

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Matter of the Application of)
Columbus Southern Power Company and)
Ohio Power Company to Adjust the)
Transmission Component of Each)
Company's Standard Service Tariff and to)
Combine that Component with its)
Transmission Cost Recovery Rider.)

Case No. 08-1202-EL-UNC

**MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Pursuant to R.C. Chapter 4911, R.C. 4903.221, Ohio Adm. Code 4901-1-11, and Ohio Adm. Code 4901-1-12, the Office of the Ohio Consumers' Counsel ("OCC"), on behalf of all the residential utility consumers of Columbus Southern Power Company and Ohio Power Company (collectively, "AEP" or "Companies"), moves to intervene with regard to the Companies' Transmission Cost Recovery Rider ("TCRR"). The Public Utilities Commission of Ohio ("Commission" or "PUCO") is, in this proceeding, setting the TCRR that customers will pay.

The basis for OCC's Motion to Intervene is set forth in the attached Memorandum in Support.

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Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read 'JL Roberts', with a long horizontal flourish extending to the right.

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**MEMORANDUM IN SUPPORT
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

On October 31, 2008, the Companies submitted their application ("Application") to the Commission for authority to recover transmission costs from customers. OCC files this Motion to Intervene in this proceeding to protect the interests of residential consumers in AEP's service territory.

II. ARGUMENT

A. OCC's Motion to Intervene Should be Granted.

OCC moves to intervene under its legislative authority to represent all residential utility consumers pursuant to 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 consumers may be "adversely affected" by this case, especially if the consumers are unrepresented in a

proceeding regarding transmission rates charged by Companies. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission 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 are representing all of the Companies' approximately 1.2 million residential consumers. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of shareholders.

Second, OCC's advocacy for all of the Companies' residential consumers will include advancing the position that transmission rates should be no more than what is reasonable and permissible under Ohio law for service that is adequate under Ohio law. The Companies' rates should be no more than what is reasonable and lawful. OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, the authority having regulatory control of public utilities' rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceeding. OCC, with its longstanding expertise and experience in PUCO proceedings, will 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 statutory residential utility consumer advocate, OCC has a very real and substantial interest in this case where residential consumers are being required to pay transmission rates of Companies' that change on a periodic basis as Companies' transmission costs change.

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) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission 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 because it uniquely has been designated as the state representative of the interest of all 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 recently confirmed OCC's right to intervene in PUCO proceedings when the Court ruled on an appeal that the PUCO erred

by denying the OCC's intervention.¹ The Court found that the PUCO abused its discretion in denying OCC's intervention and that OCC should have been granted intervention.²


OCC meets the criteria set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11 as well as the precedent established by the Supreme Court of Ohio for intervention. On behalf of all of the Companies' residential consumers, the Commission should grant OCC's Motion to Intervene.

III. CONCLUSION

OCC's Motion should be granted. OCC represents all the Companies' approximately 1.2 million residential customers who are required to pay for its transmission costs. OCC respectfully requests that the Commission grant its Motion to Intervene in this case.

Respectfully submitted,

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CONSUMERS' COUNSEL



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¹ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20 (2006).

² *Id.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's *Motion to Intervene* was provided to the persons listed below via first class U.S. Mail, postage prepaid, this 13th day of November 2008.



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