

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Establishment of)
4901:1-10-10(B) Minimum Reliability)
Performance Standards for Columbus) Case No. 09-756-EL-ESS
Southern Power Company and)
Ohio Power Company.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case in which Columbus Southern Power Company and Ohio Power Company (collectively "AEP" or "Company") have filed an Application proposing new reliability performance standards that are part of the Electric Service and Safety Standards ("ESSS"). Each of the Ohio Electric Distribution Utilities ("EDUs") was required by the Public Utilities Commission of Ohio ("PUCO" or "Commission") to file such proposed standards.¹ OCC moves to intervene on behalf of all of the approximately 1.3 million residential utility consumers of AEP. The reasons the Commission should grant OCC's Motion to Intervene ("Motion") are further set forth in the attached Memorandum in Support.

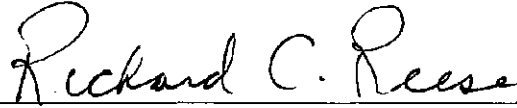
The Commission should grant OCC's Motion to Intervene in order to afford OCC the opportunity to comment on AEP's proposed reliability standards and assist in correcting any deficiencies in the proposed standards, consistent with such comments.

¹ *In re the Commission's Review of Chapters 4901:1-9, 4901:1-10, 4901:1-21, 4901:1-22, 4901:1-23, 4901:1-24, and 4901:1-25, of the Ohio Administrative Code, Case No. 06-653-EL-ORD, Entry on Rehearing at 9-10 (May 6, 2009) ("ESSS Case").*

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Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
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A handwritten signature in cursive script that reads "Richard C. Reese". The signature is written in dark ink and is positioned above a horizontal line.

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On May 6, 2009, the Commission issued an Entry on Rehearing requiring the EDUs to file proposed new standards within 60 days following the effective date of the new ESSS.² The standards relate to the frequency and duration of outages experienced on the EDU's electric distribution systems, and are required by Ohio Adm. Code 4901:1-10-10(B)(4). In proposing the standards, the EDUs are required to take into account factors that include the historical performance of their distribution facilities, system design, and the results of customer perception surveys.³ The procedural requirements that the Commission, and other parties must follow in considering the new outage-related reliability standards, as well as the procedures the EDUs must follow in proposing the new standards are set forth in Ohio Adm. Code 4901:1-10-10(B)(6).

OCC moves to intervene in this case in order to, among other matters, provide comments at a later date in the proceeding regarding adjustments that should be made to AEP's proposed standards and changes that should be made to the method by which the Company develops its proposed standards. OCC has authority under Ohio law to

² Id. at 9-10.

³ Ohio Adm. Code 4901:1-10-10(B)(4)(a) and (b).

represent the interests of all the approximately 1.3 million residential utility customers of AEP, pursuant to R.C. Chapter 4911.

II. ARGUMENT

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 were unrepresented in a proceeding that involves standards that directly impact the quality of service received by the customers of the EDUs. 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 is representing the residential consumers of AEP in order to help ensure that appropriate electric reliability standards are adopted by the Commission. This interest is different than that of any other party and especially different than that of the utilities whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for consumers will include advancing the position that AEP's initial filing in this case is does not adequately support the Company's proposed new reliability standards. 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 the terms under which public utilities provide their services.

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 was significantly involved in the ESSS rulemaking making that adopted new criteria for the calculation of outage-related standards. From this experience as well as other involvement in reliability-related matters, the OCC has information and will develop additional 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 residential utility consumer advocate, OCC has a very real and substantial interest in this case which will determine just what standards constitute reasonable benchmarks for the frequency and duration of outages experienced by residential customers of AEP.

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 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 confirmed OCC’s right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC’s intervention and that OCC should have been granted intervention.⁴

III. CONCLUSION

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. AEP’s residential customers expect and pay for reliable service. The proposed new reliability standards should assist in ensuring that AEP’s customers receive the level of service for which they pay. The Commission should grant OCC’s Motion to Intervene.

⁴ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below *via* regular U.S. Mail Service, postage prepaid, this 6th day of November 2009.



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