**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Alternative Energy Rider & Auction Cost Recovery Rider for Ohio Power Company. | )  )  ) | Case No. 15-1052-EL-RDR |

**REPLY IN SUPPORT OF MOTION TO INTERVENE**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Public Utilities Commission of Ohio[[1]](#footnote-1) should grant the Office of the Ohio Consumers' Counsel's[[2]](#footnote-2) motion to intervene[[3]](#footnote-3) because it easily satisfies the requirements of Ohio Revised Code[[4]](#footnote-4) 4903.221 and Ohio Administrative Code[[5]](#footnote-5) 4901-1-11, because it is consistent with the Ohio Supreme Court's ruling that intervention should be liberally allowed and because Ohio consumers should have a voice in PUCO cases where their utility has a voice.[[6]](#footnote-6) Ohio Power Company's[[7]](#footnote-7) arguments to the contrary, set forth in its memorandum contra,[[8]](#footnote-8) are meritless.

**A. OCC's Motion to Intervene is timely.**

R.C. 4903.221 provides that a person may file a motion to intervene no later than (i) any deadline that the PUCO sets or, if no such deadline is set, (ii) five days before the scheduled date of hearing. In this case, the PUCO did not set a deadline for intervention. Nor is there any hearing set. Thus, OCC's Motion to Intervene is timely.

AEP Ohio suggests that OCC's Motion to Intervene is somehow late, complaining that it was filed "[t]wo years after this compliance filing docket was opened, and nearly five years after the Commission approved the creation of the AER...."[[9]](#footnote-9) AEP Ohio also refers to the "late stage" of OCC's Motion to Intervene filing.[[10]](#footnote-10) But the timing of OCC's Motion to Intervene as compared to these events is irrelevant for at least two reasons.

First, as discussed above, the timing of OCC's Motion to Intervene is consistent with R.C. 4903.221; AEP Ohio does not argue otherwise. Second, OCC is seeking to intervene in this proceeding as it pertains to AEP Ohio's quarterly AER updates, the last of which AEP filed less than two weeks ago on June 1, 2017. Thus, any argument that OCC's intervention is untimely must fail.

**B. Residential consumers may be adversely affected by this proceeding because they will pay millions of dollars to AEP Ohio under rider AER.**

AEP Ohio contends that "[t]he amount that AEP Ohio may collect from customers for prudently incurred alternative energy costs is not at issue here" and that "the prudence of AEP Ohio's alternative energy costs" is not "at issue in this proceeding."[[11]](#footnote-11) Instead, AEP Ohio claims that "[t]he issue here is merely whether AEP Ohio has properly updated its quarterly rate adjustments, subject to financial audit and reconciliation."[[12]](#footnote-12)

This argument fails for at least two reasons. First, AEP Ohio cites no authority for its bare conclusion that the scope of this proceeding excludes a review of the amount that AEP Ohio may collect from customers or a prudence review. The PUCO should not permit AEP Ohio to restrict OCC or any other party from addressing these issues. In its March 1, 2017 filing, AEP Ohio disclosed that the rate that customers pay for rider AER would increase by over 100%.[[13]](#footnote-13) Residential customers are adversely affected by a proceeding that doubles the rate that they pay for AEP Ohio's alternative energy rider. Moreover, AEP Ohio’s charges to consumers for renewable energy are showing as much higher than similar charges paid by consumers of other Ohio electric utilities, in a chart on the PUCO’s website.[[14]](#footnote-14)

Second, even if, as AEP Ohio contends, the issue in this case is "whether AEP Ohio has properly updated its quarterly rate adjustments," then OCC, as the statutory representative of AEP's 1.3 million residential consumers, has a right to intervene in this case, obtain discovery, and evaluate whether AEP Ohio has in fact done so. By opposing OCC's Motion to Intervene, AEP Ohio suggests that it is permitted to update its quarterly rate adjustments and OCC cannot be heard on that issue. This is just not true.

In either case, OCC has demonstrated that residential consumers may be adversely affected by this proceeding.

**C. OCC has a real and substantial interest in ensuring that customers pay only lawful and reasonable rates for AEP Ohio's alternative energy rider.**

Again, AEP Ohio opposes OCC's intervention by attempting to unilaterally determine the scope of this proceeding. According to AEP Ohio, "[t]he subject of this proceeding is simply to update mathematically the Company's AER rates consistent with the Commission's *ESP III* Opinion and Order."[[15]](#footnote-15) AEP Ohio's argument fails for the same reasons as before.

First, there is no support for AEP Ohio's pronouncement that this case is solely about math and that OCC has no right to evaluate the reasonableness or prudence of AEP Ohio's renewable rates. And second, even if this case were as limited as AEP Ohio claims, then OCC has a right to intervene, take discovery, and determine whether AEP Ohio's calculations correctly determine the rate that its 1.3 million residential customers pay. Either way, OCC's Motion to Intervene should be granted.

**D. OCC will advance the legal position that customers should not pay unreasonable or unlawful rates under AEP Ohio's alternative energy rider.**

AEP Ohio contends that OCC's legal position "has no apparent relation to the merits of this proceeding."[[16]](#footnote-16) In support of this argument, AEP Ohio states only that "the reasonableness and lawfulness of the AER" is not at issue.[[17]](#footnote-17) This argument fails.

By moving to intervene, OCC is not seeking to challenge the existence of the AER. Instead, as described in its Motion to Intervene, OCC is seeking to intervene to ensure that the rate that residential customers pay through the AER is lawful and reasonable.[[18]](#footnote-18) Thus, consistent with R.C. 4903.221(B)(2), OCC's potential legal positions in this case support its intervention.

**E. OCC's intervention will not unduly prolong and delay this proceeding.**

AEP Ohio argues that OCC's intervention will unduly prolong and delay this proceeding in two ways. First, AEP Ohio argues that the proceeding would be delayed because AEP Ohio might be required to respond to discovery.[[19]](#footnote-19) But the mere taking of discovery does not constitute undue delay. Indeed, parties and intervenors have a statutory right to take discovery.[[20]](#footnote-20) AEP Ohio cites no authority for its view that the ability to take discovery constitutes undue delay warranting denial of intervention. If the ability to take discovery constituted undue delay, then, by extension, no party would ever be permitted to intervene in any case before the PUCO.

Second, AEP Ohio claims that OCC's intervention may require AEP Ohio to "argue repetitive legal and/or factual issues."[[21]](#footnote-21) This claim is baseless. OCC has a right to raise legal and factual issues related to AEP Ohio's filings, and there is no evidence that such issues will be "repetitive." The PUCO should reject AEP Ohio's argument that OCC's intervention would unduly prolong and delay this proceeding.

**F. No other party to this proceeding represents the interests of all of AEP Ohio's 1.3 million residential consumers.**

In its Motion to Intervene, OCC asserted that it satisfied Ohio Adm. Code 4901-1-11(B)(5) because it is the unique representative of AEP Ohio's residential consumers.[[22]](#footnote-22) AEP Ohio does not dispute this and does not argue that some other party represents the same interests as OCC. Instead, AEP Ohio counters OCC's position by again claiming that residential consumers have no interest in this proceeding at all, and therefore, it is impossible for any party (OCC or otherwise) to represent residential customers' interests.[[23]](#footnote-23)

Not only because AEP expects its residential consumers to pay Rider AER charges, but also for the many reasons described above, the residential consumers that OCC represents have an interest in this proceeding. There is no party other than OCC that represents those interests. Thus, OCC satisfies OAC 4901-1-11(B)(5), and AEP's arguments to the contrary are meritless.

**G. CONCLUSION**

OCC's Motion to Intervene satisfies the requirements of R.C. 4903.221 and Ohio Adm. Code 4901-1-11. The PUCO should reject AEP Ohio's attempt to deny OCC a right to be heard in a proceeding in which AEP Ohio recently sought to double the rate that residential customers pay to AEP Ohio for renewable energy.

Respectfully submitted,

BRUCE WESTON (0016973)

OHIO CONSUMERS' COUNSEL

*/s/ Christopher M. Healey*

Christopher M. Healey (0086027)

Counsel of Record

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (614) 466-9571

[christopher.healey@occ.ohio.gov](mailto:christopher.healey@occ.ohio.gov)

(Will accept service via email)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply was served on the persons stated below via electronic transmission, this 15th day of June 2017.

*/s/ Christopher M. Healey*

Christopher M. Healey

Assistant Consumers' Counsel

**SERVICE LIST**

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| William Wright  Public Utilities Commission of Ohio  30 E. Broad St., 16th Floor  Columbus, OH 43215  [William.wright@ohioattorneygeneral.gov](mailto:William.wright@ohioattorneygeneral.gov)  Attorney Examiners:  [Sarah.parrot@puc.state.oh.us](mailto:Sarah.parrot@puc.state.oh.us)  [Greta.see@puc.state.oh.us](mailto:Greta.see@puc.state.oh.us) | Steven T. Nourse  AEP Service Corporation  1 Riverside Plaza, 29th Floor  Columbus, Ohio 43215  [stnourse@aep.com](mailto:stnorse@aep.com) |

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1. "PUCO" [↑](#footnote-ref-1)
2. "OCC" [↑](#footnote-ref-2)
3. Motion to Intervene by the Office of the Ohio Consumers' Counsel (May 24, 2017) (the "Motion to Intervene"). [↑](#footnote-ref-3)
4. "R.C." [↑](#footnote-ref-4)
5. "Ohio Adm. Code" [↑](#footnote-ref-5)
6. Ohio Consumers' Counsel v. PUCO, 111 Ohio St. 3d 384, 2006-Ohio-5853, ¶ 20 (2006). [↑](#footnote-ref-6)
7. "AEP Ohio" [↑](#footnote-ref-7)
8. Ohio Power Company's Memorandum Contra the Office of the Ohio Consumers' Counsel's Motion to Intervene (June 8, 2017) (the "Memo Contra"). [↑](#footnote-ref-8)
9. Memo Contra at 2. [↑](#footnote-ref-9)
10. Memo Contra at 8. [↑](#footnote-ref-10)
11. Memo Contra at 4. [↑](#footnote-ref-11)
12. Id. [↑](#footnote-ref-12)
13. See Correspondence (Mar. 1, 2017) at Redline of AER (showing an increase in the rate for residential customers from 0.10060 cents/kWh to 0.20370, a 102% increase). [↑](#footnote-ref-13)
14. Renewable Portfolio Standard/Rate Impacts, 2nd Quarter 2017:

    <https://www.puco.ohio.gov/industry-information/industry-topics/ohioe28099s-renewable-and-advanced-energy-portfolio-standard/aer-rates-2q-2017/> [↑](#footnote-ref-14)
15. Memo Contra at 5. [↑](#footnote-ref-15)
16. Memo Contra at 5. [↑](#footnote-ref-16)
17. Id. [↑](#footnote-ref-17)
18. See Motion to Intervene at 2. [↑](#footnote-ref-18)
19. Memo Contra at 6. [↑](#footnote-ref-19)
20. See R.C. 4903.082 ("All parties and intervenors shall be granted ample rights of discovery."). [↑](#footnote-ref-20)
21. Memo Contra at 6. [↑](#footnote-ref-21)
22. Motion to Intervene at 3. [↑](#footnote-ref-22)
23. Memo Contra at 7. [↑](#footnote-ref-23)