

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Alternative)	
Energy Compliance Plan Under Rule)	Case No. 10-484-EL-ACP
4901:1-40-03(C), Ohio Administrative)	
Code, by Columbus Southern Power)	
Company.)	
)	
In the Matter of the Annual Alternative)	
Energy Compliance Plan Under Rule)	Case No. 10-485-EL-ACP
4901:1-40-03(C), Ohio Administrative)	
Code, by Ohio Power Company.)	

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in these cases involving the plans docketed by Columbus Southern Power Company and Ohio Power Company ("AEP" or "Companies") for compliance with future annual advanced- and renewable-energy benchmarks mandated by Amended Substitute Senate Bill 221 ("S.B. 221").¹ The Companies' plans for compliance with the new law could have a significant effect on the rates and reliability of electric service for AEP's approximately 1.2 million residential utility consumers on whose behalf OCC is seeking to intervene. The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

¹ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Terry L. Etter

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MEMORANDUM IN SUPPORT

R.C. 4928.64 establishes benchmarks for alternative energy resources, including renewable energy resources, which electric distribution utilities in Ohio must meet each year through 2025. Ohio Adm. Code 4901:1-40-03(C) requires the Companies to “file a plan for compliance with future annual advanced- and renewable-energy benchmarks, including solar, utilizing at least a ten-year planning horizon.” The Companies jointly submitted their Alternative Energy Compliance Plans on April 15, 2010.

The Companies may collect the cost of compliance with the alternative energy benchmarks from customers.² OCC has authority under law to represent the interests of all the approximately 1.2 million Ohio residential utility customers of AEP, pursuant to R.C. Chapter 4911.

² R.C. 4928.64(E) specifically makes the costs bypassable only by consumers who choose to receive electric service from a supplier other than AEP. See also Ohio Adm. Code 4901:1-40-03(A)(3).

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 these consumers were unrepresented in a proceeding concerning AEP’s generation and purchase of electricity from alternative energy sources for its statutory requirement to meet the alternative energy benchmarks in S.B. 221. Thus, OCC satisfies this element of the intervention standard in R.C. 4903.221.

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 all of AEP’s residential customers. This interest reflects that rates consumers pay for electric service could include the result of the Companies’ claimed costs of compliance with the alternative energy benchmarks in S.B. 221. OCC also has an interest in ensuring that consumers receive the benefit from increasing the supply of advanced and renewable energy in the mix of energy sources serving Ohioans, as intended in the new energy law. This interest is different from that of any other party and especially different from that of the utility, whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for consumers will include advancing the position that rates that include compliance costs be reasonable, as required by R.C. 4905.22. 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 residential utility consumer advocate, OCC has a very real and substantial interest in this case where rates for residential customers served by the Companies are at stake.

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.³

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 consumers, the Commission should grant OCC's Motion to Intervene.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Terry L. Etter

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

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene by the Office of the Ohio Consumers' Counsel* was served on the persons stated below via First Class U.S. Mail, postage prepaid, this 28th day of May 2010.

/s/ Terry L. Etter

Terry L. Etter

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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Mrs. Mary V. Edwards on behalf of Etter, Terry L. and Office of the Ohio Consumers' Counsel