

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the Power)
Purchase Agreement Rider of Ohio Power) Case No. 18-1003-EL-RDR
Company.)

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

AEP Ohio's residential customers have paid around \$40 million to subsidize two old, uneconomic, polluting coal plants that AEP owns in part through the Ohio Valley Electric Corporation ("OVEC"). The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where the Public Utilities Commission of Ohio ("PUCO") ordered a prudence audit of the charges to consumers under AEP's Power Purchase Agreement Rider ("OVEC Rider").¹ In that audit, the auditor found that these power plants' costs for environmental compliance could be "extremely high."² Just how high is a secret from the public because AEP required the auditor to exclude that information from the publicly filed audit report. OCC is filing on behalf of the 1.3 million residential utility customers of AEP. The reasons the 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.

² Audit Report at 5 (Jan. 11, 2019).

Respectfully submitted,

Bruce Weston (#0016973)
Ohio Consumers' Counsel

/s/ Christopher Healey

Christopher Healey (0086027)
Counsel of Record
Bryce McKenney (0088203)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

65 East State Street, 7th Floor
Columbus, Ohio 43215
Telephone [Healey]: (614) 466-9571
Telephone [McKenney]: (614) 466-9585
christopher.healey@occ.ohio.gov
Bryce.mckenney@occ.ohio.gov
(willing to accept service by e-mail)

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the Power)
Purchase Agreement Rider of Ohio Power) Case No. 18-1003-EL-RDR
Company.)

MEMORANDUM IN SUPPORT

Customers have paid around \$40 million in subsidies to AEP Ohio to prop up two unprofitable coal plants, one of which isn't even located in Ohio (in Indiana). And consumers have paid millions more in subsidies to Duke and DP&L for the same plants. The PUCO ordered an independent audit of these charges from June 1, 2016 through December 31, 2017. Consumers pay the subsidies through a bill surcharge called "Rider PPA," but more properly known as the "OVEC Rider."³ The auditor filed its redacted audit report in this case on August 8, 2019.⁴ OCC has authority under law to represent the interests of the 1.3 million residential utility customers of AEP 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 the PUCO will determine whether AEP prudently incurred the costs that it charges customers through the OVEC Rider. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

³ Entry (June 13, 2018).

⁴ Redacted Audit Report (August 8, 2019).

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 in this case involving subsidies that customers pay to bail AEP out of the losses it would otherwise incur based on its investment in the OVEC coal plants. This interest is different than that of any 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, among other things, advancing the position that customers should only be made to pay rates that are found to be just and reasonable with costs that are found to be prudent. (Our full position is that the PUCO should shield AEP's consumers from paying any corporate welfare to subsidize these coal plants. But the PUCO has already resolved that issue in favor of consumers paying the subsidies.) 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 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 PUCO is auditing the prudence of millions of dollars in charges to consumers to subsidize AEP's interest in the OVEC coal plants.

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.

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.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 PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

Bruce Weston (#0016973)
Ohio Consumers' Counsel

/s/ Christopher Healey

Christopher Healey (0086027)
Counsel of Record
Bryce McKenney (0088203)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

65 East State Street, 7th Floor
Columbus, Ohio 43215
Telephone [Healey]: (614) 466-9571
Telephone [McKenney]: (614) 466-9585
christopher.healey@occ.ohio.gov
Bryce.mckenney@occ.ohio.gov
(willing to accept service by e-mail)

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

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 2nd day of December 2019.

/s/ Christopher Healey
Christopher Healey
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

SERVICE LIST

Werner.margard@ohioattorneygeneral.gov	stnourse@aep.com
Attorney Examiners:	mpritchard@mcneeslaw.com
	fdarr@mcneeslaw.com
Sarah.parrot@puc.state.oh.us	bojko@carpenterlipps.com
Greta.see@puco.ohio.gov	paul@carpenterlipps.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/2/2019 5:30:00 PM

in

Case No(s). 18-1003-EL-RDR

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