

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio )  
Army National Guard for Approval of a )  
Unique Arrangement for the Toledo, ) Case No. 14-1012-EL-AEC  
Ohio and Walbridge, Ohio Facilities )

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**MOTION TO INTERVENE OF  
THE TOLEDO EDISON COMPANY**

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Pursuant to Ohio Revised Code § 4903.221 and O.A.C. 4901-1-11, The Toledo Edison Company (“Company”) moves to intervene in this proceeding. The Company has a real and substantial interest in this proceeding and its interests, which may be prejudiced by this proceeding and are not adequately represented by the existing parties. Thus, for these reasons, and as set forth more fully in the attached memorandum in support, the Company respectfully requests that the Commission grant this timely request to intervene.

Respectfully submitted,

*/s/ James W. Burk*  
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COMPANY

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**MEMORANDUM IN SUPPORT OF THE MOTION TO INTERVENE  
OF THE TOLEDO EDISON COMPANY**

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Ohio Army National Guard (“Guard” or “Applicant”) filed an Application for a Unique Arrangement on June 2, 2014. As an expected signatory party to the contract for which Guard seeks approval, the Company has a real and substantial interest in this proceeding. The Company’s Motion should be granted so that its interests can be adequately represented and properly presented for the Commission’s consideration.

Ohio Revised Code § 4903.221 provides that any “person who may be adversely affected by a public utilities commission proceeding” may intervene in a Commission proceeding. The Commission’s own rules reinforce the right to intervene and provide that:

Upon timely motion, any person *shall be* permitted to intervene in A proceeding upon a showing that ... [t]he person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the interest is adequately represented by existing parties.

O.A.C. 4901-1-11 (A) (emphasis added). “The regulation’s text is very similar to Civ.R. 24-the rule governing intervention in civil cases in Ohio – which is generally liberally construed in favor of intervention.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111

Ohio St. 3d 384, 387 (2006) (internal quotations omitted). In considering a motion to intervene, the Commission is directed to both O.R.C. § 4903.221 and O.A.C. 4901-1-11(B) to consider a number of criteria, each of which is clearly satisfied by the Company's Motion to Intervene. The following criteria are as follows:

(B) In deciding whether to permit intervention under paragraph (a)(2) of this rule, the commission, the legal director, the deputy legal director, or an attorney examiner shall consider:

- (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 perspective intervenor will unduly prolong or delay the proceedings.
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.
- (5) The extent to which the person's interest is represented by existing parties.<sup>1</sup>

The Company has a number of real and substantial interests in this proceeding that are central to the requested unique arrangement. The Company will be one of the signatory parties to the contract underlying the unique arrangement requested in this proceeding. Therefore, the outcome of this proceeding will have a direct impact upon the Company. The Company has met with both the Applicant and Staff to discuss the unique arrangement being sought and therefore is already knowledgeable about the approach being proposed as part of the unique arrangement.

The Company plans to participate in the proceeding to help assure that any customer benefits identified as arising from the Unique Arrangement will remain in effect throughout the expected term of the unique arrangement. The Company plans to continue working with the Staff and the Applicant and may provide testimony in this proceeding if necessary to help develop the record for the Commission's consideration.

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<sup>1</sup> This criterion is found only in O.A.C. 4901-1-11(B), and not in O.R.C. § 4903.221.

The Company's participation in this proceeding will not unduly delay or prolong the proceeding and this Motion to Intervene was filed prior to the due date for interventions. The Company's participation will provide assistance to the Commission and its evaluation of the proposed Unique Arrangement. The Company has worked with many customers over the years in the development and implementation of reasonable arrangements and will use that historical knowledge and expertise in this proceeding to assist the Commission in reaching a reasonable result and to provide a solid precedent to be relied upon going forward.

The Companies are also uniquely positioned to protect and balance the interest of their customers and shareholders through supporting efforts what will help mitigate costs that may be imposed upon customers and then providing for a reasonable recovery mechanism for those costs.

As shown above, the Company's Motion to Intervene satisfies each of the criteria the Commission must consider in granting intervention. Therefore, the Company respectfully requests that the Commission grant its Motion to Intervene and allow it to represent its interests in this proceeding.

Respectfully submitted,

/s/ James W. Burk \_\_\_\_\_

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On behalf of The Toledo Edison Company

## CERTIFICATE OF SERVICE

A copy of the foregoing *Motion to Intervene* of and the *Memorandum in Support* thereof have been served by electronic mail, this 23<sup>rd</sup> day of June 2014, upon the following parties as shown on the attached service list.

/s/ James W. Burk\_\_\_\_\_

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Summary: Motion Motion to Intervene of The Toledo Edison Company electronically filed by Mr. Robert M. Endris on behalf of Burk, James W. Mr.