

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of PRO-)	
TEC Coating Company, LLC for the)	Case No. 19-0124-EL-AEC
Approval of a Reasonable Arrangement)	
for its Leipsic, Ohio Plant.)	

**MOTION FOR LEAVE TO ACCEPT MOTION TO INTERVENE
OUT OF TIME
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") hereby moves the Public Utilities Commission ("PUCO") for leave to file its motion to intervene, out of time. Under Ohio Admin. Code 4901-1-12 and 4901-1-13, the PUCO rules provide for an extension of time to file pleadings for good cause shown. The PUCO also has the ability, upon an application or motion filed by a party, to waive any requirement of Chapter 4901:1-38, including the deadline for motions to intervene (Ohio Adm. Code 4901:1-38-03(E)). R.C. 4903.221 also allows the PUCO wide discretion when evaluating motions to intervene, including the discretion to grant a motion to intervene filed after a specified deadline for intervention has passed.

On February 1, 2019, OCC filed its Motion to Intervene.¹ The deadline for this filing under the PUCO's rules was January 31, 2019.² At the time OCC's intervention was filed, there had been a miscalculation of the twenty-day deadline, and that is why

¹ OCC's February 1, 2019 Motion to Intervene is attached hereto as Exhibit A.

² Ohio Adm. Code 4901:1-38-03.

OCC's one day late intervention was filed without a Motion for Leave. That oversight is being corrected now.

There is good cause to grant OCC's leave to file its intervention out of time. No party will be prejudiced by OCC's request for leave to file its motion to intervene out of time. Allowing OCC's leave to file its intervention will allow the interests of Ohio residential customers to be considered, when these are the very customers who may be adversely affected by this case, as they are being asked to subsidize the discounts for electric service that is being sought by PRO-TEC ("Applicant").

The grounds for this Motion are more fully described in the accompanying Memorandum in Support. OCC has also attached to this motion its motion to intervene, filed on Feb. 1, 2019.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Maureen R. Willis
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MEMORANDUM IN SUPPORT

OCC seeks the PUCO's permission for leave to file, out of time, its motion to intervene filed on February 1, 2019 in this docket. That motion to intervene was filed one day beyond the twenty-day intervention deadline established under the PUCO's energy efficiency arrangements rules (Ohio Adm. Code 4901:1-38-03).

OCC's motion to intervene was filed without seeking leave from the PUCO to file out of time. OCC's Counsel in this proceeding miscalculated the twenty-day intervention period. As a result of the miscalculation, OCC was unaware that its intervention was late. Consequently, OCC did not seek leave to file its motion to intervene. OCC subsequently became aware that its motion to intervene was filed one day late. *See, e.g.*, PRO-TEC Memorandum Contra The Office of the Ohio Consumers' Counsel Motion to Intervene (Feb. 12, 2019). OCC seeks to cure its one-day late motion to intervene by seeking leave now from the PUCO to file its motion to intervene, out of time.

The PUCO rules permit parties to obtain an extension of time to file pleadings for good cause shown or upon motion of the legal director, deputy legal director, or an attorney examiner. Ohio Adm. Code 4901-1-13(A). The PUCO rules also allow parties to file motions, for good cause. Ohio Adm. Code 4901-1-12. Additionally, the PUCO has

the ability, upon an application or motion filed by a party, to waive any requirement of Chapter 4901:1-38, including the deadline for motions to intervene (Ohio Adm. Code 4901:1-38-03(E)). And, specifically under R.C. 4903.221, the PUCO may grant a motion to intervene after a deadline for intervention has passed

Under rules and the law, the PUCO has wide discretion when evaluating motions to intervene and may grant a late-filed motion to intervene. In fact, there is PUCO precedent demonstrating it has done so on numerous occasions.³ Therefore, the PUCO should exercise discretion here, find good cause and grant OCC leave to file its one-day late motion to intervene.

Contrary to the Applicant's assertions otherwise, no party will be prejudiced by allowing OCC leave to file its motion to intervene, to cure its one day late intervention.⁴ OCC's intervention does little to impede the PUCO in reaching a timely decision on this

³ The PUCO has at times permitted untimely interventions. *See, e.g., Re Ohio Power Co.*, Case No. 15-507-EL-EDI, Opinion and Order at 10 (Sept. 27, 2017) (allowing motions to intervene that were seven days late to be granted); *In the Matter of the Application of Ohio Power Co.*, Case No. 11-346-EL-SSO, Entry (July 8, 2011) (permitting late interventions (one week to 2 months late) for Dominion Retail, ELPC, OEC, Ormet and EnerNOC); *In the Matter of Columbus S. Power*, Case No. 08-917-EL-SSO, Entry at Finding 4 (Oct. 29, 2008) (allowing late intervention (over one month late) for EnerNOC and AICUO); *In the Matter of DP&L*, Case No. 89-105-EL-EFC, Entry (Dec. 28, 1989)(granting Montgomery County Board of Commissioners intervention one month after hearing had concluded and two weeks after briefs had been filed); *Columbus S. Power*, Case No. 09-872-EL-UNC, Entry at ¶14 (Dec. 1, 2010)(granting Kroger intervention after the conclusion of the evidentiary hearing).

⁴ The PUCO has ruled a one day late filing (testimony) did not prejudice the objecting party and granted a parties' motion for leave to file one day out of time. *In the Matter of the Complaint of the City of Huron v. Ohio Edison Co.*, Case No. 03-1238-EL-CSS, Entry at ¶13 (Aug. 2, 2005); *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company*, Case No. 10-2929-EL-UNC, Entry at ¶ 9 (Apr. 13, 2012) (granting OMA's motion for leave to file testimony one day late). *See also Re the Dayton Power and Light Company*, Case No. 05-792-EL-ATA, Entry at footnote 1 (allowing utility leave to file its memorandum one day late).

matter. OCC's one day late intervention will not unduly prolong or delay this case. The PUCO's rule requiring a 20-day period for filing intervention and comments in reasonable arrangement cases is an abbreviated process that caters to the applicant. A one day delay in this abbreviated process is not prejudicial to the Applicant. OCC's motion should be granted. This case can proceed expeditiously even with OCC's intervention and the PUCO can timely determine, as it must, whether the application may be unjust and unreasonable.

On the other hand, precluding OCC's intervention (and input) on a case where OCC is the lone advocate for residential customers will cause prejudice. This is especially so where residential customer interests may be adversely affected because they are being asked to subsidize the discounts for electric service that the Applicant seeks. OCC's intervention will also assist the PUCO in considering and lawfully deciding this case in the public interest. Granting OCC's motion would also be consistent with the Ohio Supreme Court holdings that statutes and rules governing intervention should be "generally liberally construed in favor of intervention." *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940, P 16 (quoting *State ex rel. Polo v. Cuyahoga Cty. Bd. Of Elections*, 74 Ohio St.3d 143, 144, 656 N.E.2d 1277 (1995)).

The PUCO should take all these factors into account and find that there is good cause to grant OCC's leave to file its one-day late motion to intervene. Even with the one-day late filing of OCC's motion to intervene, the Applicant is afforded a timely process for its Application to be considered (recognizing the process is abbreviated and

caters to the applicant). Applicant will suffer no prejudice from OCC's one day late intervention.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Maureen R. Willis
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Leave to Accept Motion to Intervene by the Office of the Ohio Consumers' Counsel has been served electronically upon those persons listed below this 15th day of February 2019.

/s/ Maureen R. Willis

Maureen R. Willis

Senior Counsel

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**MOTION TO INTERVENE
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One of AEP Ohio's industrial customers, PRO-TEC Coating Company LLC (PRO-TEC or "Applicant") is seeking approval of a customer-funded electric rate discount arrangement with AEP Ohio. Under the unique arrangement, the Applicant will receive over the next six years (till the end of AEP Ohio's current electric security plan) a \$7 million total electric rate discount on its electric service bills.

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case on behalf of the approximately 1.2 million residential utility customers of AEP Ohio who will be asked to subsidize the Applicant's discount.¹ The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

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

Respectfully submitted,

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Ohio Consumers' Counsel

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MEMORANDUM IN SUPPORT

The Applicant seeks approval of an arrangement that would reduce the amount it pays for electric service – and potentially increase charges to the residential customers of AEP Ohio. Under the proposal, AEP Ohio would charge the Applicant \$7 million less for electric service. Other customers, including residential customers, would subsidize the rate discount. OCC has authority under law to represent the interests of all 1.2 million residential utility customers of AEP Ohio under R.C. Chapter 4911.

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 customers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding where AEP Ohio’s customers are being asked to subsidize discounts for electric service to the Applicant. 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 proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is representing the residential customers of AEP Ohio in this case where customers are being asked to subsidize discounts for electric service to the Applicant. This interest is different than that of any other party.

Second, OCC's advocacy for residential customers will include advancing the position that rates should be no more than what is reasonable and lawful under Ohio law. 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 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 outcome could increase the rates that residential customers pay.

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 PUCO 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 (“Court”) 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.²

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Court for intervention. On behalf of Ohio residential customers, the PUCO should grant OCC’s Motion to Intervene.

² See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

Respectfully submitted,

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/s/ Maureen R. Willis
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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 electronic transmission, this 1st day of February 2019.

/s/ Maureen R. Willis

Maureen R. Willis
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Case No(s). 19-0124-EL-AEC

Summary: Motion Motion to Intervene by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Willis, Maureen Mrs.

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Case No(s). 19-0124-EL-AEC

Summary: Motion Motion for Leave to Accept Motion to Intervene Out of Time by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Willis, Maureen R Mrs.