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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company to Revise PUCO Tariff No. 18.	)))	Case No. 07-1304-EL-ATA

MOTION TO INTERVENE
AND
MOTION TO CONVENE TECHNICAL CONFERENCE OR WORKSHOPS
AND
MOTION TO AMEND APPLICATION
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of all 610,000 residential utility consumers of The Ohio Power Company ("OP"), moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in the above-identified case where OP proposes to modify its standby, interconnection, and net metering tariffs ("Tariffs") for service to Ohio customers. The Tariffs affect the ability of Ohioans to secure those services on reasonable terms that do not economically discourage net metering and connecting distributed generation to the power grid. Standby service allows customers with cogeneration or distributed generation to take power from OP on a planned or unplanned basis. Needlessly discouraging cogeneration, distributed generation and net metering will cause a loss of system benefits for all customers – including residential customers. OCC's Motion should be granted because OCC satisfies the legal standards for intervention, as explained in the attached Memorandum in Support.

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Respectfully submitted,

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In the Matter of the Application of Ohio Power Company to Revise PUCO Tariff No. 18.	)))	Case No. 07-1304-EL-ATA

MEMORANDUM IN SUPPORT

I. INTRODUCTION

On December 20, 2007, the OP filed an application requesting the PUCO to approve modifications to its Tariffs for standby, net metering, and interconnection services.[1] This filing follows an extensive investigation by the PUCO as required by the Energy Policy Act of 2005 ("EPAct 2005"), in Case No. 05-1500 EL-COI ("05-1500"). Standby service also affects the economics of cogeneration, distributed generation and net metering in the service area of OP. Standby service permits customers with cogeneration or distributed generation to take power from OP on a planned or unplanned basis. OCC actively participated in case 05-1500 and is experienced in the issues presented herein.

II. INTERVENTION

OCC moves to intervene under its legislative authority to represent residential utility consumers in Ohio.[2] In addition, R.C. 4903.221 provides, in part, that any person "who may be adversely affected" by a PUCO proceeding may seek intervention in that proceeding. The interests of Ohio's residential consumers may be "adversely affected"

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[1] The other AEP company, Columbus Southern Power Company filed similar tariffs: *In the matter of the Application of the Columbus Southern Power Company to Revise PUCO Tariff No. 18*, PUCO Case No. 07-1303-EL-ATA.

[2] R.C. Chapter 4911.

by this case, especially if the consumers are unrepresented in a proceeding where the PUCO approves the implementation of the policies in EPAct 2005 via modifications to Tariffs concerning standby, interconnection, and net metering services it offers to customers. 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 lies in ensuring that the policies in EPAct 2005 are properly implemented by OP and that residential customers do not pay unjust and unreasonable charges. Nor should residential customers pay more than a reasonable and just share of any standby, net metering, or interconnection costs. Customers should have reasonable and lawful standards and conditions for standby, net metering and interconnection service. This interest is different than that of any other party and especially different than that of the utility that advocates for the financial interest of its shareholders.

Second, OCC will advocate a legal position that the Tariffs should be limited to assessing costs that are no more than what is reasonable and permissible under Ohio law and that the standards for standby, net metering, and interconnection service are

reasonable and lawful. OCC's position is therefore directly related to the merits of this case pending before the PUCO.

Third, OCC's intervention will not unduly prolong or delay the proceeding. OCC has longstanding expertise and experience in PUCO proceedings, and will contribute to the process of the case. As previously stated OCC was a party to and actively participated in the predecessor case 05-1500 as well as the PUCO workshops regarding standby, net metering, and interconnection service tariff modifications.

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 Admn. 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 where OP proposes to implement the policies of EPAct 2005 and have the PUCO approve standby, net metering, and interconnection tariffs that relate to expenses borne by customers, including residential customers.

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 because it has been uniquely 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 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.[3]

OCC meets the criteria set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11. Additionally, granting OCC intervention is consistent with the intervention standards explained by the Supreme Court of Ohio. On behalf of all the OP's residential consumers, the Commission should grant OCC's Motion to Intervene.

III. MOTION TO CONVENE TECHNICAL CONFERENCES OR WORKSHOPS

Technical conferences or workshops are useful when addressing complex and technical issues, such as standby, net metering, and interconnection. The Tariffs filed in this case are difficult to understand and the rates are difficult to calculate, as discussed below.

The PUCO Ordered technical conferences to be held in the 05-1500 case to provide "an opportunity to share technical information, knowledge and experience" about

[3] *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶13-20.

net metering, cogeneration, net metering and standby rates.[4] Ohio Admn. Code 4901-1-37 allows the PUCO to hold workshops, as it did regarding standby, net metering, and interconnection services last year, for the purpose of receiving information and exchanging ideas about specific topics. Requests for workshops are to be made in writing as specified, in the PUCO's Rules. OCC has submitted a request for workshops and a copy of that request is attached hereto as Exhibit A.

OCC requests technical conferences or workshops because the Tariffs concerning standby, net metering, and interconnection service require clarification and discussion. The Tariffs do not appear to be consistent with the PUCO's policy decisions for those service offerings. The PUCO and all parties would benefit from such technical conferences or workshops.

R.C. 4909.18 provides "Any public utility desiring to establish any rate,...or modify, amend, change , increase or reduce any existing rate...shall file a written application..." with the PUCO. Pursuant to R.C. 4905.32, public utilities can only charge according to their schedules filed with the PUCO. To fulfill the intent of these statutes for obtaining approval of and implementing tariffs, OP must file clear and understandable Tariffs for standby, net metering, and interconnection services.

The inability of customers to understand utility proposals that will impact the type of services they receive and the rates charged for those services is a paramount concern. Moreover, the Commission has shared this concern as demonstrated by the numerous rules it has promulgated that establish customers' rights to obtain clear and

[4] *In the Matter of the Commission's Response To Provisions of the Federal Energy Policy Act of 2005 Regarding Net Metering, Smart Metering and Demand Response, Cogeneration and Power Production Purchase and Sale Requirements, and Interconnection*, Case No. 05-1500-EL-COI ("05-1500 Case"), Order at 2 (March 28, 2007).

understandable information from their utilities. In addition, on many different occasions, and in various proceedings, the Commission has reinforced the importance of customer understandability through its rulings on customer notification requirements.[5] Customer understanding of the utility application and tariffs is key. Customers must understand the substance of the document and have an opportunity to inquire further, object, or intervene as to the proposal.[6] OP's Tariffs are not clear and customers must be provided understandable Tariffs.

In addition to being unclear, OCC can identify instances where the Tariffs filed in Case No. 07-1304-EL-ATA are onerous or not consistent with PUCO policies determined in the 05-1500 case. A few examples of problems in Tariffs filed in this case follow:

- Fourteen riders are a component of the generation rate, including "Provider of Last Resort Charge," "IGCC Cost Recovery Charge Rider," and "Major Storm Cost Recovery Rider." Some of the riders appear to be distribution-related and others simply not applicable to standby service;[7]

- The notice requirements are not acceptable for existing customers .[8]

- Tariffs require charges for *inter alia,* black start, operating reserves and reactive charges billed through PJM Interconnection L.L.P;[9]

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[5] *See* e.g. *In re Application of the Ohio Bell Telephone Company*, Case No. 93-487-TP-ALT, Order at 80-81. (November 23,1994); *In re Complaint of the Office of the Consumers' Counsel*, Case No. 92-1525-TPCSS, 1994 Ohio PUC LEXIS 956,178, Order (March 30, 1994).

[6] *Ohio Assoc. of Realtors v. Public Utilities Comm.* (1979), 60 Ohio St. 2d. 172, 178.

[7] *In the Matter of the Application of Ohio Power Company to Revise PUCO Tariff No. 18*, PUCO Case No. 07-1304-EL-ATA, compliance tariff 4th Revised Sheet No. 27-8.

[8] Id. 4th Revised Sheet No. 27-x.

[9] Id. Original Sheet 27-x.

- The IEEE requirements are not specified in the Tariffs for interconnection ;[10] and

- When interconnection inspection fees will be required is not specified.[11]

The Tariffs, as filed, impede cogeneration, interconnection, distributed generation, and net metering within OP's service area by imposing onerous or confusing standby, net metering and interconnection rates. These issues are examples of problems and do not necessarily address all problems with the Tariffs.

The Tariffs and the concepts upon which they are based must be rejected. For all these reasons, OCC moves the PUCO to convene technical conferences or workshops to investigate and explain the rates filed by OP in this case. At the conclusion of the technical conferences or workshops, OP should be required to file amended Tariffs reflecting the types of standby, net metering, and interconnection rates deemed appropriate by the PUCO in the 05-1500 case. Once these amended Tariffs have been scrutinized and there has been an opportunity for parties to comment, it can be determined whether formal hearings must be convened for the PUCO to determine whether the burden of proof discussed below has been satisfied.

IV. OP BEARS THE BURDEN OF PROOF AND HAS FAILED TO MEET IT.

R.C. 4909.18 requires that when a change or amendment of a rate is proposed, OP must demonstrate to the PUCO that the change or proposal is <u>just and reasonable</u>: "If it appears to the commission that the proposals in the application may be unjust or unreasonable, the commission shall set the matter for a hearing.... At such hearing <u>the</u>

[10] Id. 1st Revised Sheet No. 6-3D.

[11] Id. 1st Revised sheet No.6-4D and 6-5D.

burden of proof to show that the proposals in the application are just and reasonable shall be upon the public utility." (Emphasis added). The PUCO, in its March 28, 2007 Order in the 05-1500 case, provided policy guidance concerning the standby rates, interconnection and net metering for Ohio. OP has not complied with the decisions in that Order. OP has failed to meet its burden of proof.

OP's Tariffs thwart the PUCO's goal to make interconnection, net metering, and distributed generation easily implemented processes because interconnecting customers typically require standby rates to obtain electricity to meet planned or unplanned outages.

Once OP amends its Tariffs, a hearing may still be necessary for a fair opportunity for parties to contribute to the record that the PUCO will consider in making its findings, opinions, and decisions under R.C. 4903.09 and other statutes.[12]

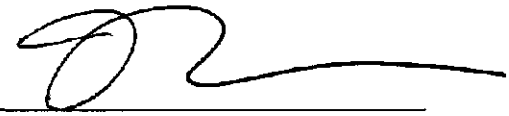
V. CONCLUSION

For the reasons stated above, the Commission should grant OCC's Motion to Intervene, on behalf of residential consumers in OP's service area, and convene technical conferences or workshops. The PUCO should also grant OCC's Motion to amend the Application so that the proposed Tariff terms and conditions are clear and compliant with the PUCO's requirements. If OP does not become clear and compliant with PUCO standards for Tariffs, then OCC's Motion for a hearing should be granted to resolve the matter in the public interest.

[12] OCC does not waive any right to a hearing.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's *Motions* was provided to the persons listed below via first class U.S. Mail, postage prepaid, this 13th day of February 2008.

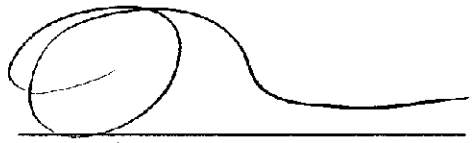

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Exhibit A

Office of the Ohio Consumers' Counsel

Your Residential Utility Advocate

Janine L. Migden-Ostrander
Consumers' Counsel

February 12, 2008

Hand Delivered
Steven R. Brennen, Director
Utilities Department
Doris McCarter, Director
Service Monitoring and Enforcement Department
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

Re: REQUEST FOR WORKSHOPS
FirstEnergy Companies:
Case Nos. 07-1294-EL-ATA, 07-1295-EL-ATA, and 07-1296-EL-ATA;
Case Nos. 07-1291-EL-ATA, 07-1292-EL-ATA, and 07-1293-EL-ATA;
Case Nos. 07-1297-EL-ATA, 07-1298-EL-ATA and 07-1299-EL-ATA; and
Case Nos. 07-1288-EL-ATA, 07-1289-EL-ATA , and 07-1290-EL-ATA.
Dayton Power & Light:
Case Nos. 07-1301-EL-ATA and 07-1302 EL-ATA
AEP Companies:
Case Nos. 07-1303-EL-ATA and 07-1304-EL-ATA
Duke Energy:
Case No. 05-1500-EL-COI

Dear Mr. Brennen and Ms. McCarter:

By this letter, the Office of the Ohio Consumers' Counsel ("OCC") requests that workshops be convened as soon as reasonably possible by the Public Utilities Commission of Ohio ("Commission" or "PUCO") to address the above-captioned applications pursuant to Ohio Adm. Code 4909-1-1-37. Rule 37 allows for requests for workshops by sending a letter to the PUCO department director with a copy to the PUCO Chairman.

These electric company applications purport to be in compliance with EPAct 2005 and the Commissions' Order in Case No. 05-1500-EL-COI ("05-1500 Order"). The filings contain tariffs that are confusing, if not inconsistent with the 05-1500 Order.[1] Several workshops were conducted by PUCO Staff last year to address issues related to the 05-1500 Order, including for standby service, interconnection, and net metering. It was

[1] In the Matter of the Commission's Response To Provisions of the Federal Energy Policy Act of 2005 Regarding Net Metering, Smart Metering and Demand Response, Cogeneration and Power Production Purchase and Sale Requirements, and Interconnection, Case No. 05-1500-EL-COI ("05-1500 Case"), Order (March 28, 2007).

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anticipated that the result of the workshops would be standardized, tariffs providing services on common terms. This has not been the case.

The tariffs filed are confusing and in some instances nearly impossible to calculate. In order to provide customers with clear and consistent tariffs that provide appropriate notice of the terms and conditions available to customers, the applications and attendant tariffs must be rejected, revised and refilled. By way of example, tariffs should include explanations of the various options available to customers for standby services including examples of rates calculations for each type of rate available showing the proposed charge for the most common levels of customer use. Tariffs should be conformed to the Commissions' policies as stated in the 05-1500 Order. Workshops will also be useful in reviewing such rate calculations to see how the rates differ by electric company. These specific concerns regarding the tariffs and OCC's request to convene workshops or technical conferences are more fully discussed in OCC's Motion to Intervene in each specific electric company application.

The OCC appreciates the PUCO's interest in making the tariffs as user-friendly as possible. The PUCO's work in the 05-1500 case is important for Ohio's energy future and the OCC would like to see this process end for Ohio customers as well as it began.

Very truly yours,

Jacqueline Lake Roberts, Counsel of Record
Assistant Consumers' Counsel

cc: Alan R. Schriber, Chairman
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Paul Colbert, Associate General Counsel and Tamara R.R. McIntosh, Regulatory Liaison,DE-OH
Steven T. Nourse, Senior Attorney, American Electric Power Service Corporation