

In the Matter of the 2015 Review of the Delivery Capital Recovery Rider contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company)
)
) **Case No. 15-1739-EL-RDR**
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)

R.C. § 4903.221 permits intervention only by persons who may be “adversely affected” by proceedings. Likewise, the Commission’s intervention rule authorizes intervention only when:

[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 person's interest is adequately represented by existing parties.¹

In considering a motion to intervene, the Commission's rule directs that the Commission should consider: (1) the nature and extent of the intervenor's interest; (2) the legal position advanced by the intervenor and its probable relation to the merits of the case; (3) whether intervention will unduly prolong or delay the proceedings; (4) whether the intervenor will significantly contribute to full development and equitable resolution of the factual issues; and (5) the extent to which the intervenor's interest is represented by existing parties.²

A. OCC Has No Real or Substantial Interest In The Audit Review Process that Will Be Impaired.

In an attempt to support its intervention, OCC states that this is a “case involving an *investigation* into the appropriateness of costs [the Companies] collected from customers.” Motion p.2 (emphasis added). This mischaracterizes the nature of this proceeding, which is not an investigation by the Commission, but instead is an “annual audit review process of Rider DCR” conducted specifically pursuant to the terms of the Stipulation first approved by the Commission in Case No. 10-388-EL-SSO (ESP II case) and extended in Case No. 12-1230-EL-SSO (ESP III case).³ The Commission found in Case No. 10-388-EL-SSO, that the right to participate in DCR audits was conferred upon only Signatory Parties to the Stipulation.⁴ In

¹ O.A.C. 4901-1-11(A).

² See O.A.C. 4901-1-11(B)(1)-(5); see also R.C. 4903.221(B)(1)-(4).

³ See Entry, p.2, December 9, 2015, *In the Matter of the 2015 Review of the Delivery Capital Recovery Rider contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company*, Case No. 15-1739-EL-RDR, (“Additionally, under the terms of the Stipulation, FirstEnergy agreed to submit to an annual audit review process of Rider DCR.”)

⁴ Opinion and Order, p. 40, Case No. 10-388-EL-SSO, “The Commission finds that the Signatory Parties had negotiated in good faith for the right to participate in the DCR audits....[OCC] will have the opportunity to fully participate in any Commission proceeding *resulting* from the audit process....” (emphasis added).

denying the OCEA's⁵ Application for Rehearing on the issue of the Rider DCR audit process, the Commission specifically noted the Companies' contention that "there is no legal requirement that any parties be involved in the independent audit process and that OCEA will have all statutory rights available to it in any Commission proceeding which includes a review of audit *results*."⁶

The Commission must deny OCC's Motion at this time because it has not demonstrated that it has a real and substantial interest in the audit review process or that intervention at this stage of this proceeding will impair or impede the OCC's ability to adequately represent the interests of residential consumers in Ohio.

B. OCC Has No Legal Position to Advance With Respect to the Audit Review Process.

OCC states in support of its Motion, "OCC's advocacy for residential customers will include advancing the position that [the Companies'] customers should receive adequate service at a reasonable rate under Ohio law." Motion p.2. The OCC cites Section 4905.22, Revised Code, in support of the legal position it intends to advance. However, the only purpose of this proceeding thus far is the issuance of an RFP for, and selection of, an independent auditor to conduct the audit review process. The audit review process has no relation to "necessary and adequate service and facilities," nor whether the Companies' charges for service are "just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission" as provided in the relevant statute.

⁵ Citizens Power, Ohio Consumers' Counsel, and the Natural Resources Defense Council (Ohio Consumer and Environmental Advocates).

⁶ Third Entry on Rehearing, February 9, 2011, Case No. 10-388-EL-SSO (emphasis added).

As a non-Signatory Party to the Stipulation which established the Rider DCR audit review process, the OCC simply has no legal argument to advance at this stage of the proceeding. Thus, while claiming that its legal position “is therefore directly related to the merits of this case that is pending before the PUCO,” that relation only manifests upon the filing of the completed audit report. The OCC’s legal position is premature until after the audit report is filed with the Commission. In other words, the OCC has “put the cart before the horse.”

C. There Are No Factual Issues to Develop in the Audit Review Process.

The OCC claims its intervention “will significantly contribute to the full development and equitable resolution of the *factual* issues.” Motion p.2 (emphasis added). However, there simply are no factual issues being developed at the audit review process phase of this proceeding. Instead, non-Signatory Parties “may fully participate in any Commission proceeding *resulting from* the audit process, including ample rights to discovery.”⁷ Indeed, the OCC has intervened in past proceedings after the audit report was filed—without objection by the Companies—and has issued discovery and filed comments therein. The OCC therefore previously has followed the Commission-approved process and sought intervention in Rider DCR proceedings after the audit report has been filed.

⁷ Opinion and Order, p.40, Case No. 10-388-EL-SSO (Emphasis added).

IV. CONCLUSION

For all of the foregoing reasons, the Commission should deny or defer ruling on OCC's Motion to Intervene at this time.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On January 4, 2016, the foregoing document was filed on the Public Utilities Commission of Ohio's Docketing Information System. The PUCO's e-filing system will electronically serve notice of the filing of this document and the undersigned has served electronic copies to the following parties:

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Case No(s). 15-1739-EL-RDR

Summary: Memorandum Memorandum Contra Ohio Consumers' Counsel's Motion to Intervene by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company electronically filed by Mr. Robert M. Endris on behalf of Burk, James W. Mr.