

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Power Company for Approval of a) Case No. 12-2999-EL-UNC
Change in Bill Format.)

**MOTION TO INTERVENE,
MOTION TO SUSPEND AUTOMATIC APPROVAL
AND
INITIAL COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene¹ in this case where Ohio Power Company (the "Company" or "AEP-Ohio") filed an Application for Approval of a Change in Bill Format ("Application"). In addition, the Company requested that the Public Utilities Commission of Ohio ("Commission" or "PUCO") review its Application on an expedited basis. OCC is filing this Motion on behalf of the approximately 1.2 million residential utility customers of AEP-Ohio.

OCC also moves to suspend the automatic approval of AEP-Ohio's Application for Approval of a Change in Bill Format pursuant to Ohio Admin. Code 4901:1-10-22(C). In the Application, the Company proposes the following: 1) listing the Company's Deferred Asset Phase-In Rider ("DAPIR") as a separate line item on customers' bills, 2) including bill messages describing this new rider until April 2013, and 3) including a definition for the DAPIR on bill backers after April 2013, when existing bill stock is expended.² The Company will implement DAPIR to collect from

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

² In the Matter of the Application of Ohio Power Company for Approval of a Change in Bill Format, Case No. 12-2999-EL-UNC, Application, at 1(November 16, 2012).

customers certain distribution costs that were deferred as regulatory assets pursuant to the Commission's authorization in various prior proceedings.

In Case No. 12-1969-EL-ATS, the Company filed an Application ("Securitization Application") seeking the PUCO's authority to collect from customers certain phase-in costs and associated financing costs through the issuance of bonds payable from the collection of phase-in-recovery ("PIR") charges. The PIR charges will ultimately be collected from customers through the DAPIR. However, the Commission has not issued a decision in Case No. 12-1969-EL-ATS. As such, approval of AEP-Ohio's Application for a Change in Bill Format should be suspended until such time as there is a financing order issued in the Company's securitization proceeding. The reasons the Commission should grant OCC's Motions are further set forth in the attached Memorandum in Support, which includes initial comments on AEP-Ohio's Application.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Kyle L. Kern

Kyle L. Kern, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (Direct Kern) (614) 466-9585
kern@occ.state.oh.us

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Power Company for Approval of a) Case No. 12-2999-EL-UNC
Change in Bill Format.)

**MEMORANDUM IN SUPPORT OF MOTIONS
AND
INITIAL COMMENTS**

I. BACKGROUND

On July 31, 2012, AEP-Ohio filed a Securitization Application in Case No. 12-1969-EL-ATS, seeking authority to recover from customers certain specified “phase-in costs and financing costs” through the issuance of bonds payable from the collection of PIR charges in Case No. 12-1969-EL-ATS. The PIR charges will ultimately be collected from customers through the Company’s proposed Deferred Asset Phase-In Rider (“DAPIR”).

On November 16, 2012, the Company filed an Application requesting Commission approval and expedited review of proposed changes in bill format related to the DAPIR. However, approval of the proposed change in bill format is premature given that the Commission has not issued a Financing Order in the Company’s securitization proceeding (Case No. 12-1969-EL-ATS). It is not known at this time if the proposed securitization, or the proposed rider (DAPIR), will be approved by the Commission and implemented by AEP-Ohio.

II. MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

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 AEP-Ohio’s residential customers³ may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding where the Company has requested expedited review of proposed changes to its bill format related to the DAPIR. Expending customer funds to modify AEP-Ohio’s bill format (to explain and define a rider that does not exist) is not in the best interest of customers. 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 customers of the Company in this case involving AEP-Ohio’s request for expedited review of proposed changes to its bill format. This interest is different than that of any

³ OCC has authority under law to represent the interests of all the approximately 1.2 million residential Utility customers of AEP-Ohio, pursuant to R.C. Chapter 4911.

other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential customers will include advancing the position that customers' bills should be accurate and contain clear and understandable form and language.⁴ 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 advocate for residential utility customers, OCC has a very real and substantial interest in this case where AEP-Ohio has requested expedited review of proposed changes to its bill format.

⁴ Ohio Admin. Code 4901:1-10-22(B).

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 deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying OCC’s interventions and that OCC should have been granted intervention in both proceedings.⁵

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 customers, the Commission should grant OCC’s Motion to Intervene.

III. MEMORANDUM IN SUPPORT OF MOTION FOR SUSPENSION

Ohio Admin. Code 4901:1-10-22(C) provides:

Any new bill format proposed by an electric utility shall be filed with the commission for approval. If an application for sample bill approval is not acted upon within forty-five calendar days, said

⁵ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

sample shall be deemed approved on the forty-sixth day after the filing.

Under the rule, the proposed change in bill format will be automatically approved if not acted upon by the Commission by December 31, 2012. But the Company requested **expedited** review⁶ of its proposed change in customers' bill format. And despite the fact that the Commission has not yet issued a Financing Order in the Company's securitization proceeding, the Company requested to run bill messages stating:

Due to the approval of AEP Ohio's request to securitize deferred asset receivables, the PUCO has **approved** a new rider that appear as separate line items on the bill.⁷

It is premature to approve the proposed change in bill format requested by the Company, or to include a bill message stating that the Company's request to securitize deferred asset receivables has been approved by the PUCO. Including a message on customers' bills describing a rider before it is implemented is inaccurate and will be confusing to customers, but also fails to coincide with Ohio Admin. Code 4901:1-10-22(B), which states: "[c]ustomer bills issued by or for the electric utility shall be accurate, shall be rendered at monthly intervals, **and shall contain clear and understandable form and language....**" (Emphasis added).

The Commission recently suspended automatic approval of FirstEnergy's proposed changes to bill format in order to "allow for further review and evaluation by

⁶ In addition, note that Ohio Admin. Code 4901-1-12(C) provides that "[a]ny **motion** may include a specific request for an **expedited ruling**. The grounds for such a request shall be set forth in the memorandum in support. ..." The Company did not file a Motion in this proceeding and also failed to include a memorandum in support setting forth the grounds for an expedited ruling. The Company's Application should be denied based on procedural deficiencies.

⁷ *In the Matter of the Application of Ohio Power Company for Approval of a Change in Bill Format*, Case No. 12-2999-EL-UNC, Application at 1 (November 16, 2012). (Emphasis added).

the Commission.”⁸ Suspension of the automatic bill format approval and further review of AEP-Ohio’s proposed bill format changes is also appropriate in this proceeding.

IV. INITIAL COMMENTS

A. AEP-Ohio’s Proposed Bill Format Change Is Premature, As The PUCO Has Not Issued A Financing Order In The Company’s Securitization Proceeding (Case No. 12-1969-EL-ATS).

On July 31, 2012, AEP-Ohio filed an Application with the Commission for authority to issue phase-in recovery bonds to recover phase-in costs and financing costs, impose and collect phase-in recovery charges, tariff and bill format approvals.⁹ The Company requested approval of the following bill format language within the Application.

[AEP-Ohio] seeks approval of a bill message that includes the following (or substantially similar) language: “In Case No. 12-1969-EL-ATS the Commission approved recovery of previously incurred costs, including PUCO-approved Phase-In-Recovery Charges, Ohio Power Company collects from all customers on behalf of its subsidiary, Ohio Power Phase-In Recovery Bonds I, which owns the right to impose and collect such charges.”¹⁰

But on November 16, 2012, AEP-Ohio filed a separate Application for Approval of a Change in Bill Format in this docket, proposing different language.

R.C.4928.232(C)(1) requires that within one hundred thirty-five days after the date an Electric Distribution Utility’s (“EDU”) application is filed, the PUCO must issue

⁸ *In the Matter of the Joint Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Issue Phase-In-Recovery Bonds and Impose, Charge and Collect Phase-In- Recovery Charges and for Approval of Tariff and Bill Format Changes*, Case No. 12-1465-EL-ATS, Entry at 1 (September 12, 2012).

⁹ *In the Matter of the Application of Ohio Power Company for Authority to Issue Phase-In-Recovery Bonds and Impose, Charge and Collect Phase-In-Recovery Charges and For Tariff and Bill Format Changes*, Case No. 12-1969-EL-ATS, Application, July 31, 2012.

¹⁰ Case 12-1969-EL-ATS, Application at 14.

a financing order granting the application in its entirety, approve the application with modifications, or issue an order suspending or rejecting the application. A financing order by the PUCO will be final after thirty days *if* no application for rehearing is filed.¹¹ The final financing order will remain in effect until the phase-in-recovery bonds issued under the final financing order and all financing costs related to the bonds have been paid in full.¹² But AEP-Ohio has now placed the proverbial cart before the horse, because it proposed the use of a bill message that states: “[d]ue to the Approval of AEP Ohio’s request to securitize deferred asset receivables, the PUCO has approved a new rider that appear as separate line items on the bill.”¹³

Including this bill message prior to the issuance of a Financing Order is inaccurate and misleading. Until the Commission issues a decision in the Company’s Securitization Application (and that decision is final),¹⁴ and the Company completes the securitization process, the proposed DAPIR rider is not in effect

B. AEP-Ohio’s Proposed Definition For DAPIR Is Not Clear And Understandable, As Required By Ohio Admin. Code 4901:1-10-22(B).

Ohio Admin. Code 4901:1-10-22(B) requires that bills contain content that are in clear and understandable form and content.¹⁵ But AEP-Ohio proposed the following definition:

¹¹ R.C. 4928.233(E)(1).

¹² R.C. 4928.235 (A)(1).

¹³ Case 12-2999-EL-UNC, Application at 1

¹⁴ In addition, per Ohio Admin. Code 4901-1-35, parties have thirty days in which to file an Application for Rehearing of the PUCO’s Financing Order in Case No. 12-1969-EL-ATS. Under Ohio Admin. Code 4901-1-35(B) parties have ten days from the date an Application for Rehearing to file Memoranda Contra.

¹⁵ Ohio Admin. Code 4901:1-10-22(B).

Deferred Asset Phase-In Rider (DAPIR): Recovers previously incurred deferrals for distribution assets. This rider will replace the Deferred Asset Recovery Rider. AEP Ohio will collect this charge from all customers on behalf of its Special Purpose Entity which owns the right to impose such charges.

OCC has concerns about the clarity and understandability of this definition for residential customers. For example, language like “...incurred deferrals for distribution assets,” and the term “Special Purpose Entity” are not easily understandable. In addition, it is doubtful that customers are familiar with the Deferred Asset Recovery Rider (“DARR”), or the fact that they are currently paying the DARR charges through a rider.¹⁶ AEP-Ohio states that the DAPIR replaces the DARR. However, until such time as the Commission actually issues a Financing Order, there is no basis to disclose to customers that DAPIR will replace DARR.

C. AEP Ohio’s Request For Expedited Review of Its Proposed Bill Format Could Lead to Wasteful Spending of Customers’ Funds.

AEP-Ohio explained that the proposed definition for the DAPIR would not be listed on the bill until after sometime after April 2013 (when its current supply of bill backers¹⁷ is expended). While not explicitly stated, the expedited review requested by AEP-Ohio is presumably needed so that the Company has sufficient lead time to order its next supply of bill backers. But the prudence (or lack thereof) for modifying the bill format to implement changes that have not been approved by the Commission is cause for concern. To this end, AEP-Ohio could theoretically order millions of bill backers containing inaccurate information about the DAPIR, which would need to be discarded.

¹⁶ The only riders that are currently listed as separate line items on AEP-Ohio bills are the Rate Stability Rider (“RSR”) and the Phase-In Recovery Rider (“PIRR”).

¹⁷ Application at 1. Bill backers are the stationary that electric bills are printed on and the back page is pre-printed to include much of the regulatory information that is required to be listed on electric bills.

Residential customers should not have to shoulder the financial responsibility if this were to occur.

V. CONCLUSION

OCC meets the standards for intervention in this proceeding. The Commission should grant OCC's Motion to Intervene.

The Commission should suspend automatic approval of the Company's Application proposing changes in bill format related to DAPIR until such time as the PUCO issues a final Order in Case No. 12-1969-EL-ATS. The PUCO has not yet issued a Financing Order in the AEP-Ohio securitization proceeding, and thus, further review involving the bill format are inappropriate at this time.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Kyle L. Kern

Kyle L. Kern, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (Direct Kern) (614) 466-9585
kern@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene, Motion to Suspend Automatic Approval and Initial Comments* was served on the persons stated below via electronic transmission this 3rd day of December 2012.

/s/ Kyle L. Kern
Kyle L. Kern
Assistant Consumers' Counsel

SERVICE LIST

William 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

Steven T. Nourse
AEP Service Corporation
1 Riverside Plaza, 29th Fl.
Columbus, OH 43215
stnourse@aep.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/3/2012 3:01:58 PM

in

Case No(s). 12-2999-EL-UNC

Summary: Motion Motion to Intervene, Motion to Suspend Automatic Approval and Initial Comments by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Kern, Kyle Mrs.