

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Matter of the Application of)
Columbus Southern Power Company for) Case No. 09-987-EL-BEC
Amendment of the 2009 Solar Energy)
Resource Benchmark, Pursuant to Section)
4928.64(C)(4), Ohio Revised Code.)

In the Matter of the Application of Ohio) Case No. 09-988-EL-BEC
Power Company for Amendment of the)
2009 Solar Energy Resource Benchmark,)
Pursuant to Section 4928.64(C)(4), Ohio)
Revised Code.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in these cases in which the Ohio Power Company and the Columbus Southern Power Company (collectively, "AEP Ohio") are seeking to delay implementing the Solar Energy Resource Benchmark that is part of the recently enacted Sub. S.B. 221 ("S.B. 221").¹ OCC is filing on behalf of all the approximately 1.3 million residential utility consumers of AEP Ohio. The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion to Intervene ("Motion") are further set forth in the attached Memorandum in Support.

¹ 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 black ink, appearing to read "Terry L. Etter", is written over a horizontal line.

Terry L. Etter, Counsel of Record

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**BEFORE
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In the Matter of the Application of)	
Columbus Southern Power Company for)	
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Power Company for Amendment of the)	
2009 Solar Energy Resource Benchmark,)	
Pursuant to Section 4928.64, Ohio)	
Revised Code.)	

MEMORANDUM IN SUPPORT

These cases involve AEP Ohio's request for a declaration by the Commission that a *force majeure* event has taken place and that, under R.C. 4928.64(C)(4), AEP Ohio's 2009 Solar Energy Resource Benchmark compliance obligations should be delayed and combined with the 2010 requirements. OCC has authority under law to represent the interests of all the approximately 1.3 million residential utility customers of AEP 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 these cases, especially if the consumers were unrepresented in a proceeding that involves plans to delay the implementation of the solar energy resource requirement that could have a significant

impact on the cost of providing electricity to consumers over an extended period of time.

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 AEP Ohio in order to help assure that the solar energy provisions contained in S.B. 221 are properly implemented. 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 stockholders.

Second, OCC's advocacy for residential consumers will include comments, which will be filed separately, that will include the position that AEP Ohio was aware of the 2009 Solar Energy Resource Benchmark since July of 2008 and should have been prepared to comply with it, and that the Commission would be establishing a bad precedent at the onset of the program if it simply delays compliance requirements. 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 the terms under which public utilities provide their services.

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 was significantly involved in the legislative discussions revolving around S.B. 221, including its provisions regarding the Solar Energy Resource Benchmark. From this experience, OCC has expertise and will 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 real and substantial interest in this case, which could have a significant impact on the cost of providing electricity to consumers.

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

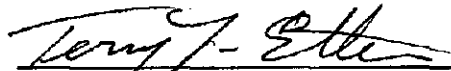
residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

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.²

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.

Respectfully submitted,

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² See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below by regular U.S. Mail, postage prepaid, on this 20th day of November 2009.



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