**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| --- | --- | --- |
| In the Matter of The Annual Review of the Distribution Investment Rider Contained in the Tariff of The Dayton Power and Light Company d/b/a AES Ohio. | )  )  )  )  ) | Case No. 23-1106-EL-RDR |

**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 The Dayton Power and Light Company d/b/a AES Ohio (“AES Ohio”) is applying to the PUCO for a required annual review of AES Ohio’s distribution investment rider (“DIR”), in compliance with the settlement in *In re Application of the Dayton Power and Light Company d/b/a AES Ohio for Approval of Its Electric Security Plan*, Case No. 22-900-EL-SSO.[[1]](#footnote-2) AES Ohio charges consumers for distribution infrastructure investments intended to improve reliability of the grid.[[2]](#footnote-3) This annual review will audit AES Ohio’s DIR for accounting accuracy, prudency, and compliance with Ohio law.[[3]](#footnote-4)

OCC is filing on behalf of the approximately 500,000 residential utility consumers of AES Ohio. 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,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ Robert Eubanks*

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**MEMORANDUM IN SUPPORT**

AES Ohio charges consumers through the DIR for capital costs related to distribution infrastructure investments that are supposed to improve reliability of the grid.[[4]](#footnote-5) This annual review will audit AES Ohio’s charges to consumers under the DIR to ensure accounting accuracy and prudency.[[5]](#footnote-6) Residential consumers of AES Ohio have an interest in seeing that the money they are charged through DIR is accurately accounted-for, prudently applied toward improving grid reliability, and otherwise fully compliant with Ohio law and PUCO regulation.

OCC has authority under law to represent the interests of all the approximately 500,000 residential utility consumers of AES Ohio 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.

The interests of Ohio’s residential consumers may be “adversely affected” by this case, especially if the consumers were unrepresented in a proceeding that will review whether costs charged to them by AES Ohio under the DIR are prudent and charged in compliance with AES Ohio’s approved tariff, PUCO rules, and Ohio law. 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 AES Ohio in this case involving an annual audit of the DIR. 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 rates should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. This includes ensuring that AEP Ohio’s DIR is accurately accounted-for and prudently implemented to improve reliability of service to consumers, and that AEP Ohio is in full compliance with 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. The case is still in its earliest stages, with the PUCO’s request for proposal anticipating a final audit report to be filed by or on July 26, 2024.[[6]](#footnote-7)

OCC will attempt to avoid duplicative discovery in the proceeding. The issues OCC will raise fall clearly within the scope of the proceeding reviewing AEP Ohio’s DIR for accounting accuracy, prudency, and compliance. 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 distribution investment riders.[[7]](#footnote-8) There will be no prejudice to the PUCO Staff and AES Ohio in granting OCC’s intervention.

Fourth, OCC’s intervention will significantly contribute to full development and equitable resolution of the factual issues. OCC’s interest in protecting residential consumers will lead it to fully and carefully examine AES Ohio’s charges to residential consumers under DIR and whether AES Ohio’s investments increase reliability for 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 Ohio Administrative Code Rule 4901-1-11(A) which sets the standard for *intervention as of right*, mirroring Ohio Civil Rule 24(A). Under 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 the PUCO is reviewing and auditing what AES Ohio charges to consumers through the DIR. The DIR is paid for by consumers, and this proceeding will review whether the charges are prudent and are being used to improve reliability of electric utility service. 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.[[8]](#footnote-9)

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/ Robert Eubanks*

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(Will accept service via email)

**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 8th day of February 2024.

*/s/ Robert Eubanks*

Robert Eubanks

Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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1. Entry dated January 10, 2024, Case No. 23-1106-EL-RDR at 1-2. [↑](#footnote-ref-2)
2. *Id*. [↑](#footnote-ref-3)
3. *Id.* [↑](#footnote-ref-4)
4. *Id*. [↑](#footnote-ref-5)
5. *Id*. [↑](#footnote-ref-6)
6. *Id*. at 9. [↑](#footnote-ref-7)
7. *See* *In the Matter of the 2017 Review of the Distribution Investment Rider Contained in the Tariff of Ohio Power Company*, Case No. 18-230-EL-RDR, Entry (March 18, 2019) – Entry granted OCC intervention; *In the Matter of the 2016 Review of the Distribution Investment Rider Contained in the Tariff of Ohio Power Company,* Case No. 17-38-EL-RDR, Entry (March 18, 2019)- Entry granted OCC intervention; *In the Matter of the 2018 Review of the Distribution Investment Rider Contained in the Tariff of Dayton Power and Light Company*, Case No. 19-439-EL-RDR (August 15, 2019) – Entry granted OCC intervention. [↑](#footnote-ref-8)
8. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-9)