**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| --- | --- | --- |
| In the Matter of the Distribution Investment Rider for Ohio Power Company. | )  ) | Case No. 14-1696-EL-RDR |

**MOTION TO INTERVENE**

**BY**

**THE 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 collecting charges from customers through its Distribution Investment Rider. This proceeding involves a quarterly adjustment to the Distribution Investment Rider based on costs from the third quarter of 2017.[[1]](#footnote-2) OCC is filing on behalf of the 1.2 million residential utility customers of AEP Ohio. The reasons the Public Utilities Commission of Ohio (“PUCO”) should grant OCC's motion to intervene are further set forth in the attached Memorandum in Support.

Respectfully submitted,

BRUCE WESTON (0016973)

OHIO CONSUMERS' COUNSEL

*/s/ Kevin Moore*

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**MEMORANDUM IN SUPPORT**

This case involves charges on customers’ bills for rates AEP Ohio was authorized to collect though its Distribution Investment Rider. However, that authorization reflected a corporate income tax rate of 35 percent that has since been reduced to 21 percent as a result of the Tax Cuts and Jobs Act of 2017, effective January 1, 2018.[[2]](#footnote-3) Consumers should see the full benefit of that tax cut reflected in their 2018 rates that the PUCO approves in this case. Thus, the outcome of this proceeding could impact the utility bills that Ohio customers pay. Ohio law authorizes OCC to represent the interests of all of AEP Ohio’s 1.2 million residential utility customers.[[3]](#footnote-4)

R.C. 4903.221 provides that any person "who may be adversely affected" by a PUCO proceeding is entitled to intervene in that proceeding. The interests of Ohio's residential consumers may be adversely affected by this case because AEP Ohio’s Distribution Investment Rider is a charge on residential customers’ utility bill. 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 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 Duke’s residential consumers. This interest is different from that of any other party and especially different than that of the Utility, whose advocacy includes the financial interest of stockholders.

Second, OCC's legal position will include (without limitation) that utility rates charged to consumers should be just and reasonable.[[4]](#footnote-5) That especially involves ensuring that the rates being collected from AEP Ohio’s customers reflects a full year of benefits from the Tax Cuts and Jobs Act corporate income tax reduction from 35 percent to 21 percent that was effective January 1, 2018. OCC will work to determine whether the proposed charges for AEP Ohio’s Distribution Investment Rider are just and reasonable. OCC's position is therefore directly related to the merits of this case.

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 the 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."[[5]](#footnote-6) As the residential utility consumer advocate, OCC has a real and substantial interest in this case in which the PUCO will review the charges that customers pay for AEP Ohio’s Distribution Investment Rider.

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." Although OCC does not concede that the PUCO must consider this factor, OCC satisfies it because OCC has been uniquely 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.[[6]](#footnote-7)

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 consumers, the PUCO should grant OCC's motion to intervene.

Respectfully submitted,

BRUCE WESTON (0016973)

OHIO CONSUMERS' COUNSEL

*/s/ Kevin Moore*

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Counsel of Record

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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 viaelectric transmission this 20th day of February 2018.

*/s/ Kevin Moore*

Kevin Moore  
Assistant Consumers' Counsel

**SERVICE LIST**

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1. AEP Ohio Quarterly Update at 1, Case No. 14-1696-EL-RDR (December 21, 2017). [↑](#footnote-ref-2)
2. See Tax Cuts and Jobs Act of 2017, Public Law No. 115-97. [↑](#footnote-ref-3)
3. *See* R.C. Chapter 4911. [↑](#footnote-ref-4)
4. *See* R.C. 4905.22 ("All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission . . ."). [↑](#footnote-ref-5)
5. Ohio Adm. Code 4901-1-11(A)(2). [↑](#footnote-ref-6)
6. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20. [↑](#footnote-ref-7)