**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Ohio Power Company for Authority to Abandon Electric Service Lines, Pursuant to Ohio Revised CodeSections 4905.20 and 4905.21. | ))))) | Case No. 22-693-EL-ABN |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene[[1]](#footnote-2) where Ohio Power Company (“AEP”) seeks authority to abandon its distribution lines serving 286 residential consumers living in the Northtowne Apartment Complex located in Columbus, Ohio. AEP proposes to abandon the distribution lines to the Northtowne Apartment Complex because submetering company Nationwide Energy Partners (“NEP”) has demanded that AEP construct facilities so that NEP can resell or redistribute (submeter) electric utility service to those consumers.

Residential consumers residing in the Northtowne Apartment Complex face significant harm if AEP abandons its distribution lines so that NEP can submeter electric utility service to them.[[2]](#footnote-3) Among other things, AEP claims that over 25% of the Northtowne residents will lose their ability to participate in the Percentage of Income Payment Plan (“PIPP”) program that helps income-eligible consumers pay their utility bills.[[3]](#footnote-4)

This case is not only about the abandoned consumer protections affecting those consumers in the Northtowne complex, but also concerns for all consumers who may face responsibility for the stranded investment created by AEP’s abandonment of these facilities. OCC is filing on behalf of AEP’s residential utility consumers. 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/ Angela D. O’Brien*

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## MEMORANDUM IN SUPPORT

AEP has requested authority from the PUCO to abandon distribution lines serving 286 residential consumers living in the Northtowne Apartment Complex. AEP seeks to abandon distribution lines to Northtowne because NEP (a large, non-landlord submetering company) is forcing AEP to convert Northtowne consumers to master-metered service so NEP can submeter electric utility service to the consumers.[[4]](#footnote-5) If AEP is allowed to abandon service, the Northtowne residential consumers will face significant harm. In particular, financially vulnerable consumers will lose their ability to participate in the PIPP program and in AEP budget payment plans.[[5]](#footnote-6) Consumers will also lose important protections under the Ohio Administrative Code regarding disconnections and reconnections.[[6]](#footnote-7) However, this case is not only about the abandoned consumer protections affecting those consumers in the Northtowne complex, but also concerns for all consumers who may face responsibility for the stranded investment created by AEP’s abandonment of these facilities.

AEP claims that it does not want to abandon service to the Northtowne consumers.[[7]](#footnote-8) But AEP has been forced by the PUCO to continue processing NEP’s submetering requests pending the outcome of AEP’s Complaint against NEP in Case No. 21-990-EL-CSS.[[8]](#footnote-9) According to AEP, processing NEP’s requests has significantly drained AEP’s resources.[[9]](#footnote-10) The PUCO previously denied (wrongfully in our view) OCC’s intervention in Case No. 21-990-EL-CSS, where NEP’s demands to submeter service have already adversely affected AEP consumers.[[10]](#footnote-11) For consumer protection, the PUCO should grant OCC’s motion to intervene here.

OCC has authority under law to represent the interests of the residential utility consumers currently served by AEP, 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 the residential consumers may be “adversely affected” by this case, especially if these consumers were unrepresented in a proceeding where AEP is allowed to stop providing them with PUCO-regulated essential electric utility service, and potentially seek protection from all consumers for the stranded investment created by AEP’s abandonment of these facilities. 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 consumers currently served by AEP in this case involving AEP’s request to abandon the distribution assets, and the potential stranded investment created by the abandonment. This interest is different than that of any other party and especially different than that of AEP whose advocacy includes its own financial interest and the interest of its non-residential consumers.

Second, OCC’s advocacy for residential customers will include advancing the position that the residential consumers should not have to pay unreasonable rates for electric utility service while giving up rights and protections they receive from AEP, the PUCO-regulated utility. 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 O.A.C. 4901-1-11(A)(2). As the advocate for residential utility consumers, OCC has a very real and substantial interest in this case where AEP is seeking to abandon essential electric utility service to consumers.

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) that OCC already has addressed and that 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 customers. That 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-12)

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

Respectfully submitted,

Bruce Weston (0016973)

Ohio Consumers’ Counsel

*/s/ Angela D. O’Brien*

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(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 9th day of September 2022.

 */s/ Angela D. O’Brien*

 Angela D. O’Brien

 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-2)
2. AEP Application, at ¶ 18. [↑](#footnote-ref-3)
3. *Id.* [↑](#footnote-ref-4)
4. AEP Application, at ¶ 15. [↑](#footnote-ref-5)
5. AEP Application, at ¶ 18. [↑](#footnote-ref-6)
6. AEP Application, at ¶ 18. [↑](#footnote-ref-7)
7. AEP Application, at ¶ 17. [↑](#footnote-ref-8)
8. AEP Application, at ¶ 9. [↑](#footnote-ref-9)
9. AEP Application, at ¶ 13. [↑](#footnote-ref-10)
10. *See In the Matter of the Complaint of Ohio Power Company v. Nationwide Energy Partners, LLC*, Case No. 21-990-EL-CSS, Entry (July 27, 2022). OCC timely filed an Application for Rehearing of the July 27, 2022 Entry affirming the Attorney Examiner’s denial of OCC’s motion to intervene. [↑](#footnote-ref-11)
11. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-12)