**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the 2011 through 2016 Review of the Energy Efficiency and Peak Demand Reduction Rider Contained in the Tariffs of Ohio Power Company. | )  )  )  ) | Case No. 17-0030-EL-RDR |

**MOTION TO INTERVENE**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

In this case, the Public Utilities Commission of Ohio ("PUCO") ordered its staff to issue a request for proposal for a third-party audit of the Ohio Power Company's ("AEP Ohio") 2011 through 2016 energy efficiency and peak demand reduction programs.[[1]](#footnote-2) The audit will include, among other things, a review of (i) accounting accuracy, (ii) prudency, (iii) compliance of the energy efficiency rider mechanism, and (iv) prudency of management decisions in administering AEP Ohio's energy efficiency programs.[[2]](#footnote-3) The audit will focus not only on the cost of the programs, but also on AEP Ohio's profits (shared savings) and lost revenues charged to customers.[[3]](#footnote-4)

The Office of the Ohio Consumers’ Counsel ("OCC") files this motion on behalf of AEP Ohio's nearly 1.3 million residential electric customers who pay for AEP's energy efficiency and peak demand reduction programs. The PUCO should grant OCC's motion to intervene for the reasons set forth in the attached memorandum in support.

Respectfully submitted,

BRUCE WESTON (0016973)

OHIO CONSUMERS' COUNSEL

*/s/ Christopher M. Healey*

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**MEMORANDUM IN SUPPORT**

In this proceeding, Larkin & Associates PLLC (the "Auditor"), as ordered by the PUCO, will audit AEP Ohio's energy efficiency programs for the period 2011 through 2016.[[4]](#footnote-5) Among other things, the Auditor will (i) review AEP Ohio's energy efficiency portfolio plans, (ii) review the actual cost of the programs, which customers pay, (iii) verify that AEP Ohio did not collect lost distribution revenues from customers from 2012 to 2014, (iv) review the prudency of AEP Ohio's management decisions in administering its energy efficiency programs, (v) determine whether expenses, including meals, travel, and entertainment, are prudent and related to energy efficiency, (vi) confirm the accuracy of rates charged to customers for energy efficiency, (vii) confirm the accuracy of charges to customers for utility profits (shared savings), (viii) confirm the accuracy of charges to customers for lost revenues, and (ix) verify customer rebates and incentives.[[5]](#footnote-6)

This audit, therefore, may affect what AEP Ohio's residential consumers pay for energy efficiency, including program costs, utility profits, and lost revenues. OCC has authority under law to represent the interests of AEP Ohio's residential utility customers under 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 where the PUCO will review and rule upon, among other things, the prudency of energy efficiency expenditures charged to customers. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the PUCO 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 OCC's interest is representing the residential customers of AEP Ohio in this case where the PUCO will review an audit of charges to customers for energy efficiency costs. OCC's 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, OCC's advocacy for residential customers will include advancing the position that the rates consumers pay for electric service (including charges for energy efficiency) should be no more than what is reasonable and lawful under Ohio law. 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, 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, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that 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, OCC has a real and substantial interest in this case involving the Utility's energy efficiency programs, which affect the rates residential customers pay for electric service.

In addition, 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), which OCC already has addressed and which OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the PUCO shall consider the "extent to which the person's interest is represented by existing parties." While OCC does not concede the lawfulness of this criterion, 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, in deciding two consolidated appeals regarding OCC's right to intervene, the Supreme Court of Ohio has confirmed that "intervention ought to be liberally allowed."[[6]](#footnote-7) In those cases, OCC explained in its motion to intervene that the proceeding could negatively impact residential consumers, and OCC established that the interests of consumers would not be represented by existing parties.[[7]](#footnote-8) Because there was no evidence disputing OCC's position, nor any evidence that OCC's intervention would unduly delay the proceedings, the Supreme Court found that the PUCO could not deny OCC the right to intervene.[[8]](#footnote-9)

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 PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

BRUCE WESTON (0016973)

OHIO CONSUMERS' COUNSEL

*/s/ Christopher M. Healey*

Christopher M. Healey (0086027)

Counsel of Record

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(willing to accept service via email)

**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 3rd day of November 2017.

*/s/ Christopher M. Healey*

Christopher M. Healey

Assistant Consumers' Counsel

**SERVICE LIST**

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1. Entry (Feb. 1, 2017). [↑](#footnote-ref-2)
2. *Id.* at RFP at 1. [↑](#footnote-ref-3)
3. *Id.* [↑](#footnote-ref-4)
4. Entry (Mar. 29, 2017). [↑](#footnote-ref-5)
5. Entry at 2 (Feb. 1, 2017). [↑](#footnote-ref-6)
6. See Ohio Consumers' Counsel v. Pub. Util. Comm., 111 Ohio St. 3d 384, 2006-Ohio-5853, ¶ 20 (2006). [↑](#footnote-ref-7)
7. Id. ¶¶ 18-20. [↑](#footnote-ref-8)
8. Id. ¶¶ 13-20. [↑](#footnote-ref-9)