

In the Matter of the Application of The)
Toledo Edison Company's Delivery) Case No. 12-523-EL-RDR
Capital Recovery Rider (DCR) Quarterly)
Filing for April 1, 2012.)

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

Respectfully submitted,

/s/ Jeffrey L. Small

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¹ See R.C. Chapter 4911, R.C. 4903.221, and Ohio Adm. Code 4901-1-11.

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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MEMORANDUM IN SUPPORT

On February 2, 2012, the Company filed documents in connection with distribution rate increases that TE placed into effect on January 1, 2012, and that it proposes to place into effect on April 1, 2012. TE's filing is part of the Company's efforts to increase its retail customers' rates by means of the Delivery Capital Recovery Rider ("DCR") that was approved, in concept but not with respect to specific numbers, in the Commission's Order in Case Nos. 10-388-EL-SSO, et al.² The OCC has authority under law to represent the interests of all the approximately 275,000 residential utility customers of TE, 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 customers may be "adversely affected" by this case, especially if the customers were unrepresented in a proceeding that sets or is involved in the setting of distribution rates that residential customers pay. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

² TE's Submission, Cover Letter at 1 (February 3, 2012).

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 is representing the residential customers of TE in this case involving distribution rate-setting (i.e. TE's DCR). 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 residential customers will include advancing the position that distribution rates should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. 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 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, 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 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 advocate for residential utility customers, the OCC has a very real and substantial interest in this case where distribution rates paid by retail customers, including residential customers, 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 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 customers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed the OCC’s right to intervene in PUCO proceedings, in deciding two appeals in which the OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying the OCC’s interventions and that the OCC should have been granted intervention in both proceedings.³

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

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 residential customers, the Commission should grant the OCC's Motion to Intervene.

Respectfully submitted,

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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 electronic transmission, this 15th day of February 2012.

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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Small, Jeffrey L. Mr.