

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

In the Matter of the Complaint of
Christopher Lemke

Complainant,

v.

Toledo Edison Company,

Respondent.

Case No. 10-194-EL-CSS

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

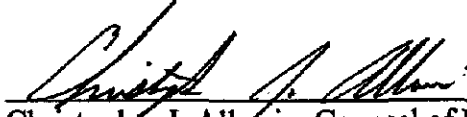
The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this complaint case where, according to the filed complaints, certain of the utility company's procedures violate the Ohio Administrative Code and contradict the State of Ohio's statutory policy of encouraging the implementation of distributed generation across customer classes.¹ OCC is filing on behalf of all the approximately 275,000 residential utility consumers of the Toledo Edison Company ("Toledo Edison" or "Company"). The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion are further set forth 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 "Christopher J. Allwein", is written over a horizontal line.

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of)	
Christopher Lemke)	
)	
Complainant,)	
)	
v.)	Case No. 10-194-EL-CSS
)	
Toledo Edison Company,)	
)	
Respondent.)	

MEMORANDUM IN SUPPORT

This case involves the review of the reasonableness and lawfulness of Toledo Edison's meter and testing requirements for interconnection, which, according to the complaints, violates Commission Rule 4901:1-10-28(A)(4).² OCC has authority under law to represent the interests of all the approximately 275,000 residential utility customers of Toledo Edison, 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 may be "adversely affected" by this case, especially if the consumers were unrepresented in a proceeding where the Company's actions are placing additional and unnecessary costs on customers attempting to achieve interconnection of

² Ohio Adm. Code 4901:1-10-28(A)(4) states that "Net metering shall be accomplished using a single meter capable of registering the flow of electricity in each direction. A customer's existing single-register meter that is capable of *registering the flow of electricity in both directions* satisfies this requirement." Here, the Complainant notes that the existing meter possesses the required capabilities. Thus, the Company's insistence on the installation of a different meter violates the rule.

their distributed generation source with the Company's system. 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 all of Toledo Edison's customers may benefit from new technology and that interconnection to the network should be facilitated by Ohio's electric distribution utilities.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, OCC's advocacy for consumers will include advancing the position that Toledo Edison, as an Ohio electric distribution utility ("EDU"), shall ensure that compliance with the interconnection rules must not be "unduly burdensome or expensive for any applicant in accordance with division (A) of section 4928.11 of the Revised Code."⁴ This position includes that residential customers should not be charged for unnecessary and expensive tests on their windmill generators prior to signing an

³ R.C. 4928.11(A). "The rules regarding interconnection shall seek to prevent barriers to new technology and shall not make compliance unduly burdensome or expensive."

⁴ Ohio Adm. Code 4901:1-22-02(A)(1).

interconnection agreement with an EDU. OCC's position also includes asking the Commission to ensure that the Company adheres to the interconnection and net metering rules. 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, 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, particularly regarding policies that concern net metering and interconnection to the grid.

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 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 the Commission's rules and policies concerning residential net metering and interconnection governing are 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.

Furthermore, OCC’s motion is consistent with PUCO precedent. The Commission previously granted OCC’s motion to intervene in consumer complaints with similar allegations against FirstEnergy EDUs including Toledo Edison.⁵

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.⁶

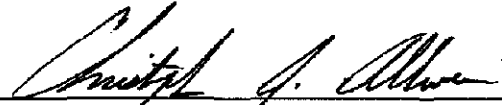
OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio and the PUCO for intervention. On behalf of Ohio residential consumers, the Commission should grant OCC’s Motion to Intervene.

⁵ See *Lester L Lemke v. The Toledo Edison Company*, Case No. 07-514-EL-CSS, Entry at 1 (January 23, 2009); *Gerald Giesler v. The Toledo Edison Company*, Case No. 07-498-EL-CSS, Entry at 1 (January 23, 2009); *Brian A. and Christy G- Malott v. Ohio Edison Company*, Case No. 07-525-EL-CSS, Entry at 1 (January 23, 2009).

⁶ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

Respectfully submitted,

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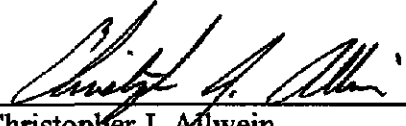
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene by the Office of the Ohio Consumers' Counsel*, was served on the persons stated below via first class U.S. Mail, postage prepaid on this 3rd day of March 2010.



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