**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of Establishing the Nonbypassable Recovery Mechanism for Net Legacy Generation Resource Costs Pursuant to R.C. 4928.148. | ))) | Case No. 19-1808-EL-UNC |

**MOTION TO INTERVENE**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Public Utilities Commission of Ohio (“PUCO”) will be determining, per House Bill 6, how monopoly electric utility customers in Ohio will be charged to subsidize two uneconomic coal power plants. The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene on behalf of Ohio’s residential electric utility consumers. The PUCO seeks comments on its Staff’s proposal to establish a Legacy Generation Resource Rider (referenced in this motion as “Coal Subsidy Charge”).

The PUCO Staff filed its proposal on September 25, 2019, for the PUCO to authorize electric utilities to charge consumers for the OVEC plants in Ohio and Indiana through the Coal Subsidy Charge. The PUCO is considering the Coal Subsidy Charge pursuant to the directive by the Ohio General Assembly that each electric utility in Ohio charge customers to subsidize the two coal plants located in Ohio and Indiana, respectively.[[1]](#footnote-2) The reasons the PUCO should grant OCC’s motion are further set forth in the attached memorandum in support.

Respectfully submitted,

 Bruce Weston (#0016973)

 Ohio Consumers’ Counsel

 */s/ Bryce McKenney*

 Bryce McKenney (0088203)

 Counsel of Record

 William J. Michael (0070921)

 Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, 7th Floor

Columbus, Ohio 43215-4213

Telephone [McKenney]: (614) 466-9585

Telephone [Michael]: (614) 466-1291

Bryce.mckenney@occ.ohio.gov

 William.michael@occ.ohio.gov

(Willing to accept service by e-mail)

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of Establishing the Nonbypassable Recovery Mechanism for Net Legacy Generation Resource Costs Pursuant to R.C. 4928.148. | ))) | Case No. 19-1808-EL-UNC |

**MEMORANDUM IN SUPPORT**

The PUCO Staff filed a proposal on September 25, 2019, for the PUCO to authorize Ohio’s monopoly electric utilities to collect subsidies from consumers for the OVEC plants in Ohio and Indiana through the Coal Subsidy Charge. The PUCO Staff proposed that the Coal Subsidy Charge include two parts – a statewide charge on the electric bills of Ohio electric utility consumers and an adjustment mechanism for giving consumers’ money to the utilities (AEP, DP&L and Duke) that have an ownership interest in the Ohio and Indiana coal plants. OCC has authority under law to represent the interests of Ohio’s residential electric 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 all of Ohio’s residential electric utility consumers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding regarding the charges consumers will pay to subsidize coal-fired power plants in Ohio and Indiana. 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 proceedings; and

(4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

First, the nature and extent of OCC’s interest is representing Ohio’s residential electric utility consumers in this case where they will be asked to pay charges to subsidize two coal-fired power plants, one in Ohio and the other in Indiana. This interest is different from that of any other party and especially different from the electric utilities, whose advocacy includes the financial interests of stockholders.

Second, OCC’s legal position will include, without limitation, advancing the position that consumers should pay no more for the Coal Subsidy Charge than is fair and allowed under House Bill 6.[[2]](#footnote-3) Residential customers should not be required to pay more than a fair ratemaking share of the subsidies that House Bill 6 allows. In this regard, OCC will work toward certainty that the subsidy charges by December 31, 2030, or sooner.

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 Ohio’s residential electric utility consumers, OCC has a very real and substantial interest in this case where the PUCO will establish the charges that customers must pay for two coal-fired power plants located in Ohio and Indiana.

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 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 consumers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio (“Court”) confirmed OCC’s right to intervene in PUCO proceedings in deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying OCC’s interventions and that OCC should have been granted intervention in both proceedings.[[3]](#footnote-4)

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 electric utility consumers, the PUCO should grant OCC’s motion to intervene.

Respectfully submitted,

 Bruce Weston (#0016973)

 Ohio Consumers’ Counsel

 */s/ Bryce McKenney*

 Bryce McKenney (0088203)

 Counsel of Record

 William J. Michael (0070921)

 Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, 7th Floor

Columbus, Ohio 43215-4213

Telephone [McKenney]: (614) 466-9585

Telephone [Michael]: (614) 466-1291

Bryce.mckenney@occ.ohio.gov

 William.michael@occ.ohio.gov

(Willing to accept service by e-mail)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below viaelectric transmission this 17th day of October 2019.

*/s/ Bryce A. McKenney*

Bryce A. McKenney
Counsel of Record

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

**SERVICE LIST**

|  |  |
| --- | --- |
| John.jones@ohioattorneygeneral.govrnkurtz@BKLlawfirm.comkboehm@BLKlawfirm.comjkylercohn@BKLlawfirm.comstnourse@aep.com | mpritchard@mcneeslaw.combojko@carpenterlipps.commjsettineri@vorys.comglpetrucci@vorys.com |

1. Ohio Adm.Code 4901:1-38. [↑](#footnote-ref-2)
2. *See* R.C. 4905.22 (“All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission . . .”). [↑](#footnote-ref-3)
3. *See Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 13-20 (2006). [↑](#footnote-ref-4)