

**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)

**SURREPLY IN SUPPORT OF MEMORANDUM CONTRA OF OHIO EDISON
COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE
TOLEDO EDISON COMPANY TO REPLY OF THE OFFICE OF THE OHIO
CONSUMERS' COUNSEL**

Respectfully submitted,

/s/ Robert M. Endris

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I. INTRODUCTION

Where, as here, a movant seeking untimely intervention claims “extraordinary circumstances” for the first time in Reply to a memorandum contra, it is proper to allow an opportunity to address the newly asserted arguments. Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”), respectfully submit this Surreply to the Reply of the Office of the Ohio Consumers’ Counsel (“OCC”) filed with the Public Utilities Commission of Ohio (“Commission”) on February 21, 2019. As will be explained more fully below, OCC’s Reply presents circumstances so ordinary that they fall well short of the Commission’s standard and should be denied.

II. BACKGROUND

On December 14, 2018, the Companies filed their Non-Market-Based Services Rider (“Rider NMB”) Report in Support of Staff’s 2019 Annual Review (“2019 Report”). The deadline to intervene was January 23, 2019. On January 30, 2019, seven days after the deadline, OCC filed a Motion to Intervene, as well as a Motion for Leave to File Motion to Intervene Out of Time (“Motion for Leave”). On February 14, 2019, the Companies filed their Memorandum Contra OCC’s Motion for Leave (“Companies’ Memorandum Contra”) noting, among other things, that OCC had failed to assert “extraordinary circumstances” to justify its untimely motion to intervene as required by the Commission’s rules.

On February 21, 2019, OCC filed its Reply to the Companies’ Memorandum Contra. In its Reply, OCC offered for the first time an explanation why its Motion to Intervene was untimely, asserting its lateness resulted from the press of business and the holidays:

OCC’s review of the Utilities’ proposed tariffs was delayed due to the press of business, and OCC determined its interest and need to participate in this proceeding later than usual. The short procedural timeframe in this proceeding, plus the holiday season, plus OCC’s

consumer advocacy in other major PUCO proceedings combined to create “extraordinary circumstances” resulting in OCC’s late-filed Motion to Intervene.

OCC Reply at p. 4. As explained below, OCC’s excuses do not constitute extraordinary circumstances that justify granting a late-filed intervention.

III. ARGUMENT

Under Section 4901-1-11(F), OAC, late intervention will be granted only under “extraordinary circumstances.” In its Reply, OCC for the first time offers the press of business and the holidays as reasons for missing the intervention deadline. Neither of these reasons is legally sufficient or supported by facts.

The Commission has ruled that the press of business does not qualify as extraordinary circumstances justifying OCC’s late intervention. In *In the Matter of Muskingum River Plant for Certification as an Eligible Ohio Renewable Energy Facility*,¹ after filing eight days past the intervention deadline, OCC argued unsuccessfully that additional time was needed to determine its interest in participating in the case. The Commission denied OCC’s late intervention, explaining that OCC’s remedy for needing more time to review was to timely request an extension of the deadline, not to file late: “While BFC and OCC contend that additional time was needed in order to evaluate Muskingum’s application, the proper action to take under those circumstances is to timely request for an extension of the intervention deadline.”² Here as well, OCC did not request an extension of the intervention deadline. Because Commission precedent dictates that press of business does not qualify as extraordinary circumstances, OCC’s request for late intervention should be denied.

¹ Case No. 10-911-EL-REN (Aug. 26, 2010) (“*Muskingum*”).

² *Muskingum*, p. 2.

Further, OCC cannot raise the “short procedural schedule” as extraordinary circumstances. The forty-day intervention period has been a feature of the Commission’s rules for transmission cost recovery riders since 2008.³ The four major electric distribution utilities in Ohio have filed *many* transmission cost recovery rider proceedings under this same forty-day intervention deadline. Nor can OCC credibly contend that the holiday season qualifies as extraordinary circumstances. The annual holiday season is foreseeable. Moreover, OCC had several days before the holiday season and approximately three weeks after the holidays to file a timely motion to intervene, or a timely motion for extension. For these reasons as well, OCC’s late intervention should be denied.

IV. CONCLUSION

This Surreply is necessary to allow the Companies an opportunity to address arguments that OCC withheld until its Reply to the Companies’ Memorandum Contra. Because OCC’s claimed “extraordinary circumstances” are not supported by Commission precedent or the facts, the Commission should deny OCC’s Motion for Leave to file an untimely motion to intervene.

Respectfully submitted,

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³ *In the Matter of the Adoption of Rules for Standard Service Offer, Corporate Separation Rules, Reasonable Arrangements, and Transmission Riders for Electric Utilities Pursuant to Sections 4928.14, 4928.17, and 4905.31, Revised Code, as amended by Amended Substitute Senate Bill No. 221, Case No. 08-777-EL-ORD, Finding and Order, September 17, 2008 (Adopting a forty-day intervention deadline where Staff had proposed thirty days and OCEA (including OCC) had proposed five days before any hearing).*

*Attorney for Ohio Edison Company, The Cleveland
Electric Illuminating Company and The Toledo
Edison Company*

CERTIFICATE OF SERVICE

On February 26, 2019, the foregoing document was filed on the Public Utilities Commission of Ohio's Docketing Information System. The Commission'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: Reply Surreply in Support of Memorandum Contra of Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company to Reply of the Office of the Ohio Consumers' Counsel electronically filed by Mrs. Ashlee E Waite on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company and Endris, Robert M Mr.