**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Application of the Ohio Department of Development to Adjust Ohio Power Company’s 2023 Universal Service Fund Rider Rate. | )))) | Case No. 23-779-EL-UNC |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene[[1]](#footnote-2) in this case about Ohio Power Company (“AEP” or “Company”) charges to consumers for low-income consumer assistance programs.[[2]](#footnote-3) All consumers, including residential consumers, pay to support the low-income consumer programs through the Universal Service rider. AEP seeks to impose on consumers new charges for the low-income consumer assistance program totaling $25,434,207. OCC is filing on behalf of about 1.5 million residential utility consumers of AEP. 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/ Connor D. Semple*

Connor D. Semple (0101102)

Counsel of Record

Donald J. Kral (0042091)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone: [Semple] (614) 466-9565

Telephone: [Kral]: (614) 466-9571

connor.semple@occ.ohio.gov

donald.kral@occ.ohio.gov

(willing to accept service by e-mail)

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Application of the Ohio Department of Development to Adjust Ohio Power Company’s 2023 Universal Service Fund Rider Rate. | )))) | Case No. 23-779-EL-UNC |

## MEMORANDUM IN SUPPORT

AEP asks the PUCO to modify its USF Rider rate so it can charge consumers an additional $25,434,207 for low-income consumer assistance. OCC has authority under law to represent the interests of the about 1.5 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 Ohio’s residential consumers may be “adversely affected” by this case. This is especially so if consumers are unrepresented in a proceeding where the PUCO is reviewing whether proposed additional charges on consumers under the USF Rider are just and reasonable. 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 in representing the residential consumers of AEP in this case about additional charges under the USF Rider. 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 charges should be no more than what is just and reasonable under Ohio law, for service that is adequate 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. 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 O.A.C. 4901-1-11(A)(2). As the advocate for residential utility consumers, OCC has a real and substantial interest in this case where the PUCO may impose additional charges on AEP consumers under the USF Rider.

In addition, OCC meets the criteria of O.A.C. 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.

O.A.C. 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.[[3]](#footnote-4)

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,

Bruce Weston (0016973)

Ohio Consumers’ Counsel

*/s/ Connor D. Semple*

Connor D. Semple (0101102)

Counsel of Record

Donald J. Kral (0042091)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone: [Semple] (614) 466-9565

connor.semple@occ.ohio.gov

donald.kral@occ.ohio.gov

(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 2nd day of August 2023.

 */s/ Connor D. Semple*

 Connor D. Semple

 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**

|  |  |
| --- | --- |
| amy.botschnerobrien@ohioago.govsteven.beeler@ohioago.govAttorney Examiners:megan.addison@puco.ohio.govgreg.price@puco.ohio.gov | dstinson@brickergraydon.com |

1. *See* R.C. Chapter 4911, R.C. 4903.221 and O.A.C. 4901-1-11. [↑](#footnote-ref-2)
2. R.C. 4928.52. [↑](#footnote-ref-3)
3. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-4)