

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

9
RECEIVED-DOCKETING DIV
2007 JUN -7 PM 3:40
PUCO

In the Matter of the Application of)
Columbus Southern Power Company and)
Ohio Power Company to Adjust the)
Transmission Component of Each) Case No. 06-273-EL-UNC
Company's Standard Service Tariff and to)
Combine that Component with its)
Transmission Cost Recovery Rider.)

**MOTION TO INTERVENE AND
MOTION TO ADJUST TRANSMISSION COST RECOVERY RIDER
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Pursuant to R.C. Chapter 4911, R.C. 4903.221, Ohio Adm. Code 4901-1-11, and Ohio Adm. Code 4901-1-12, the Office of the Ohio Consumers' Counsel ("OCC"), on behalf of all the residential utility consumers of Columbus Southern Power Company and Ohio Power Company (collectively, "AEP" or "Companies"), hereby submits this Motion to Intervene And Motion to Adjust Transmission Cost Recovery Rider ("TCRR") with the Public Utilities Commission of Ohio ("Commission" or "PUCO").

The bases for OCC's Motion to Intervene and Motion to Adjust Transmission Cost Recovery Rider is set forth in the attached Memorandum in Support.

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business
technician Am Date Processed 6/7/07.

Respectfully submitted,

Janine L. Migden-Ostrander
Consumers' Counsel



Jacqueline Lake Roberts, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

614-466-8574 (Telephone)

roberts@occ.state.oh.us

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Columbus Southern Power Company and)	
Ohio Power Company to Adjust the)	
Transmission Component of Each)	Case No. 06-273-EL-UNC
Company's Standard Service Tariff and to)	
Combine that Component with its)	
Transmission Cost Recovery Rider.)	

**MEMORANDUM IN SUPPORT
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

On February 3, 2006, the Companies submitted their application ("Application") to the Commission for authority to increase their transmission rates and to combine the transmission component of each company's standard service tariff with its TCRR.

On March 15, 2006, OCC filed a Motion to Intervene under its legislative authority to represent the interests of all the residential utility consumers of Ohio. On May 27, 2006, the Commission issued an order denying OCC's intervention. On May 18, 2007, the Staff of the Commission ("Staff") filed its *Biennial Review of Controllable RTO Costs* ("Staff Review"). Staff found, *inter alia*, "that the Companies appear to have sufficient procedures and strategies in place to minimize the controllable costs."¹ No reductions to the TCRR were recommended. OCC's review of the Application, the Staff Review and related information has not (at this point) identified an issue regarding the

¹ Staff Review at 9.

Companies' controllable costs, although OCC has identified an apparent over-collection of transmission costs.

II. ARGUMENT

A. OCC's Motion to Intervene Should be Granted.

OCC moves to intervene under its legislative authority to represent all residential utility consumers in Ohio, 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, especially if the consumers are unrepresented in a proceeding regarding transmission rates charged by Companies. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission 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 all of the Companies' approximately 1.2 million residential consumers. 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 shareholders.

Second, OCC's advocacy for all Companies' residential consumers will include advancing the position that transmission rates should be no more than what is reasonable and permissible under Ohio law for service that is adequate under Ohio law. The Companies' rates should be no more than what is reasonable and lawful. OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, the authority having regulatory control of public utilities' rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceeding. 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 statutory residential utility consumer advocate, OCC has a very real and substantial interest in this case where residential consumers are being required to pay transmission rates of Companies' that change on a periodic basis as Companies' transmission costs change.

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) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission 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 because it uniquely has been designated as the state representative of the interest of all 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 recently confirmed OCC’s right to intervene in PUCO proceedings when the Court ruled on an appeal that the PUCO erred by denying the OCC’s intervention.² The Court found that the PUCO abused its discretion in denying OCC’s intervention and that OCC should have been granted intervention.³

OCC was recently granted intervention in a transmission rider case after the PUCO previously denied intervention – exactly what OCC requests here.⁴

OCC meets the criteria set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11 as well as the precedent established by the Supreme Court of Ohio for intervention. On behalf of all of the Companies’ residential consumers, the Commission should grant OCC’s Motion to Intervene.

B. OCC’s Motion to Adjust Transmission Cost Recovery Rider Should be Granted.

The purpose of the TCRR is to collect all transmission costs of the Companies. Companies should not be collecting transmission costs in any rates except the TCRR.

² *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20 (2006).

³ *Id.*

⁴ *In re Transmission Rates of Duke Energy Ohio*, Case No. 05-727, Order (May 30, 2007).

Approximately \$200,000 in costs appear to be double-recovered by AEP ("Overcharges") because they are collected in both the TCRR and base rates. The TCRR and base rates must be adjusted so that 1) transmission costs are only being recovered once; 2) the TCRR is adjusted so that customers receive full credit for Overcharges, including carrying costs on the Overcharges; and 3) this adjustment should be reflected in the next TCRR filing made by Companies.

Companies, not intervenors, have the burden of proof under R.C. 4909.18 to demonstrate that the costs they seek to pass through the TCRR are the types of costs that were approved to be passed through, that there are no Overcharges, and the costs are, in fact, FERC-approved costs.⁵ The inappropriateness of some of the Companies' transmission costs leads to the conclusion that existing rates are unjust and unreasonable. The Companies should not be collecting Overcharges.

OCC requests that the TCRR be adjusted in the Companies' next filing to ensure only proper recovery of transmission costs, and that consumers are compensated by crediting the TCRR Overcharges, with carrying charges, for the entire period of over collection.

III. CONCLUSION

OCC's Motions should be granted. The Commission based its previous decision regarding OCC's intervention on the assumption that whether a hearing in this case is required is dispositive on the matter of intervention. OCC represents all the Companies' approximately 1.2 million residential customers who are required to pay for its transmission costs. To that end, the Commission must consider the criteria for granting

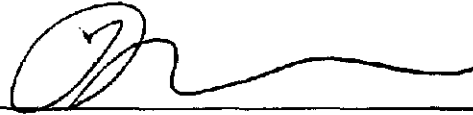
⁵ OCC's Motions at 8-9; IEU's Motion at 7-10.

intervention contained within R.C. 4903.221 - as it did in the *Duke* case - all of which OCC satisfies. OCC seeks to protect consumers from Overcharges, and the Companies should be required to adjust their TCRR consistent with the relief requested herein.

OCC respectfully requests that the Commission grant its Motions in this case.

Respectfully submitted,

Janine L. Migden-Ostrander
Consumers' Counsel

A handwritten signature in black ink, appearing to read 'J. Lake', with a long horizontal flourish extending to the right.

Jacqueline Lake Roberts, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
614-466-8574 (Telephone)
614-466-9475 (Facsimile)
roberts@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's *Motion to Intervene and Motion to Adjust Transmission Cost Recovery Rider* was provided to the persons listed below via first class U.S. Mail, postage prepaid, this 7th day of June 2007.



Jacqueline Lake Roberts
Assistant Consumers' Counsel

SERVICE LIST

Marvin Resnik, Esq.
American Electric Power Service, Corp.
1 Riverside Plaza, 29th Floor
Columbus, OH 43215

Duane Luckey, Section Chief
Assistant Attorney General
Public Utilities Commission
180 East Broad Street
Columbus, OH 43215

Samuel Randazzo, Esq.
Lisa McAlister, Esq.
Daniel Neilsen, Esq.
McNees, Wallace & Nurick, LLC
21 East State St., 17th Floor
Columbus, OH 43215

David Rinebolt, Esq.
OPAE
P.O. Box 1793
Findlay, OH 45839-1793