

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the Non-Market-)
Based Services Rider Contained in the Tariffs of)
Ohio Edison Company, The Cleveland Electric) **Case No. 18-1818-EL-RDR**
Illuminating Company and The Toledo Edison)
Company)

**MEMORANDUM CONTRA OF OHIO EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY
TO MOTION FOR LEAVE TO FILE MOTION TO INTERVENE OUT OF TIME
BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

On December 14, 2018, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the “Companies”) filed their annual review of their transmission riders (“Rider NMB”). Under the Commission’s rules, the intervention deadline in this proceeding was January 23, 2019. On January 30, 2019, seven days after the deadline, the Office of the Ohio Consumers’ Counsel (“OCC”) filed a Motion to Intervene, as well as a Motion for Leave to File Motion to Intervene Out of Time (“Motion for Leave”). OCC’s Motion for Leave should be denied because it fails to offer any explanation for missing the January 23, 2019 intervention deadline, much less the “extraordinary circumstances” required by law.

II. ARGUMENT

The Companies filed their Rider NMB application on December 14, 2018. The Commission’s rule governing this proceeding provides that “[a]ffected parties may file a motion to intervene and detailed comments on any issues concerning any application filed under this rule

within forty days of the date of the filing of the application.”¹ This rule has been in place since 2009. Under this rule, the deadline to move to intervene in this proceeding was January 23, 2019.

OCC filed its Motion to Intervene and Motion for Leave on January 30, 2019, one week after the intervention deadline. Commission rules provide that “[a] motion to intervene which is not timely will be granted *only under extraordinary circumstances*.”² While OCC’s Motion for Leave acknowledges its Motion to Intervene was late, OCC offers no explanation whatsoever for missing the January 23, 2019 intervention deadline. Rather, OCC’s Motion for Leave simply asserts that there is good cause to grant its late intervention “because OCC’s participation will assist the PUCO in reviewing the complex issues associated with” Rider NMB.³ OCC never addresses the applicable legal standard for late intervention. Because OCC’s Motion for Leave is legally insufficient, the Commission should deny OCC’s Motion for Leave.

The Commission has routinely denied untimely interventions where no extraordinary circumstances were present.⁴ OCC is not exempt from this rule. For instance, OCC has been denied intervention when it filed a motion to intervene eight days after the deadline.⁵ Failure to include any reason at all for untimely intervention is grounds for denial of intervention.⁶ In fact,

¹ O.A.C. 4901:1-36-03(F).

² O.A.C. 4901:1-11(F) (emphasis added).

³ Memorandum in Support of Motion for Leave, at 2.

⁴ *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider et al.*, Case No. 14-1693-EL-RDR et al., Entry (Jan. 7, 2016) at 9; *In re AEP Ohio*, Case No. 10-2376-EL-UNC, Opinion and Order (Dec. 14, 2011) at 9; *In the Matter of the Review of the Alternative Energy Rider Contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 11-5201-EL-RDR, Opinion and Order (Aug. 7, 2013) at 7-8.

⁵ *See In the Matter of Muskingum River Plant for Certification as an Eligible Ohio Renewable Energy Facility*, Case No. 10-911-EL-REN, Entry (Aug. 26, 2010) at 2 (“The attorney examiner finds that BFC and OCC have not shown that extraordinary circumstances exist for granting their untimely motions to intervene, as required by Rule 4901-1-11(F), O.A.C. ... Accordingly, the motions to intervene filed by BFC and OCC are denied.”).

⁶ *In the Matter of the Application of Duke Energy Ohio, Inc. to Establish and Adjust the Initial Level of its Distribution Reliability Rider*, Case No. 09-1946-EL-RDR, Opinion and Order (Apr. 14, 2010) at 10 (denying an untimely motion to intervene where the movant offered no explanation as to why it was filed out of time).

OCC itself has insisted that lack of any explanation for why intervention was untimely is itself grounds for denial:

GMEC's statement of its reason for intervening provides no cause for its untimely intervention in these proceedings, and certainly does not display any extraordinary circumstances. GMEC's request does not merit any consideration regarding an exception to the prohibition against untimely motions to intervention, and its Motion should be denied.⁷

Without the requisite showing of extraordinary circumstances, the Commission does not need to consider whether the movant otherwise meets the criteria for granting intervention.⁸

The Commission has routinely denied late intervention in many cases involving an insufficient showing of extraordinary circumstances. It should similarly deny OCC's Motion for Leave which is utterly devoid of any effort to show extraordinary circumstances justifying late intervention.

III. CONCLUSION

For the foregoing reasons, the Commission should deny OCC's Motion for Leave to File Motion to Intervene Out of Time.

Respectfully submitted,

⁷ *Ohio Consumers' Counsel, Industrial Energy Users-Ohio and American Municipal Power-Ohio v. The Dayton Power and Light Company et al.*, Case No. 02-2364-EL-CSS et al., Ohio Consumers' Counsel's Memorandum Contra to Green Mountain Energy Company's Motion to Intervene, June 12, 2003, at 4 (emphasis added).

⁸ *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan et al.*, Case Nos. 08-917-EL-SSO et al., Entry (June 29, 2011) at 10 ("Given that their motions were untimely filed and they have not demonstrated extraordinary circumstances to justify late intervention, the Commission finds it unnecessary to determine whether appellants have otherwise satisfied the criteria for intervention.")

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CERTIFICATE OF SERVICE

On February 14, 2019, 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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Summary: Memorandum Memorandum Contra of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company to Motion for Leave to File Motion to Intervene Out of Time by OCC electronically filed by Mr Robert M Endris on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company