**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Commission’s Review of the Distribution Investment Rider Work Plan for 2024 of The Dayton Power and Light Company d/b/a AES Ohio. | )  )  )  )  ) | Case No. 23-1176-EL-RDR |

**REPLY TO AES OHIO’S MEMORANDUM CONTRA**

**OCC’S MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

# INTRODUCTION

In this case, the PUCO will review AES Ohio’s “work plan” for its Distribution Investment Rider (“DIR”), through which AES Ohio will charge consumers ***$137 million*** for investments purportedly to improve AES Ohio’s service reliability. It is imperative that AES Ohio’s 2024 proposed DIR spending is thoroughly reviewed to protect residential consumers from footing the bill for excessive or misdirected spending which does not resolve the repeated service reliability shortfalls that AES Ohio has subjected them to over the last several years.

The PUCO’s review of the work plan should also confirm that any proposed DIR charges to residential consumers are just, reasonable, do not exceed the PUCO set caps, and will result in meaningful and measurable improvements in electric service reliability to residential consumers. The PUCO’s review should also include an assessment of cost responsibility for the various projects, including economic development projects which represent more than half of the DIR expenditures the utility wants to charge its consumers. The review should also confirm that AES Ohio is providing a service to its residential consumers that is adequate and, in all respects, just and reasonable, as required by R.C. 4905.22.

Despite these important consumer issues presented by AES Ohio’s work plan, AES Ohio opposes intervention by OCC, the state advocate for residential utility consumers. AES Ohio’s attempt to silence residential utility consumers in this matter is wrong. The PUCO should grant OCC’s motion to intervene.

AES Ohio argues that its residential utility consumers have no real and substantial interest in this proceeding[[1]](#footnote-1) about how AES Ohio will spend the millions of dollars it charges consumers through the DIR. Nothing could be further from the truth.

OCC’s Motion to Intervene fully explained how 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. OCC’s right to intervene in PUCO proceedings has been affirmed by the Supreme Court of Ohio, which determined that “intervention ought to be *liberally allowed* so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO.”[[2]](#footnote-2)

AES Ohio’s opposition to OCC’s intervention is without merit. As explained in OCC’s motion to intervene and further explained below, OCC satisfies the standards for intervention. OCC’s Motion to Intervene should be granted.

# II. ARGUMENT

1. **OCC satisfies the standard for intervention as of right under O.A.C. 4901-1-11(A)(2). The PUCO should reject AES Ohio’s claims that OCC has no interest in this so-called “informational” proceeding.**

OCC explained in its motion to intervene how it satisfies the standards for intervention under R.C. 4903.221 and O.A.C. 4901-1-11. In this regard, it should be noted that O.A.C. 4901-1-11(A) sets the standard for *intervention as of right,* mirroring Ohio.Civ.R. 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.”

OCC has a real and substantial interest in participating in this matter on behalf of AES Ohio’s residential consumers who will be charged increased rates that make up a significant portion (66.7%) of the $137 million AES Ohio seeks under its distribution rider.[[3]](#footnote-3) The work plan will determine what expenditures should be made to “emphasize proactive distribution maintenance, improve service reliability and resilience of the grid and promote equity for low income communities.”[[4]](#footnote-4) OCC has an interest in protecting residential consumers from excessive or misdirected spending which does not resolve the repeated service reliability problems they have experienced over the last several years. OCC has an interest in assuring that AES Ohio’s spending is within the capped amounts agreed to under the PUCO approved settlement (which OCC opposed). OCC has an interest in assuring that the work plan appropriately addresses residential consumers’ reliability issues and is not disproportionately geared to resolving the needs of big business or furthering economic development projects.

OCC’s interests in intervening for residential consumers also include verifying that AES Ohio is meeting the various requirements of its DIR work plan, including the performance of robust annual audits that include, but are not limited to:

1) On-site inspections of new capital assets;

2) Tracking capital expenses from continuing property records, invoices, and other supporting documentation to the used and useful assets and vice versa;

3) Verification of proper accounting and computation of annual property tax expense;

4) Verification of proper accounting and computation of state, local, and federal income tax expense, as well as taxes other than income;

5) Verification of proper accounting and computation of annual depreciation expense;

6) Verification of proper accounting for DIR revenues; and

7) Verification with FERC Form 1.[[5]](#footnote-5)

AES Ohio argues that OCC’s intervention should be denied because residential consumers’ interests are “negligible.”[[6]](#footnote-6) AES Ohio also claims that OCC intervention is unwarranted because in AES Ohio’s view, the proceeding is merely “informational” and there “no issues to litigate at this time in this matter.”[[7]](#footnote-7) These arguments should be rejected.

Nothing in R.C. 4903.221 or O.A.C. 4901-1-11 precludes intervention in a so-called “informational” or uncontested proceeding. OCC explained how it satisfies the standards for intervention in its motion to intervene. And plainly, AES Ohio’s residential utility consumers have a real and substantial interest in “information” about how the millions of dollars they pay AES Ohio through the DIR will be spent to ensure service reliability issues for residential consumers. OCC’s motion to intervene should be granted.

Moreover, other interested stakeholders (who signed the settlement in AES Ohio’s electric security plan case) were allowed to provide input on AES Ohio’s work plan. Thus, AES Ohio’s claim that residential consumers have no interest in the work plan is simply not true. When the PUCO approved AES Ohio’s electric security plan settlement, it cited the fact that AES Ohio “will develop, ***with input from interested parties***, an annual work plan to focus spending on where it will have the greatest impact on sustaining reliability and resilience of the grid for all customers.”[[8]](#footnote-8) AES Ohio shared its work plan with the Signatory Parties to that settlement on December 22, 2023.[[9]](#footnote-9) However, AES Ohio did not share it with OCC, as OCC was not a Signatory Party. And although OCC did not sign AES Ohio’s electric security plan settlement (because the entire settlement package harms consumers), that doesn’t mean that it should be denied intervention in this case. AES Ohio’s residential utility consumers have a real and substantial interest in the work plan for AES Ohio’s DIR, and OCC intervention should be granted.

1. **OCC satisfies the standards for intervention under R.C. 4903.221 and O.A.C. 4901-1-11(B). The PUCO should grant OCC’s intervention.**

OCC fully explained how it satisfies the intervention standards in R.C. 4903.221 and O.A.C. 4901-1-11(B). AES Ohio’s claims that OCC’s intervention and participation in this case will unduly prolong or delay the proceeding have no merit. 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. Given the early stage of this proceeding, it is difficult to see how OCC’s intervention will prolong or delay the case.

Finally, the PUCO should reject AES Ohio’s claim that OCC’s participation would not contribute to the full development and equitable resolution of the issues in this case. OCC’s intervention will significantly contribute to full development and equitable resolution of this proceeding. OCC’s interest in protecting residential consumers will lead it to fully and carefully examine AES Ohio’s DIR review. 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.

# III. CONCLUSION

AES Ohio’s arguments against OCC’s intervention are misplaced and should be rejected. Intervention by OCC is well-settled under the law, and OCC’s motion to intervene should be granted. 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. OCC’s intervention should be granted in order to allow for representation of residential consumers’ real, direct interests in AES Ohio’s DIR proceedings.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply to AES Ohio’s Memorandum Contra OCC’s Motion to Intervene was served on the persons stated below via electronic transmission, this 9th day of February 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:

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1. AES Ohio’s Memorandum in Opposition to Motion to Intervene By OCC, 23-1176-EL-RDR (February 2, 2023) at 2. [↑](#footnote-ref-1)
2. [*Ohio Consumers' Counsel v. PUCO*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940, ¶ 20](https://plus.lexis.com/api/document/collection/cases/id/4MFT-J0X0-TVW7-J31S-00000-00?cite=111%20Ohio%20St.%203d%20384&context=1530671) (emphasis added). [↑](#footnote-ref-2)
3. Opinion and Order dated December 14, 2022, Case No. 20-1651-EL-AIR at 59. [↑](#footnote-ref-3)
4. Opinion and Order dated August 9, 2023, Case No. 22-900-EL-SSO, et al. at 28. [↑](#footnote-ref-4)
5. AES Ohio’s Memorandum in Opposition to Motion to Intervene by Office of the Ohio Consumers’ Counsel, Case No. 23-1176-EL-RDR (February 2, 2024) at 1-2. [↑](#footnote-ref-5)
6. *Id.* at 2. [↑](#footnote-ref-6)
7. *Id*. [↑](#footnote-ref-7)
8. *Supra* 22-900-EL-SSO. [↑](#footnote-ref-8)
9. Notice of AES Ohio’s Annual Work Plan For Its Distribution Investment Rider, Case No. 23-1176-EL-RDR (December 29, 2023) at 1. [↑](#footnote-ref-9)