**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Ohio Power Company to Update Its Basic Transmission Cost Rider. | ))) | Case No. 24-42-EL-RDR |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene[[1]](#footnote-2) where the Ohio Power Company (“AEP”) submitted its annual application to update its Basic Transmission Cost Rider (“BTCR”) charge to consumers.[[2]](#footnote-3) AEP charges consumers for transmission-related charges through the BTCR.[[3]](#footnote-4) In this filing, AEP represents that BTCR charges to residential consumers will increase by more than $154 million beginning April 1, 2024.[[4]](#footnote-5) AEP represents that this is ***32% more*** than what residential consumers pay under current BTCR rates.[[5]](#footnote-6)

While substantially increasing what residential consumers will pay under the BTCR, AEP also proposes to reduce BTCR charges to most business and industrial consumers. This results in an enormous shift in cost allocations between the classes of consumers, to the detriment of residential consumers. Under current rates residential consumers pay 43% of the BTCR charges.[[6]](#footnote-7) Under proposed rates AEP would collect 53% of BTCR charges from residential consumers.[[7]](#footnote-8) AEP provides no evidence to support increasing the amount residential consumers will pay under the BTCR.

The 32% jump in residential consumer BTCR charges hits already over-charged residential consumers unfairly. A 1,000 kwh per month residential user is currently paying $33.16 per month for Rider BTCR. That will jump to almost $44 per month under the proposed Rider BTCR.[[8]](#footnote-9)

OCC represents the interests of the 1.5 million Ohio residential consumers of AEP who must pay under Rider BTCR. The PUCO should grant OCC’s motion to intervene for the reasons set forth in the attached memorandum in support.

Respectfully submitted,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ Donald J. Kral*

Donald J. Kral (0042091)

Counsel of Record

Thomas J. Brodbeck (0093920)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone [Kral]: (614) 466-9571

Telephone [Brodbeck]: (614) 466-9565

donald.kral@occ.ohio.gov

thomas.brodbeck@occ.ohio.gov

(willing to accept service via email)

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**MEMORANDUM IN SUPPORT**

In this case, AEP seeks to pass on enormous charges to financially over-burdened Ohioans by forcing residential consumers to pay an additional $154 million for Basic Transmission Cost Rider (“BTCR”) charges beginning on April 1, 2024. According to AEP, this will be ***32% more*** than what residential consumers pay under current BTCR rates. A residential consumer using 1,000 kwh per month currently pays $33.16 per month under AEP’s BTCR. That will jump to almost $44 per month under AEP’s updated BTCR.[[9]](#footnote-10)

The BTCR allows AEP to collect from consumers non-market-based transmission-related costs, imposed by the Federal Energy Regulatory Commission (“FERC”) or PJM. These charges include millions of dollars for AEP’s investments in Supplemental Transmission Projects, which largely escape regulatory review by the PUCO or FERC for prudence. What’s worse is that AEP’s residential consumers have no choice but to pay for what AEP charges through the BTCR. Certain AEP industrial consumers, however, can “opt out” of paying BTCR rates under a pilot program that shifts additional costs onto consumers who cannot participate in the program.[[10]](#footnote-11) Under current rates residential consumers pay 43% of the BTCR charges.[[11]](#footnote-12) With AEP’s updated BTCR rates, AEP plans to charge 53% of the transmission charges to residential consumers.[[12]](#footnote-13)

AEP fails to provide justification for increasing the allocation in BTCR charges to residential consumers. In addition, under O.A.C. 4901:1-36.06, AEP must include in this biennial filing “additional information detailing the electric utility’s policies and procedures for minimizing any costs in the transmission cost recovery rider where the electric utility has control over such costs.” AEP provides nothing, claiming instead that it “does not exert direct control over the costs.”[[13]](#footnote-14) That does not justify unreasonably shifting costs to AEP’s residential consumers.

 OCC has statutory authority, under R.C. Chapter 4911, to represent the interests of the 1.5 million residential electric utility consumers of AEP. R.C. 4903.221 provides the standard for permissive intervention – where the PUCO may exercise discretion in ruling upon a party’s motion to intervene. That law provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding.[[14]](#footnote-15)

 The interests of AEP’s residential consumers may be “adversely affected” by this case. That is especially so if they were unrepresented in a proceeding that substantially increases, without any evidentiary support, how much residential consumers must pay under the BTCR. Thus, this element of the permissive 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 permissive intervention:

(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’s residential consumers in this case, where AEP is increasing the amount consumers will pay under the BTCR. This interest includes evaluating whether the costs included in the BTCR are just and reasonable and fairly allocated to residential consumers. OCC’s interest is different than that of any other party and especially different than that of AEP whose advocacy includes the financial interest of stockholders.

Second, OCC’s advocacy for residential consumers will include advancing the position that AEP should charge consumers no more than what is just and reasonable under Ohio law, for service that is necessary and prudent 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. Delay in and of itself does not mean that intervention should be denied. The key consideration is whether the intervention will cause “undue delay.” Here OCC’s intervention will not cause undue delay.

OCC promptly seeks leave to intervene. The Application to add $154 million under Rider BTCR charges to residential consumers was filed on January 17, 2024. Under O.A.C. 4901:1-36-03(E), “affected parties” may file a motion to intervene and comments within 40 days of the Application’s filing. The case has not progressed beyond the filing of the Application. The PUCO has not set any procedural schedule for review of the application. No hearing has been scheduled such that granting intervention would delay the hearing. The PUCO Staff has not filed its Review and Recommendation regarding this proposed increase in AEP’s BTCR. No comments have yet been filed by any parties and the PUCO has not issued any dispositive rulings.

 OCC will attempt to avoid duplicative discovery in the proceeding. The issues OCC will raise fall clearly within the scope of the proceeding - whether the proposed BTCR charges fairly represent those “imposed on or charged to the utility” and whether they were “prudently” incurred.[[15]](#footnote-16) In addition, OCC will also use its best efforts to comply with any procedural schedule that the PUCO may adopt for this proceeding.

Further, OCC, with its longstanding expertise and experience in PUCO proceedings and consumer protection advocacy, will duly allow for the efficient processing of the case with consideration of the public interest. OCC regularly intervenes and participates in cases regarding annual updates to the transmission riders of electric distribution utilities.[[16]](#footnote-17) There will be no prejudice to the PUCO Staff and AEP in granting OCC intervention.

Fourth, OCC’s intervention will significantly contribute to full development and equitable resolution of the factual issues. AEP has not provided evidence to demonstrate that its proposed increases under the BTCR are reasonable. Nor has it provided the information about AEP’s “policies and procedures for minimizing any costs” under the BTCR as required by O.A.C. 4901:1-36-06(A). OCC’s interest in protecting residential consumers will lead it to fully and carefully examine issues regarding the increases in charges and cost shifting to residential consumers. No other party is solely focused on the needs of residential consumers and thus, there can be no equitable resolution of the factual issues in this case absent OCC’s participation. 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 Ohio Administrative Code Rule 4901-1-11(A) which sets the standard for *intervention as of right*, mirroring Ohio Civil Rule 24(A). Under 4901:1-11(A)(2) a person shall be granted intervention as of right if it has a real and substantial interest in a proceeding and is “so situated that disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person’s interest is adequately represented by existing parties.”

As the statutory advocate for residential utility consumers, OCC has a very real and substantial interest in this case where AEP has proposed to substantially increase charges to consumers through the BTCR charge. Disposition of this proceeding may, as a practical matter, impair or impede OCC’s ability to protect that interest where the interest is not adequately represented by existing parties - the PUCO Staff and the utility. OCC should be granted intervention as of right under O.A.C. 4901-1-11(A)(2).

In addition, OCC meets the permissive intervention criteria of O.A.C. 4901-1-11(B)(1)-(4). These criteria mirror the permissive intervention criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

O.A.C. 4901-1-11(B)(5) states that the PUCO shall consider “(t)he 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 has been uniquely designated as the state representative of the interests of Ohio’s residential utility consumers. OCC’s 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.[[17]](#footnote-18)

OCC meets the criteria set forth in R.C. 4903.221, O.A.C. 4901-1-11,O.A.C. 4901:1-36-03(E), 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.

Respectfully submitted,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ Donald J. Kral*

Donald J. Kral (0042091)

Counsel of Record

Thomas J. Brodbeck (0093920)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone [Kral]: (614) 466-9571

Telephone [Brodbeck]: (614) 466-9565

donald.kral@occ.ohio.gov

thomas.brodbeck@occ.ohio.gov

(willing to accept service via email)

**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of the foregoing Motion to Intervene has been served electronically upon those persons listed below this 26th day of January 2024.

 */s/ Donald J. Kral*

 Donald J. Kral

 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**

|  |  |
| --- | --- |
|  |  |
| john.jones@ohioago.gov | stnourse@aep.commkurtz@BKLlawfirm.comjkylercohn@BKLlawfirm.com |

1. *See* R.C. Chapter 4911, R.C. 4903.221 and O.A.C. 4901-1-11. [↑](#footnote-ref-2)
2. *See* Case No. 13-2385-EL-SSO, Opinion and Order at 65(the BTCR is a non-bypassable charge to all consumers, shopping and non-shopping, for non-market-based transmission charges). [↑](#footnote-ref-3)
3. *Id.* [↑](#footnote-ref-4)
4. *In the Matter of the Application of Ohio Power Company to Update Its Basic Transmission Rider,* Case No. 24-42-EL-RDR, Application at Schedule B-2 (Jan. 17, 2024). [↑](#footnote-ref-5)
5. *Id.* [↑](#footnote-ref-6)
6. *See, id.* [↑](#footnote-ref-7)
7. *Id.* [↑](#footnote-ref-8)
8. *Id.* at Schedule A-2 (Current rate of $.0331659 per kWh increasing to $.0438391 per kWh). [↑](#footnote-ref-9)
9. *Id.* at Schedule A-2 (Current rate of $.0331659 per kWh increasing to $.0438391 per kWh). [↑](#footnote-ref-10)
10. *See, e.g., In the Matter of the Review of the Non-Market-Based Services Rider Pilot Program Established by Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company,* Case No. 22-391-EL-RDR, Executive Summary and Rider NMB Pilot Audit Report Overview (July 17, 2023), at 44-45 (identifying potential drivers of cost shifts related to the structure of the pilot program) and Table 2 (documenting cost-shifts by rate class resulting from Rider NMB). [↑](#footnote-ref-11)
11. *See, id.* [↑](#footnote-ref-12)
12. *Id.* [↑](#footnote-ref-13)
13. Application at ¶ 13. [↑](#footnote-ref-14)
14. *See also**,* O.A.C. 4901:1-36-03(E) governing applications for transmission cost recovery riders states: “(a)ffected parties may file a motion to intervene and detailed comments on any issues concerning any application filed under this rule within forty days of the date of the filing of the application.” [↑](#footnote-ref-15)
15. *See* O.A.C. 4901:1-36-02(A) (stating that the rider is used to recover transmission and transmission-related costs “imposed on or charged to the utility”); O.A.C. 4901:1-36-03(B) (stating that PUCO may conduct “prudence and/or financial reviews of the costs incurred and recovered through the transmission cost recovery rider”). [↑](#footnote-ref-16)
16. *See, e.g., In the Matter of the Application of the Ohio Power Company to Update Its Basic Transmission Cost Rider,* Case No. 23-57-EL-RDR, Motion to Intervene by Office of the Ohio Consumers’ Counsel (Feb. 2, 2023), Consumer Protections Comments by Office of the Ohio Consumers’ Counsel (Feb. 27, 2023). [↑](#footnote-ref-17)
17. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-18)