

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 Approval of a Competitive Bidding Process)	Case No. 07-796-EL-ATA
for Standard Service Offer Electric Generation)	Case No. 07-797-EL-AAM
Supply, Accounting Modifications Associated)	
with Reconciliation Mechanism and Phase In,)	
and Tariffs for Generation Service.)	

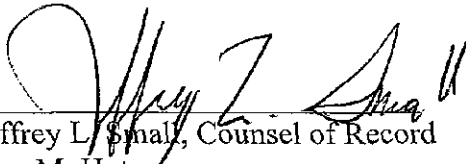
**MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Pursuant to R.C. Chapter 4911, R.C. 4903.221, Ohio Adm. Code 4901-1-11 and 4901-1-12, the Office of the Ohio Consumers' Counsel ("OCC"), on behalf of all residential utility consumers served by the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy EDUs" or "Company"), moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant the OCC's intervention in the above-captioned cases. These cases were filed on July 10, 2007 by the FirstEnergy EDUs. The reasons for granting the OCC's motion are further set forth in the attached Memorandum in Support.

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 And Date Processed 7/11/07

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



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

Office of the Ohio Consumer's Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485

Telephone: 614-466-8574

E-mail small@occ.state.oh.us
hotz@occ.state.oh.us

**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 Approval of a Competitive Bidding Process)	Case No. 07-796-EL-ATA
for Standard Service Offer Electric Generation)	Case No. 07-797-EL-AAM
Supply, Accounting Modifications Associated)	
with Reconciliation Mechanism and Phase In,)	
and Tariffs for Generation Service.)	

MEMORANDUM IN SUPPORT

I. INTRODUCTION

The OCC moves to intervene in the above-captioned docket in order to represent the interests of the more than 1.9 million residential electric customers of the FirstEnergy EDUs. On July 10, 2007, the FirstEnergy EDUs filed an application (“Application”) pursuant to R.C. 4928.14 and Ohio Adm. Code 4901:1-35 regarding a competitive bidding process “designed to procure supply for the provision of Standard Service Offer electric generation service . . . to the Companies’ retail electric customers.”¹ The filing will be important for pricing of generation services for residential customers beginning on January 1, 2009 and thereafter if the Commission approves the Application.

II. INTERVENTION

The OCC moves to intervene under its legislative authority to represent residential utility consumers in Ohio, pursuant to R.C. Chapter 4911. 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

¹ Application at 1.

may be “adversely affected” by this case, especially if the consumers are unrepresented in a proceeding regarding prices for their generation services. 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 the OCC’s interest lies in ensuring that the Company’s residential customers receive the benefits of Ohio policy regarding competitive retail electric service as stated in R.C. 4928.02. Those benefits include the provision of “adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service”² and the promotion of “innovation and market access for cost-effective supply- and demand-side retail electric service.”³ 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 advocacy for consumers will include advancing the position that electric rates should be no more than what is reasonable and permissible under Ohio law, for service that is adequate under Ohio law. The OCC’s advocacy relates to both the

² R.C. 4928.02(A).

³ R.C. 4928.02(D).

substance of the current Application and assuring that procedural processes for the determination of generation rates protect the Company's residential customers. The 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 public utilities' rates and service quality in Ohio.

Third, the OCC's intervention will not unduly prolong or delay the proceeding. The 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, the OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. The OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest. The OCC has been extensively involved in prior cases that dealt with bidding for the generation service provided to the Company's customers.⁴

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, the OCC has a real and substantial interest in this case where the generation pricing for residential customers and related matters are at issue.

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 has already addressed, and that the OCC satisfies.

⁴ See *In re FirstEnergy RSP Proposal*, Case No. 03-2144-EL-ATA, Order (October 9, 2004) and *In re Bidding Procedure for the FirstEnergy Companies*, Case No. 04-1371-EL-UNC, Order (December 9, 2004).

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 because the OCC has been uniquely designated as the statutory representative of the interests of Ohio’s residential utility consumers.⁵ 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.⁶

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.

III. CONCLUSION

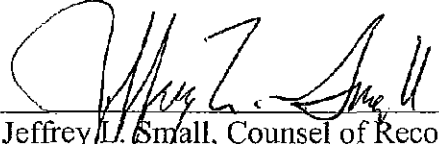
The OCC satisfies the criteria set forth in R.C. 4903.221 and the Commission’s rules for intervention. Therefore, on behalf of the Company’s more than 1.2 million residential customers, the OCC respectfully requests that the Commission grant the OCC’s Motion to Intervene. The OCC’s participation will contribute to a just resolution of the serious issues involved in this proceeding and will not cause undue delay.

⁵ R.C. Chapter 4911.

⁶ *Ohio Consumers’ Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20 (2006).

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.

Jeffrey L. Small, Counsel of Record

Ann M. Hotz

Office of the Ohio Consumer's Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: 614-466-8574

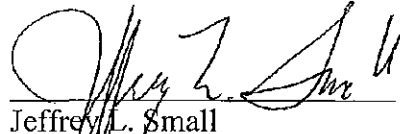
Fax: 614-466-9475

E-mail small@occ.state.oh.us

hotz@occ.state.oh.us

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing the Office of the Ohio Consumers' Counsel's *Motion to Intervene* has been served upon the below-stated counsel, via regular U.S. Mail, postage prepaid, this 11th day of July, 2007.


Jeffrey L. Small
Assistant Consumers' Counsel

SERVICE LIST

James W. Burk
Mark A. Hayden
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308

Duane Luckey
Attorney General's Office
Public Utilities Commission of Ohio
180 East Broad Street, 9th Floor
Columbus, OH 43215