

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Long-Term Forecast)	Case No. 11-2501-EL-FOR
Report of Columbus Southern Power)	Case No. 11-2502-EL-FOR
Company and Ohio Power Company)	
And related matters.)	

MEMORANDUM IN SUPPORT

I. INTRODUCTION

This is a forecasting case in which the Commission investigates the safety and adequacy of electric facilities to guide its energy policy and collects certain information as part of such investigation. R.C. 4935.01(A)(1) requires the Commission to

[e]stimate statewide and regional needs for energy for the forthcoming five- and ten-year periods which, in the opinion of the commission, will reasonably balance requirements of state and regional development, protection of public health and safety, preservation of environmental quality, maintenance of a sound economy, and conservation of energy and material resources. Other factors and trends which will significantly affect energy consumption such as the effects of conservation measures shall also be included....

To assist the Commission in this effort, R.C. 4935.04(C) requires major utilities in Ohio to file with the PUCO a long-term forecast report and specifies the content of the report.² The Commission has adopted rules implementing this statute in Ohio Adm. Code Chapters 4901:5-1, 4901:5-3 and 4901:5-5.

This case involves the review of the Long-Term Forecast Report the Companies jointly submitted on April 15, 2011. OCC has authority under law to represent the

² For electric transmission purposes, a major utility is defined as "[a]n electric transmission line and associated facilities of a design capacity of one hundred twenty-five kilovolts or more...." R.C. 4935.04(A)(1)(a).

interests of all of the Companies' approximately 1.2 million Ohio residential utility customers, pursuant to R.C. Chapter 4911.

II. OCC'S INTERVENTION

A. Intervention as of Right Under R.C. 4935.04(E)(1)

Ohio Adm. Code 4901-1-11(A)(1) provides that a person "shall be permitted to intervene" when an Ohio statute "confers a right to intervene." The General Assembly recognized the significant interests of residential electric customers in forecast cases by directing the Commission to authorize OCC's intervention in long-term forecast cases, so that OCC can be heard.

Specifically, R.C. 4935.04(E)(1) states:

The power siting board, the office of consumers' counsel, and all other persons having an interest in the [long-term forecast report] proceedings *shall be afforded the opportunity to be heard and to be represented by counsel.* (Emphasis added)

The specific reference to OCC in the statute gives OCC the right to intervene in long-term forecasting cases. The Commission should grant OCC's Motion.

B. Intervention Under R.C. 4903.221 and Ohio Adm. Code 4901-1-11(A)(2)

Although R.C. 4935.04(E)(1) is sufficient for granting OCC's intervention, OCC also meets the intervention criteria of R.C. 4903.221. That statute 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 customers may be adversely affected by this case, especially if these customers were unrepresented in a proceeding affecting the reliability of the Companies' service, as reflected in their long-

term forecast of loads and the adequacy of their resource plan to meet that load. 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 all of AEP's residential customers, in order to protect the customers' interests. 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 customers will include advancing the position that long-term forecasts of AEP's loads must be realistic and that resource plans to meet that load must be adequate and effective, so that the Companies may furnish adequate service at reasonable rates to customers.³ 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.

³ R.C. 4905.22.

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 residential utility customers, OCC has a very real and substantial interest in this case where the Companies' ability to furnish adequate service to customers at a reasonable rate is 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 customers. 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

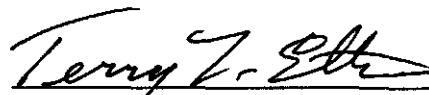
denying its intervention. The Court found that the PUCO abused its discretion in denying OCC's intervention and that OCC should have been granted intervention.⁴

III. CONCLUSION

R.C. 4935.04(E) confers upon OCC a right to intervene in this proceeding and is, in and of itself, a basis for granting OCC's motion to intervene. Further, 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. In order to ensure that the interest of Ohio's residential customers is protected, the Commission should grant OCC's Motion to Intervene.

Respectfully submitted,

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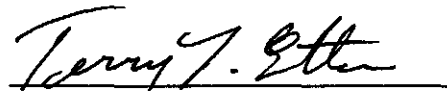
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⁴ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20 (2006).

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below via First Class U.S. Mail, postage prepaid, this 2nd day of June 2011.



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