

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Power Company to Update the Energy) Case No. 17-1266-EL-RDR
Efficiency and Peak Demand Reduction)
Rider.)

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

For the second time in less than two weeks,¹ Ohio Power Company ("AEP Ohio" or the "Utility") does not want residential consumers to be heard in proceedings before the Public Utilities Commission of Ohio ("PUCO"). But AEP Ohio's 1.2 million residential consumers should be heard.

The PUCO should grant OCC's motion to intervene² on behalf of residential consumers because it easily satisfies the requirements of Ohio Revised Code ("R.C.") 4903.221 and Ohio Administrative Code ("Ohio Adm. Code") 4901-1-11 and is consistent with the Ohio Supreme Court's ruling that intervention should be liberally allowed.³ AEP Ohio's arguments to the contrary, set forth in its memorandum contra,⁴ are meritless.

¹ AEP Ohio also opposed the Ohio Consumers' Counsel's ("OCC") intervention in its most recent update to its renewable energy rider. *See* Ohio Power Company's Memorandum Contra the Office of the Ohio Consumers' Counsel Motion to Intervene (June 8, 2017), Case No. 15-1052-EL-RDR.

² Motion to Intervene by the Office of the Ohio Consumers' Counsel (June 2, 2017) (the "Motion to Intervene").

³ Ohio Consumers' Counsel v. PUCO, 111 Ohio St. 3d 384, 2006-Ohio-5853, ¶ 20 (2006).

⁴ Ohio Power Company's Memorandum Contra the Office of the Ohio Consumers' Counsel's Motion to Intervene (June 19, 2017) (the "Memo Contra"). OCC files this reply to the Memo Contra under Ohio Adm. Code 4901-1-12(B)(2).

A. OCC's Motion to Intervene is timely.

R.C. 4903.221 provides that a person may file a motion to intervene no later than (i) any deadline that the PUCO sets or, if no such deadline is set, (ii) five days before the scheduled date of hearing. In this case, the PUCO did not set a deadline for intervention. Nor is there any hearing set. Thus, OCC's Motion to Intervene is timely.

AEP Ohio suggests that OCC's Motion to Intervene is somehow late, complaining that OCC is intervening "at this late stage."⁵ This claim lacks support in law or precedent. AEP Ohio filed its application in this case on May 15, 2017, and OCC filed its Motion to Intervene on June 2, 2017. There is no possible way to conclude that OCC's motion was filed at a "late stage" in this case. OCC's motion should be granted.

B. Residential consumers will pay millions of dollars to AEP Ohio for energy efficiency programs; they have a real and substantial interest in this proceeding and will be adversely affected by it.

AEP Ohio contends that Ohio's residential consumers will not be adversely affected by this proceeding and have no real or substantial interest in it.⁶ AEP Ohio is wrong.

Residential consumers may be adversely affected and have a real and substantial interest in this proceeding. Among other things, residential consumers (i) pay tens of millions of dollars to AEP Ohio each year for its energy efficiency programs through the rider in question in this proceeding, (ii) pay millions of dollars each year to AEP Ohio in "shared savings," which are pure profits for the utility, and (iii) pay a rate through AEP

⁵ Memo Contra at 8.

⁶ *Id.* at 3-4.

Ohio's energy efficiency and peak demand reduction ("EE/PDR") cost recovery rider that AEP Ohio seeks authorization to increase in this case.⁷

OCC has demonstrated that residential consumers may be adversely affected by this proceeding. OCC has demonstrated that residential consumers have a real and substantial interest in this proceeding. The PUCO should grant OCC's Motion to Intervene.

C. OCC will advance the legal position that customers should not pay unreasonable or unlawful rates under AEP Ohio's energy efficiency rider.

AEP Ohio contends that OCC's legal position "has no apparent relation to the merits of this proceeding."⁸ In support of this argument, AEP Ohio states that its standard service offer rates are not at issue here and that the reasonableness and lawfulness of the EE/PDR rider are not at issue.⁹ This argument fails.

AEP Ohio's reference to its standard service offer rate is confusing. OCC never mentions the standard service offer in its motion to intervene, and OCC obviously does not intend to challenge AEP Ohio's standard service offer in this energy efficiency rider case. Likewise, OCC is not seeking to challenge the existence of the EE/PDR rider. Instead, as described in its Motion to Intervene, OCC is seeking to intervene to ensure that the rate that residential customers pay through the EE/PDR rider is lawful and reasonable.¹⁰ Thus, consistent with R.C. 4903.221(B)(2), OCC's potential legal positions in this case support its intervention. Therefore, OCC's motion should be granted.

⁷ See Application.

⁸ Memo Contra at 5.

⁹ Id.

¹⁰ See Motion to Intervene at 2.

D. OCC's intervention will not unduly prolong and delay this proceeding.

AEP Ohio argues that OCC's intervention will unduly prolong and delay this proceeding in three ways. First, AEP Ohio argues that the proceeding would be delayed because AEP Ohio might be required to respond to discovery.¹¹ But the mere taking of discovery does not constitute undue delay. Indeed, parties and intervenors have a statutory right to take discovery.¹² AEP Ohio cites no authority for its view that the ability to take discovery constitutes undue delay warranting denial of intervention. If the ability to take discovery constituted undue delay, then, by extension, no party would ever be permitted to intervene in any case before the PUCO.

Second, AEP Ohio claims that OCC's intervention may require AEP Ohio to "address repetitive legal and factual issues."¹³ This claim is baseless. OCC has a right to raise legal and factual issues related to AEP Ohio's filings, and there is no evidence that such issues will be "repetitive."

Third, AEP Ohio is concerned that OCC's intervention could cause other parties to intervene and participate in this case and could cause other parties to intervene in *other* cases.¹⁴ The PUCO should reject these novel theories, which have no support in law or precedent. If other parties choose to intervene in AEP Ohio's proceedings, then those motions to intervene will be evaluated individually under the applicable sections of the Ohio Revised Code, Ohio Administrative Code, and binding Supreme Court precedent. There is no basis to conclude that the *possibility* of other parties intervening somehow

¹¹ Memo Contra at 6.

¹² See R.C. 4903.082 ("All parties and intervenors shall be granted ample rights of discovery.").

¹³ Memo Contra at 6.

¹⁴ Id.

means that OCC's intervention will delay this proceeding. And there is certainly no basis to conclude that the PUCO should reject OCC's motion to intervene because it may induce parties to intervene in *future* proceedings.

The PUCO should reject AEP Ohio's argument that OCC's intervention would unduly prolong and delay this proceeding.

E. No other party to this proceeding can represent the interests of all of AEP Ohio's 1.3 million residential consumers.

In its Motion to Intervene, OCC asserted that it satisfied Ohio Adm. Code 4901-1-11(B)(5) because it is the unique representative of AEP Ohio's residential consumers.¹⁵ AEP Ohio does not dispute this and does not argue that some other party represents the same interests as OCC. Instead, AEP Ohio counters OCC's position by again claiming that residential consumers have no interest in this proceeding at all, and therefore, it is impossible for any party (OCC or otherwise) to represent residential customers' interests.¹⁶

For the many reasons described above, the residential consumers that OCC represents have an interest in this proceeding. There is no party other than OCC that represents those interests. Thus, OCC satisfies Ohio Adm. Code 4901-1-11(B)(5), and AEP Ohio's arguments to the contrary are meritless.

F. Conclusion

The PUCO should grant OCC's Motion to Intervene; it satisfies the requirements of R.C. 4903.221 and Ohio Adm. Code 4901-1-11. By opposing OCC's Motion to Intervene, AEP Ohio apparently believes that it can update its energy efficiency rider,

¹⁵ Motion to Intervene at 3.

¹⁶ Memo Contra at 7.

charge residential customers many millions of dollars per year for energy efficiency programs, and charge residential customers millions of dollars per year in utility shareholder profits—and consumers should be denied a right to be heard by the administrative agency (the PUCO) responsible for evaluating those charges. The PUCO should reject AEP Ohio's attempt to create a public forum where only it has a voice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply was served on the persons stated below
via electronic transmission, this 26th day of June 2017.

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Summary: Reply Reply in Support of Motion to Intervene by the Office of the Ohio Consumer's Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.