Importantly, these tariffs should not and cannot legally be implemented retroactively. That means the minimum stay would not prevent NOPEC’s participation in the market this year. NOPEC’s participation could give consumers alternative choices during these times of soaring energy prices. As Ohio’s residential utility consumer advocate, OCC’s interests in this case are different than that of any other party.

Second, OCC’s advocacy for residential consumers will include, among other things, advancing the following position. Prospectively, a minimum stay requirement of reasonable length would have the consumer benefit of reducing uncertainty in the competitive market by limiting the re-enrollment and return of consumers from and to the FirstEnergy Utilities’ standard offer. And, with a prospective tariff implementation, NOPEC’s ability to re-enroll consumers from the standard-offers this year would not be prevented. These results in turn could moderate the prices that are the outcome of the standard-offer auctions. OCC’s position is therefore directly related to the merits of the application to amend supplier tariffs to include a minimum stay.

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. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully 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 O.A.C. 4901-1-11(A)(2). As the advocate for residential utility consumers, OCC has a real and substantial interest in this case where the PUCO will determine how frequently governmental aggregators can re-enroll consumers they previously returned to the standard service offer.

In addition, OCC meets the criteria of O.A.C. 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.

O.A.C. 4901-1-11(B)(5) states that the PUCO 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 deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying OCC’s interventions and that OCC should have been granted intervention in both proceedings.[[5]](#footnote-6)

OCC meets the criteria set forth in R.C. 4903.221, O.A.C. 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential consumers, the PUCO should grant OCC’s Motion to Intervene.

Respectfully submitted,

Bruce Weston (0016973)

Ohio Consumers’ Counsel

*/s/ William J. Michael*

William J. Michael (0070921)

Counsel of Record

Ambrosia E. Wilson (0096598)

Connor D. Semple (0101102)

Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone [Michael]: (614) 466-1291

Telephone [Wilson]: (614) 466-1292

Telephone [Semple]: (614) 466-9565

[william.michael@occ.ohio.gov](mailto:william.michael@occ.ohio.gov)

[ambrosia.wilson@occ.ohio.gov](mailto:ambrosia.wilson@occ.ohio.gov)

[connor.semple@occ.ohio.gov](mailto:connor.semple@occ.ohio.gov)

(willing to accept service by e-mail)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below via electronic transmission, this 6th day of January 2023.

*/s/ William J. Michael*

William J. Michael

Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

**SERVICE LIST**

|  |  |
| --- | --- |
| [john.jones@ohioAGO.gov](mailto:john.jones@ohioAGO.gov)  Attorney Examiner:  [jacqueline.st.john@puco.ohio.gov](mailto:jacqueline.st.john@puco.ohio.gov) | [cwatchorn@firstenergycorp.com](mailto:cwatchorn@firstenergycorp.com) |

1. *See* R.C. Chapter 4911, R.C. 4903.221 and O.A.C. 4901-1-11. [↑](#footnote-ref-2)
2. *See, e.g.,* FirstEnergy’s Applications, Exhibits (effective date of “TBD”). [↑](#footnote-ref-3)
3. Application at 1. [↑](#footnote-ref-4)
4. *See, e.g.,* FirstEnergy’s Applications, Exhibits (effective date of “TBD”). [↑](#footnote-ref-5)
5. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-6)