**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Ohio Power Company to Update its Pilot Throughput Balancing Adjustment Rider. | ))) | Case No. 18-375-EL-RDR |

**MOTION TO INTERVENE**

**BY**

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

In this case, Ohio Power Company ("AEP" or the "Utility") seeks to charge residential customers over $39 million for 2017 under its Pilot Throughput Balancing Adjustment Rider (the "Decoupling Rider") and to defer an additional $31.9 million to potentially be charged to customers in the future. The Office of the Ohio Consumers' Counsel ("OCC") files this motion on behalf of AEP's 1.3 million residential electricity customers. The Public Utilities Commission of Ohio ("PUCO") should grant OCC's motion to intervene for the reasons set forth in the attached memorandum in support.

Respectfully submitted,

BRUCE WESTON (0016973)

OHIO CONSUMERS' COUNSEL

*/s/ Christopher M. Healey*

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**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| --- | --- | --- |
| In The Matter of the Application of Ohio Power Company to Update its Pilot Throughput Balancing Adjustment Rider. | ))) | Case No. 17-618-EL-RDR |

**MEMORANDUM IN SUPPORT**

In this proceeding, AEP seeks to update its Decoupling Rider to include over $39 million in charges to residential customers for 2017 and to defer, for potential later collection from residential customers, an additional $31.9 million.[[1]](#footnote-2) AEP proposes charging customers for decoupling costs, which means customers will pay the difference between distribution revenues actually collected and distribution revenues that the PUCO approved in AEP's last rate case in 2011. The Decoupling Rider is a pilot program that has now run for six years, collecting costs from customers. The concept behind the Decoupling Rider is that AEP is able to charge customers for revenues that are lost a result of AEP's energy efficiency programs. OCC has legal authority to represent the interests of AEP's residential utility customers under 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 customers may be "adversely affected" by this case, especially if the customers were unrepresented in a proceeding where the Utility seeks to increase the amount that it charges customers through this rider. 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 the residential customers of AEP in this case where AEP will charge customers for revenues it has lost when customers use less energy, regardless of whether the customers' reduction in energy usage was the result of AEP's energy efficiency programs. OCC's 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 customers will include advancing the position that the rates consumers pay for electric service (including charges for energy efficiency) should be no more than what is reasonable and lawful under Ohio law. OCC's position is therefore directly related to the merits of this case that 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 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" according to Ohio Adm. Code 4901-1-11(A)(2). As the advocate for residential utility customers, OCC has a very real and substantial interest in this case involving the Utility's decoupling costs, which affect the rates residential customers pay for electric service.

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." 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 customers. 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 that 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.[[2]](#footnote-3)

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 customers, the PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

BRUCE WESTON (0016973)

OHIO CONSUMERS' COUNSEL

*/s/ Christopher M. Healey*

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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 via electronic transmission, this 12th day of March 2018.

 */s/ Christopher Healey*

 Christopher Healey

 Counsel of Record

**SERVICE LIST**

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1. *See* Application at Schedule 1 (Feb. 28, 2018). [↑](#footnote-ref-2)
2. *Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-3)