**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Ohio Power Company for Authority to Update the Tax Savings Credit Rider to Account for the Corporate Alternative Minimum Tax Rate.In the Matter of the Application of Ohio Power Company for Approval to Change Accounting Methods. | )))))))) | Case No. 24-341-EL-RDRCase No. 24-342-EL-AAM |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene in this case where Ohio Power Company (“AEP Ohio”) is seeking approval from the Public Utilities Commission of Ohio (“PUCO”) to adjust rates under AEP Ohio’s Tax Savings Credit Rider (“tax rider”).[[1]](#footnote-3) AEP Ohio proposes to credit Excess Accumulated Deferred Income Tax (“EDIT”) regulatory assets against consumer gridSMART under-recovery deferrals.[[2]](#footnote-4) In addition, AEP Ohio proposes to collect the difference between its Corporate Alternative Minimum Tax (“CAMT”) and its “regular” (non-CAMT) tax through annual tracking of charges and credits and periodic “true ups,”[[3]](#footnote-5) both accomplished under its tax rider.

This proposal could negatively impact consumers. Under the tax rider, consumers will receive $7 million in credits on their monthly bills for the EDIT, with an additional $82 million in bill credits scheduled to take effect later this year.[[4]](#footnote-6) This is consistent with the PUCO’s original approval of the tax rider, which required that the tax benefits be flowed to consumers as credits.[[5]](#footnote-7)

AEP Ohio’s proposal would end these monthly bill credits to consumers.[[6]](#footnote-8) The money would be used instead to speed up AEP Ohio’s collection of gridSMART costs.[[7]](#footnote-9) Some of the gridSMART costs are subject to a prudency review.[[8]](#footnote-10) Consumers could be harmed if these costs are not subjected to the same level of scrutiny in a prudence review because the EDIT funds were used to pay these costs. The PUCO must decide whether these proposals are just and reasonable.

OCC is filing to intervene on behalf of the 1.5 million residential utility consumers of AEP Ohio. The reasons the PUCO should grant OCC’s Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ John Finnigan*

John Finnigan (0018689)

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**MEMORANDUM IN SUPPORT**

 AEP Ohio seeks in this matter to make proposed changes to its tax rider which will ultimately impact the rates paid by residential utility consumers outside of a base rate case. AEP Ohio presents two proposals to the PUCO regarding its tax rider. First, AEP Ohio proposes to utilize surplus EDIT assets to credit consumer gridSMART under-recovery deferrals.[[9]](#footnote-11) Second, AEP Ohio proposes to track its CAMT and non-CAMT charges and credits and to collect the difference between them through a variable charge under the tax rider.[[10]](#footnote-12) The PUCO must decide whether these proposals are just and reasonable.

 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.

 The interests of Ohio’s residential consumers may be “adversely affected” by this case, especially if the consumers were unrepresented in a proceeding which seeks to determine how reduced utility taxes should be reflected in consumers’ rates. 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 the residential consumers of AEP Ohio. OCC has authority under law to represent the interests of all the 1.5 million residential utility consumers of AEP Ohio, under R.C. Chapter 4911. 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 consumers will include, among other things, advancing the position that AEP Ohio’s proposed adjustments to the tax rider are just and reasonable. 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 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. This case only initiated with the filing of AEP Ohio’s application on April 10, 2024. No other filings have been made, and the PUCO has not yet ruled on any of the issues presented by AEP Ohio. As this matter is at its very earliest stages, OCC will not cause “undue delay.”

 OCC will attempt to avoid duplicative discovery in the proceeding. The issues OCC will raise fall clearly within the scope of the proceeding regarding AEP Ohio’s tax rider proposal and its impact on residential consumers. 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 updates to various riders. In addition, OCC intervened in Case No. 20-585-EL-AIR where the rider was originally approved. There will be no prejudice to the PUCO Staff and AEP Ohio in granting OCC intervention.

Fourth, OCC’s intervention will significantly contribute to full development and equitable resolution of the factual issues. Residential consumers face enough increases and uncertainty through the overuse of riders to increase the rates of utility service. OCC’s interest in protecting residential consumers will lead it to fully and carefully examine issues regarding AES Ohio’s proposed tax rider changes. 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 O.A.C. 4901-1-11(A) which sets the standard for *intervention as of right*, mirroring Ohio Civil Rule 24(A). Under O.A.C. 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 protecting residential consumers by ensuring that AEP Ohio’s proposed adjustments to the tax rider are just and reasonable. 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.[[11]](#footnote-13)

OCC meets the criteria set forth in R.C. 4903.221, O.A.C. 4901-1-11, 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/ John Finnigan*

John Finnigan (0018689)

Counsel of Record

Thomas J. Brodbeck (0093920)

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(willing to accept service by e-mail)

**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 15th day of May 2024.

 */s/ John Finnigan*

 John Finnigan

 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 O.A.C. 4901-1-11. [↑](#footnote-ref-3)
2. *In the Matter of the Application of Ohio Power Company for Authority to Update the Tax Savings Credit Rider to Account for the Corporate Alternative Minimum Tax Rate*, 24-341-EL-RDR, et al., Application (April 10, 2024) at ¶¶ 23-26. [↑](#footnote-ref-4)
3. *Id*. at ¶¶ 27-33. [↑](#footnote-ref-5)
4. *Id.* at ¶¶ 9-13. [↑](#footnote-ref-6)
5. *In the Matter of the Application of Ohio Power Company Regarding Implementation of the Tax Cuts and Jobs Act of 2017*, Case No. 18-1007-EL-UNC, Finding and Order (Oct. 3, 2018). [↑](#footnote-ref-7)
6. *Id.* at ¶¶ 20-33. [↑](#footnote-ref-8)
7. *Id.*  [↑](#footnote-ref-9)
8. *Id.* at ¶ 20. [↑](#footnote-ref-10)
9. Case No. 24-341-EL-RDR, et al., Application (April 10, 2024) at ¶ 23. [↑](#footnote-ref-11)
10. *Id*. at ¶ 27. [↑](#footnote-ref-12)
11. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-13)