

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

In the Matter of the Fuel Adjustment) Case No. 09-872-EL-UNC
Clauses for Columbus Southern Power) Case No. 09-873-EL-UNC
and Ohio Power Company.)

MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

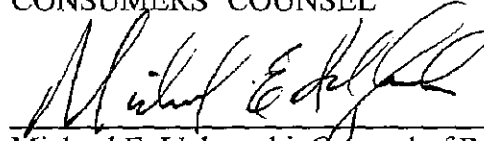
The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the approximately 1.3 million residential utility customers of Columbus Southern Power and Ohio Power Company ("the Companies" or collectively, "AEP"), moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant the OCC's intervention in the above-captioned cases where the Companies seek to recover fuel costs pursuant to a fuel adjustment clause ("FAC") approved in the Companies' ESP cases, 08-917-EL-SSO and 08-918-EL-SSO. The Companies filed the Application ("Application") in these cases on September 29, 2009.

The reasons for granting OCC's motion are set forth in the attached Memorandum in Support.

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Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Michael E. Idzkowski", written over a horizontal line.

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On September 29, 2009, Columbus Southern Power and Ohio Power Company (“the Companies” or collectively, “AEP”) filed an Application that initiated the above-captioned cases. The Application addresses the Companies’ recovery of actual fuel costs pursuant to an approved fuel adjustment clause (“FAC”) in the Companies’ ESP cases, 08-917-EL-SSO and 08-918-EL-SSO.

This case could affect all of the approximately 1.3 million residential utility customers of Columbus Southern Power and Ohio Power Company because Commission determinations regarding this matter could result in a significant change in the rates and charges residential customers would be required to pay for service. OCC has authority under law to represent the interests of the approximately 1.3 million residential utility customers of AEP pursuant to R.C. Chapter 4911. The Commission should grant OCC’s Motion to Intervene in this proceeding so that the OCC can fully participate in these proceedings and protect the interests of residential customers.

II. ARGUMENT

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 where the Commission’s decision could result in a significant change in the rates and charges residential customers would be required to pay for service. Thus, the “adversely affected” 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 lies in preventing excessive, unjustified, unreasonable, or unlawful rates and charges for residential electric service and in ensuring the provision of services that will effectively and efficiently serve the energy needs of residential customers. OCC’s interest in this proceeding is different than that of any other party, and is especially different from that of the Companies, whose advocacy includes their own financial interests.

Second, OCC's advocacy for consumers will include the legal position that electric rates should be no more than what is reasonable and permissible under Ohio law. In this regard, the Companies' recovery of fuel costs related to electric generation should be no more than what is reasonable and lawful. OCC's position is therefore directly related to the merits of these cases that are 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 proceeding. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the cases 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 cases 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 these cases where the Companies' request to recover fuel costs will have an impact on electric rates.

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.

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.¹ On behalf of Ohio’s residential consumers, the Commission should grant OCC’s Motion to Intervene.

III. CONCLUSION

As demonstrated above, OCC satisfies the test for intervention set forth in R.C. 4903.221 and the Commission’s rules. Therefore, the PUCO should grant OCC’s Motion to Intervene on behalf of the approximately 1.3 million residential customers who have an interest in the outcome of these cases.

¹ *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

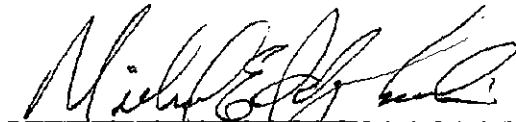
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Assistant Consumers' Counsel

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Intervene has been served upon the below-named persons via regular U.S. Mail Service, postage prepaid, this 28th day of October, 2009.


Michael E. Idzkowski
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