

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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2008 DEC 19 AM 11:34

In the Matter of the Application of)
Columbus Southern Power Company and)
Ohio Power Company to Modify Their) Case No. 08-1301-EL-AAM
Accounting Procedure for Certain Storm-)
Related Service Restoration Costs.)

PUCO

**REVISED MOTION TO INTERVENE¹
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where the applicants² seek approval for accounting authority to defer with carrying costs based on the Weighted Average Cost of Capital ("WACC") an undisclosed amount of operating and maintenance ("O&M") expenses associated with restoring electric service to customers as a result of the windstorms of September 2008. This request, if granted, would result in rate increases for Ohio customers. OCC is filing on behalf of all the approximately 1.2 million residential utility consumers of Columbus Southern Power Company and Ohio Power Company ("Companies").³ The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

¹ The Revised Motion to Intervene replaces the Motion to Intervene that OCC filed on December 18, 2008. The Motion to Intervene of December 18th is withdrawn.

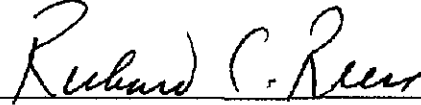
² The Applicants are Columbus Southern Power Company and Ohio Power Company.

³ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

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Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

A handwritten signature in dark ink, appearing to read "Richard C. Reese". The signature is written in a cursive style with a horizontal line underneath it.

Richard C. Reese, Counsel of Record
Melissa R. Yost
Gregory J. Poulos
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (614) 466-8574

Email: reese@occ.state.oh.us

yost@occ.state.oh.us

poulos@occ.state.oh.us

**BEFORE
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In the Matter of the Application of)
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REVISED MEMORANDUM IN SUPPORT⁴

I. INTRODUCTION

On December 15, 2008, Columbus Southern Power Company and Ohio Power Company ("Companies" or "Applicants") filed their application ("Application") for the approval to defer certain Operation and Maintenance (O & M) expenses they claim are associated with the wind storm of September 14, 2008.⁵ In the alternative, the Companies propose to recover these costs beginning with the first billing cycle of February 2009 if the Commission finds the Companies' deferral request is not the optimal method to handle recovery of these costs.⁶ The approval of the Application would permit the Companies to increase rates paid by the Companies' approximately 1.2 million residential customers by an undisclosed amount. OCC is the state agency that represents Ohio's residential utility consumers. The Commission should grant OCC's Motion to Intervene in these

⁴ The Revised Memorandum replaces the Memorandum that OCC filed on December 18, 2008. The Memorandum of December 18th is withdrawn.

⁵ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Modify Their Accounting Procedure for Certain Storm-Related Service Restoration Costs*, Case No. 08-1301-EL-AAM, Application at ¶2 (December 15, 2008).

⁶ *Application* at ¶9.

proceedings so that it can fully participate in the proceedings and protect the interests of the Companies' customers.

II. THE APPLICATION

The Companies allege that the “[P]resent application is consistent with the Commission-approved application in Case No. 06-412-EL-UNC.”⁷ There are some similarities between this Application and that prior application, but not necessarily in a good way for consumers. For example, the Commission noted in that Finding and Order that the costs sought to be recovered were not “adequately describe[d].”⁸ In the current Application, the Companies do not provide any detail on the amount of expenses to be deferred or the amount of costs to be recovered. However, the Application provides specific descriptions of equipment and facilities damaged.⁹ In addition, it appears that the Companies are aware of the amount of labor employed to restore service.¹⁰

The PUCO should not grant the Application, as framed, with its lack of information regarding the dollar amounts for deferral or recovery that will be presented for the Commission’s consideration. The OCC’s intervention, aligned with its interest in advocating for residential customers, will assist the Commission in ensuring that a complete and transparent record will be provided, under R.C. 4903.10, of what amounts

⁷ Application at ¶6.

⁸ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Modify Their Accounting Procedure for Certain Storm-Related Service Restoration Costs*, Case No. 06-412-EL-UNC, Finding and Order at ¶8 (August 9, 2006).

⁹ Application at ¶7.

¹⁰ *Id.*

of deferral or recovery the Commission should consider for approval or denial, and the reasons for an approval or denial of each cost or expense.

In addition, this current Application may be distinguished from the application submitted in the previous case by noting the circumstances surrounding the current submission. Currently, the Companies are in the midst of an Electric Security Plan (ESP) proceeding. This proceeding will decide the rates for a substantial portion of the Companies' customers. These proceedings involve issues of reliability, maintenance and service quality. The Companies note in their application that the storm occurred over three months ago.¹¹ The rate plans cited by the Companies in this application expire in less than two weeks.¹² They will be replaced by the outcome of the ESP case. Rather than abruptly granting yet another storm exception with no investigation or deliberate consideration, under plans whose terms were designed to end in 12 days, the Commission should instead consider the deferral/cost recovery request in this Application under the totality of the current circumstances. These circumstances include the rate implications of the ESP currently being litigated.

Furthermore, the OCC has reasonably requested a specific Commission investigation into the practices of the Companies in maintaining their facilities and equipment.¹³ Part of this application for investigation describes some of the specific

¹¹ Application at ¶7.

¹² *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Modify Their Accounting Procedure for Certain Storm-Related Service Restoration Costs*, Case No. 06-412-EL-UNC, Finding and Order at ¶3 (August 9, 2006).

¹³ *In the matter of a Commission Investigation into the Reliability of the Electric Distribution Service Provided by Ohio's Investor Owned Electric Companies*, Case No. 08-1299-EL-UNC, Application (December 15, 2008).

problems that these Companies have had with vegetation management and other practices that may have contributed to the length of outages experienced by the Companies' customers and the damages the Companies claim they incurred.¹⁴ The documentation provided in the OCC application should certainly be part of the record in this case and OCC should be granted intervention in order to present it.

Of additional concern is the request by the Companies to recover carrying charges based on WACC which under their Application would result in a charge of 8.25 percent.¹⁵ Should the Commission approve the Companies' Application to recover these costs, the Commission should not approve carrying costs at such a high level. The Commission has previously approved in more recent proceedings a carrying cost based on just the long-term cost of debt.¹⁶ Given the low interest rates that are available in today's economic environment, carrying costs of the magnitude that AEP is proposing are excessive and should not be permitted. Carrying costs set at the long term cost of debt would be more appropriate.

III. INTERVENTION

This case involves the review of the reasonableness and lawfulness of issues related to proposed accounting deferrals and cost recovery. OCC has authority under law to represent the interests of all the approximately 1.2 million residential utility customers

¹⁴ *Commission Investigation* at 18-22.

¹⁵ Application at para. 2- This is calculated by using the Companies' assumption of a 50/50 capitalization and a stated cost of equity at 10.5 percent and a long term cost of debt that OCC estimates as 6 percent.

¹⁶ See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Modify Certain Accounting Practices and for Tariff Approvals*, Case Nos. 05-1125-EL-ATA, 05-1126-EL-AAM and 05-1127-EL-UNC, p. 5 (September 9, 2005) (proposing "a carrying charge at the cost of debt").

of Columbus Southern Power Company and Ohio Power Company, 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 were unrepresented in a proceeding in which the Commission considers the deferral of significant O & M expenses and/or collection of costs associated with storm damage repair, which could affect rates paid by these residential customers. 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 the residential consumers of the Applicants in order to review each request and present the affects of these requests on rates paid by the Companies’ residential customers. This interest is different than that of any other party and especially different than that of the utilities whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for consumers will include advancing the position that the Companies' requests in this case – specifically recovery for storm damage - should be no more than what is reasonable and lawful under Ohio law, for service that is adequate 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 residential utility consumer advocate, OCC has a very real and substantial interest in this case where the rates of residential utility customers could be affected in the immediate future depending on the deferral and/or recovery requested.

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 in that it uniquely has been designated as the state representative of the interests 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 confirmed OCC’s right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC’s intervention and that OCC should have been granted intervention.¹⁷

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 consumers, the Commission should grant OCC’s Motion to Intervene.

IV. CONCLUSION

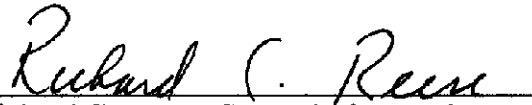
OCC should be granted intervention in this case. The cost deferral or cost recovery, as requested by the Applicants, has the potential to--or will--adversely affect the residential customers who are asked to pay the costs. The PUCO should not approve the Application unless the Companies can meet their burden of proof that the Application is allowed under the terms of the rate plan and the alleged costs are lawful, reasonable and prudently incurred. The process for the Applications should include ample discovery under R.C. 4903.082 with the opportunity for developing a record for the PUCO to

¹⁷ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

consider under R.C. 4903.09. This also includes a determination of the appropriate rate for carrying charges associated with any deferral. Therefore, the PUCO should grant intervention for OCC, and allow for a transparent and public record to be fully developed regarding the facts and circumstances of this case.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

A handwritten signature in cursive script, reading "Richard C. Reese", written over a horizontal line.

Richard C. Reese, Counsel of Record

Melissa R. Yost

Gregory J. Poulos

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (614) 466-8574

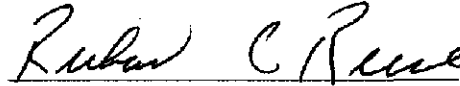
Email: reese@occ.state.oh.us

yost@occ.state.oh.us

poulos@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Revised Motion to Intervene* was served on the persons stated below via electronic service and regular U.S. Mail Service, postage prepaid, this 19th day of December, 2008.



Richard C. Reese
Assistant Consumers' Counsel

SERVICE LIST

Duane Luckey
Attorney General's Office
Public Utilities Section
180 East Broad Street
Columbus, OH 43215-3793

Samuel C. Randazzo
Lisa G. McAlister
Joseph M. Clark
McNees, Wallace & Nurick LLC
21 East State St., 17th Fl.
Columbus, OH 43215

Attorney for Industrial Energy Users-Ohio

Marvin I. Resnik
Steven T. Nourse
American Electric Power Service
Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215