

OCC's Motion should be granted because OCC meets the legal standards for intervention on behalf of consumers, as explained in detail in the attached Memorandum in Support. Additionally, the Commission should not grant Ohio Power's request for a decision on this application before the end of December 2010 for the reasons set forth in OCC's comments.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



Ann M. Hotz, Counsel of Record
Greg J. Poulos
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (Telephone)
(614) 466-9475 (Facsimile)
hotz@occ.state.oh.us
poulos@occ.state.oh.us

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Power Company for Approval of the)	
Shutdown of Unit 5 of the Philip Sporn)	Case No. 10-1454-EL-RDR
Generating Station and to Establish a)	
Plant Shutdown Rider.)	

MEMORANDUM IN SUPPORT

I. INTRODUCTION

On behalf of Ohio Power and Columbus Southern Power Company, the American Electric Power Company ("AEP") requested authority to establish a regulatory asset to defer any net costs associated with the early closure of a generating or generating units, in its Electric Security Plan ("ESP") proceeding.³ Additionally, AEP requested that it be permitted to file a request with the Commission for recovery of prudent early closure costs through a non-bypassable rider, including carrying costs at the weighted average cost of capital rate.⁴ Moreover, AEP asked the Commission to permit it to come before the Commission during the ESP period to determine the appropriate treatment for accelerated depreciation and other net early closure costs.⁵

In response, the Commission stated:

The Commission is not convinced that it is appropriate to approve the Companies' request for recovery of net cost associated with an unanticipated shut down. Despite the arguments of the Companies

³ *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan ; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets. et. al.*, Case No. 08-917-EL-SSO et. al., Application at 18-19.

⁴ *Id.*

⁵ *Id.* Company Exhibit 6 at 28.

to the contrary, we are persuaded by the arguments of the Staff that there may be offsetting positive value associated with the Companies' generation fleet.⁶

Additionally, the Commission stated:

As to the Companies' request for authority to file with the Commission to determine the appropriate treatment associated with an earlier-than-anticipated shut down, the Commission finds this aspect of the application to be reasonable and, accordingly, the request should be granted.

II. INTERVENTION

Pursuant to R.C. Chapter 4911, the OCC moves to intervene under its legislative authority to represent residential utility customers of Ohio. OCC meets the standards for intervention found in Ohio's statutes and the PUCO's rules.

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 these proceedings, especially if the consumers are unrepresented in proceedings where the Commission is seeking to determine the appropriate treatment of early retirement costs, in particular whether Ohio Power should be permitted to collect those costs from its residential customers. Residential customers should not be required to pay such costs if not provided for under law and if the collection of such costs is unreasonable and the incurrence of such costs is or was imprudent. Thus, residential consumers "may be adversely affected" by this proceeding if the Commission determines that Ohio Power may collect such costs

⁶ *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan ; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets. et. al.,* Case No. 08-917-EL-SSO et. al., Opinion and Order (March 18, 2009) at 53.

from its residential customers. Accordingly, OCC satisfies the intervention standard in R.C. 4903.221.

OCC also meets the criteria for intervention in R.C. 4903.221(B), which requires the PUCO, in ruling on motions to intervene, to consider the following:

- (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 the OCC's interest is to represent the residential customers of electric utilities regarding rates paid by residential customers which are likely to be affected by determinations in this proceeding. This interest is different than that of any other party and especially different than that of electric utilities whose advocacy includes the financial interest of stockholders.

Second, OCC's legal positions include, without limitation, that the rates paid by residential customers and the service provided for those rates should be reasonable and lawful. This legal position directly relates to the merits of the case, in which the appropriate treatment of early retirement costs are at issue.

Third, OCC's intervention will not unduly prolong or delay this proceeding, but should provide insights that will expedite the PUCO's effective evaluation of the Companies' application. OCC, with its longstanding expertise and experience in various PUCO proceedings, including the Companies' standard service offer filings and various

other cost recovery cases arising from those filings, will duly allow for the efficient processing of this proceeding with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. This case significantly relates to analysis of the costs the Company incurred or will incur from the retirement of generation plant, a matter about which OCC has obtained long-standing experience and knowledge. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding this proceeding 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 for the State of Ohio, OCC has a real and substantial interest in this proceeding where the outcome can have an effect on the electric service rates paid by residential consumers.

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.⁷

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

III. COMMENTS ON THE OHIO POWER PROPOSED TIMELINE

The Commission should not cater to the very short timeline Ohio Power proposes for this case. In addition to the legal issues this case presents, it also presents numerous factual issues about costs and the prudence of Ohio Power's actions with regard to the retirement of Sporn Unit 5. Interested parties must be given an opportunity to conduct sufficient discovery on these factual issues and will not be afforded that opportunity under Ohio Power's proposed timeline.

Ohio Power attempts to tie the need for a shortened timeline to its need to give PJM a 90-day advanced request and notification for closure of a generating facility. But the Commission's decision need not be completed within 90 days because the 90-day notice requirement is a minimum, not a maximum requirement.⁸

Finally, Ohio Power has been aware of its opportunity to file this case since the Commission issued its Opinion and Order in the ESP proceeding on May 13, 2010. Yet

⁷ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶13-20 (2006).

⁸ *Id.* at 6, ¶13.

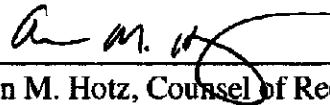
Ohio Power waited until October 2010 to file its application. Because Ohio Power was the party who controlled when this application could be filed, the Commission should not agree to the shortened procedural schedule Ohio Power requested.

IV. CONCLUSION

For the reasons stated above, the Commission should grant OCC's motion to intervene and, in the interest of fairness for Ohio customers, should not adhere to the unreasonably short procedural timeline that Ohio Power requested.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

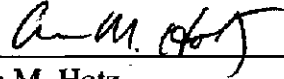


Ann M. Hotz, Counsel of Record
Greg J. Poulos
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (Telephone)
(614) 466-9475 (Facsimile)
hotz@occ.state.oh.us
poulos@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene and Comments* was served on the persons stated below via first class U.S. Mail, postage prepaid, this 20th day of October, 2010.



Ann M. Hotz
Assistant Consumers' Counsel

SERVICE LIST

Steve Nourse
AEP Service Corp.
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
stnourse@aep.com

William L. Wright
Attorney General's Office
Public Utilities Commission of Ohio
180 E. Broad St., 6th Fl.
Columbus, OH 43215
William.wright@puc.state.oh.us

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45839-1793
cmooney2@columbus.rr.com
drinebolt@ohiopartners.org

Samuel C. Randazzo
Joseph M. Clark
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
sam@mwncmh.com
jclark@mwncmh.com

Attorneys for Ohio Partners for Affordable
Energy

Attorneys for Industrial Energy Users-Ohio