**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio to Update its Transmission Cost Recovery Rider. | )  )  ) | Case No. 24-196-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-1) where AES Ohio wants to increase transmission charges to consumers for by more than $19 million beginning June 1, 2024.[[2]](#footnote-2) AES admits that this amounts to a 53***% increase over*** what residential consumers pay under current TCRR rates.[[3]](#footnote-3)

The 53% jump in residential consumer TCRR charges hits already over-charged residential consumers unfairly. An average residential consumer (using 1,000 kwh per month) currently pays $6.61 per month for Rider TCRR. That will jump to almost $10.11 per month under the proposed Rider TCRR.[[4]](#footnote-4)

OCC is filing on behalf of the 500,000 Ohio residential utility consumers of AES who must pay under Rider TCRR. 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,

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Ohio Consumers’ Counsel

*/s/ John Finnigan*

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**MEMORANDUM IN SUPPORT**

In this case, AES seeks to pass on substantially increased charges to financially over-burdened Ohioans by forcing residential consumers to pay an additional $19 million for Transmission Cost Recovery Rider (“TCRR”) charges beginning on June 1, 2024. According to AES, this will be ***53% more*** than what residential consumers pay under current TCRR rates.[[5]](#footnote-5) A residential consumer using 1,000 kwh per month currently pays $6.61 per month under AES’s TCRR. That will skyrocket to almost $10.11 per month under AES’s updated TCRR.[[6]](#footnote-6)

The TCRR allows AES 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 AES’s investments in Supplemental Transmission Projects, which largely escape regulatory review by the PUCO or FERC for prudence. What’s worse is that AES’s residential consumers have no choice but to pay for what AES charges through the TCRR. Certain AES industrial

consumers, however, can “opt out” of paying TCRR rates under a pilot program that

shifts additional costs onto consumers who cannot participate in the program.[[7]](#footnote-7)

In addition, O.A.C. 4901:1-36-06. requires AES to provide in a 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.” In this filing, AES provides no explanation at all as to its policies and procedures for “minimizing any costs” in the TCRR. Nor did AES provide this explanation in the prior TCRR filing (Case No. 23-130-EL-RDR).

OCC has authority under law to represent the interests of all the 500,000 residential utility consumers of AES, under R.C. Chapter 4911. 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.[[8]](#footnote-8)

The interests of AES’ residential consumers may be “adversely affected” by this case, especially if the consumers were unrepresented in a proceeding that substantially increases how much residential consumers must pay under the TCRR. 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 protecting the residential consumers of AES in this case against AES’s proposed, but unsupported, increase in the amount consumers will pay for transmission costs. This interest includes evaluating whether the costs included in the transmission rider are just and reasonable and fairly allocated to residential consumers. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the conflicting financial interest of stockholders.

Second, OCC’s advocacy for residential consumers will include, among other things, advancing the position that AES 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, which 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 $19 million under Rider TCRR charges to residential consumers was filed on March 15, 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 AES’s transmission charges to consumers. 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 TCRR charges fairly represent those “imposed on or charged to the utility” and whether they were “prudently” incurred.[[9]](#footnote-9) 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 consistent with the public interest. OCC regularly intervenes and participates in cases regarding annual updates to the transmission riders of electric distribution utilities.[[10]](#footnote-10) There will be no prejudice to the PUCO Staff and AES in granting OCC intervention.

Fourth, OCC’s intervention will significantly contribute to full development and equitable resolution of the factual issues. AES has not provided evidence to demonstrate that its proposed increase is reasonable. Nor has it provided the information about AES’s “policies and procedures for minimizing any costs” under the TCRR 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 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 this case where AES has proposed to substantially increase transmission charges to consumers. 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-11)

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/ John Finnigan*

John Finnigan (0018689)

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**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 22nd day of March 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-1)
2. *Id.* at Schedule B-2. [↑](#footnote-ref-2)
3. *Id.* [↑](#footnote-ref-3)
4. *Id.* at Schedule B-2 (current rate of $.00066108 per kWh increasing to $.0101098 per kWh). [↑](#footnote-ref-4)
5. *Id.* at Schedule B-3. [↑](#footnote-ref-5)
6. *Id.* at Schedule B-2 (current rate of $.00066108 per kWh increasing to $.0101098 per kWh). [↑](#footnote-ref-6)
7. Application at ⁋ 5; s*ee, 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-7)
8. *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-8)
9. *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-9)
10. *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 (February 2, 2023), Consumer Protections Comments by Office of the Ohio Consumers’ Counsel (February 27, 2023); *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 (January 26, 2024), Consumer Protection Comments by Office of the Ohio Consumers’ Counsel (February 26, 2024). [↑](#footnote-ref-10)
11. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-11)