

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Power Company to Update Its Enhanced) Case No. 15-1549-EL-RDR
Service Reliability Rider.)

**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 the Ohio Power Company ("AEP Ohio") seeks to reconcile its \$40 million Enhanced Service Reliability Rider—a rider that currently increases each applicable customer's distribution charges by over 7.3%. OCC files this motion on behalf of AEP Ohio's approximately 1.2 million residential electricity consumers.¹ The Public Utilities Commission of Ohio ("PUCO") should grant OCC's motion for the reasons set forth in the attached memorandum in support.

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

Respectfully submitted,

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MEMORANDUM IN SUPPORT

This case relates to AEP Ohio’s Enhanced Service Reliability Rider (“ESRR”), which was approved in AEP Ohio’s first² ESP case and approved for continuation in AEP Ohio’s second³ and third ESP cases.⁴ In its Opinion and Order in the third ESP case, the PUCO described the ESRR as “the cost recovery mechanism for implementation of a proactive, cycle-based vegetation management program.”⁵ The costs of this cycle-based vegetation management program are above and beyond amounts collected for vegetation management through base rates.⁶ Accordingly, Ohio’s residential customers’ bills include an additional charge for the ESRR, collected through one of AEP’s over 20 current riders.⁷

In the third ESP case, the PUCO approved the continuation of the ESRR but emphasized that the ESRR must be based on “prudently incurred costs” and would

² Case No. 08-917-EL-SSO.

³ Case No. 11-346-EL-SSO.

⁴ Case No. 13-2385-EL-SSO.

⁵ See Case No. 13-2385-EL-SSO, Opinion and Order at 47 (Feb. 25, 2015).

⁶ See Case No. 08-917-EL-SSO, Opinion and Order at 33 (Mar. 18, 2009) (finding that the costs of the cycle-based vegetation management program “are incremental to the current Distribution Vegetation Management Program and the costs embedded in distribution rates”).

⁷ See Ohio Power Company, 8th Revised Sheet No. 104-1D, *available at* <http://www.puco.ohio.gov/emplibrary/files/docketing/tariffs/Electric/Ohio%20Power%20Company/PUCO%2020%20Distribution.pdf>

remain “subject to the PUCO’s review and reconciliation on an annual basis.”⁸ This rider case is AEP Ohio’s 2014 ESRR reconciliation filing.

Ohio law authorizes OCC to represent the interests of all of AEP Ohio’s approximately 1.2 million residential electricity customers.⁹ R.C. 4903.221 provides that any person “who may be adversely affected” by a PUCO proceeding is entitled to intervene in that proceeding. The interests of Ohio’s residential consumers may be adversely affected by this case because residential customers pay the ESRR through their electric rates. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the PUCO 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 AEP Ohio’s residential consumers and ensuring that the rates that they pay are just and reasonable. This interest is different from that of any other party and especially different than that of the utility, whose advocacy includes the financial interest of stockholders.

⁸ *Id.* at 49.

⁹ *See* R.C. Chapter 4911.

Second, OCC's advocacy for consumers will include, among other things, advancing the position that AEP Ohio's customers should receive adequate service at a reasonable rate under Ohio law.¹⁰ OCC's position is therefore directly related to the merits of this case, which 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." *See* Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a real and substantial interest in this case in which the PUCO must address whether AEP Ohio's proposed update to its ESRR rates will provide residential customers adequate service at a reasonable rate, under Ohio law.

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), which OCC already has addressed and which OCC satisfies.

¹⁰ *See* R.C. 4905.22 ("All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission . . .").

Ohio Adm. Code 4901-1-11(B)(5) states that the PUCO shall consider the “extent to which the person’s interest is represented by existing parties.” Although OCC does not concede that the PUCO must consider this factor, OCC satisfies it because OCC has been uniquely 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, in deciding two consolidated appeals regarding OCC’s right to intervene, the Supreme Court of Ohio has confirmed that “intervention ought to be liberally allowed.”¹¹ In those cases, OCC explained in its motion to intervene that the proceeding could negatively impact residential consumers, and OCC established that the interests of consumers would not be represented by existing parties.¹² Because there was no evidence disputing OCC’s position, nor any evidence that OCC’s intervention would unduly delay the proceedings, the Supreme Court found that the PUCO could not deny OCC the right to intervene.¹³

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 PUCO should grant OCC’s Motion to Intervene.

¹¹ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 2006-Ohio-5853, ¶ 20 (2006).

¹² *Id.* ¶¶ 18-20.

¹³ *Id.* ¶¶ 13-20.

Respectfully submitted,

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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 electric transmission this 31st day of March 2016.

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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel
electronically filed by Ms. Deb J. Bingham on behalf of Mr. Christopher Healey