**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
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| In the Matter of the Application of Ohio Power Company to Update Its Enhanced Service Reliability Rider. | ))) | Case No. 21-1268-EL-RDR |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

Ohio Revised Code Section 4905.22 requires utilities to furnish “necessary and adequate” service to consumers. But AEP charges a million Ohioans more for “enhanced” reliable service.

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene where the amount Ohioans are charged by AEP for vegetation management that is supposed to “enhance” reliability of their electric service will be determined.[[1]](#footnote-2) AEP proposes charging consumers over $54 million through its Enhanced Service Reliability Rider (“Tree Trimming Charge”).[[2]](#footnote-3) This is nearly a doubling of the Tree Trimming Charge (from about 3.07% to 5.99% of base distribution rates).[[3]](#footnote-4) And the money collected from customers through the Tree Trimming Charge is in addition to the money AEP charges consumers for reliability through base rates.

OCC is filing on behalf of AEP’s 1.3 million residential utility consumers. The reasons the Public Utilities Commission of Ohio (“PUCO”) should grant OCC’s Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

Bruce Weston (0016973)

 Ohio Consumers’ Counsel

*/s/ William J. Michael*

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## MEMORANDUM IN SUPPORT

This case relates to AEP’s Tree Trimming Charge, which resulted from AEP’s electric security plan cases and recent base rate case.[[4]](#footnote-5) The Tree Trimming Charge is one of numerous riders that AEP uses to charge consumers in addition to base rates.[[5]](#footnote-6) The Ohio General Assembly required utility service to be adequate for consumers as a matter of law under R.C. 4905.22. But AEP charges customers additional money for operation and maintenance costs associated with “a proactive, cycle-based vegetation management program.”[[6]](#footnote-7)

The charges to consumers through the Tree Trimming Charge are in addition to amounts collected from consumers for vegetation management through base rates.[[7]](#footnote-8) Accordingly, the electric bills of AEP’s residential consumers include two charges for vegetation management: one in base rates and the other in the Tree Trimming Charge. OCC has authority to represent the interests of all of AEP’s 1.3 million residential utility consumers, pursuant to 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 AEP’s residential consumers may be “adversely affected” by this case. That is especially so if the consumers were unrepresented in a proceeding to determine the amounts, in addition to base rates, consumers pay through the Tree Trimming Charge for AEP’s vegetation management program. 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; and

(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 AEP’s residential consumers toward limiting the amount charged to consumers for vegetation management to what is just and reasonable. AEP already charges consumers for vegetation management through base rates. This consumer protection interest is different from that of any other party and especially different from that of the utility, whose advocacy includes the financial interest of stockholders.

Second, OCC’s advocacy for residential consumers will include advancing the position that rates should be no more than what is reasonable and lawful under Ohio law, for service that is adequate 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 consumers, OCC has a very real and substantial interest in this case to determine the amount charged to consumers for “enhanced” reliability through the Tree Trimming Charge (in addition to what they already pay for reliability through base rates).

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 consumers. 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.[[8]](#footnote-9)

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/ William J. Michael*

William J. Michael (0070921)

Counsel of Record

Amy Botschner O’Brien (0074423)

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(willing to accept service by e-mail)

**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 25th day of March 2022.

 */s/ William J. Michael*

 William J. Michael

 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**

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1. *See* R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11. [↑](#footnote-ref-2)
2. The amount charged for the Tree Trimming Charge is a percentage of base rates. *See Id.* at ¶ 4. [↑](#footnote-ref-3)
3. *See Id.* at Schedule 1. [↑](#footnote-ref-4)
4. *See Id.* at ¶ 3. [↑](#footnote-ref-5)
5. *See* AEP’s Tariff. [↑](#footnote-ref-6)
6. *See, e.g.,* Case No. 13-2385-EL-SSO, Opinion and Order (February 25, 2015) at 47. [↑](#footnote-ref-7)
7. *See* Application at ¶ 3. [↑](#footnote-ref-8)
8. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-9)