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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application)
of Columbus Southern Power)
Company and Ohio Power Company) Case No. 10-163-EL-RDR
to Update Their Enhanced Service)
Reliability Riders)

**MOTION TO INTERVENE
AND
MOTION FOR A PROCEDURAL RULING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential utility consumers, moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention.¹ OCC also moves for a procedural ruling that includes provision for protests and a hearing on disputed matters in the above-captioned proceeding where the Applicants are proposing adjustments to the Enhanced Service Reliability ("ESR") riders.² The reasons for granting OCC's motions are further set forth in the attached Memorandum in Support.

PUCO

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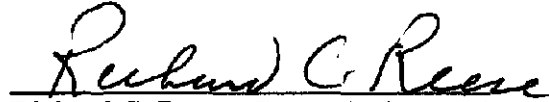
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¹ R.C. Chapter 4911, R.C. 4903.221, Ohio Adm. Code 4901-1-11, and Ohio Adm. Code 4901-1-12.

² AEP's ESR is allegedly intended to reimburse the Company for its incremental expenditures on vegetation management above a certain baseline. The baseline was determined in discussions with AEP and PUCO Staff.

Respectfully submitted,

JANINE L. MIGDEN-STRANDER
CONSUMERS' COUNSEL

A handwritten signature in black ink that reads "Richard C. Reese". The signature is written in a cursive style with a horizontal line underneath it.

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On February 11, 2010, the Columbus Southern Power Company (“CSP”) and the Ohio Power Company (“OP”)(collectively, “AEP,” or the “Company”) filed an application (“Application”) proposing new ESR riders for each of its operating companies.³ AEP attached workpapers to the Application regarding its adjustment to the ESR for the two electric distribution utilities. The results from the establishment of the new riders could adversely affect AEP’s approximately 1.2 million residential distribution customers who pay for electric service. The Commission should grant OCC’s Motion to Intervene in these proceedings so that OCC can fully participate in this proceeding and protect the interests of residential customers.

II. INTERVENTION SHOULD BE GRANTED.

The OCC moves to intervene in the above-captioned docket under its legislative authority, pursuant to R.C. Chapter 4911, to represent the interests of the more than 1.2 million residential customers of AEP. R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention

³ *In re AEP’s Self-Complaint Regarding Service Reliability*, Case No. 06-222-EL-SLF, Complaint at 1 (January 31, 2006).

in that proceeding. Residential customers would be subject to AEP's proposed adjustments to the ESR riders if they are approved by the Commission. The interests of residential electric customers in Ohio are therefore "adversely affected" by these cases. Thus, this element of the intervention standard stated 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 lies in AEP's proposal to establish new riders (i.e. the ESRs) that would be paid by residential customers. It is essential that the interest of residential customers be represented inasmuch as the Company's plans would directly affect the rates paid by residential customers.

Second, the OCC's advocacy for residential consumers will include advancing the position that electric rates should be no more than what is reasonable and permissible under Ohio law for service that is adequate under Ohio law. This advocacy includes advancing the position that the determination of rates should not proceed without the possibility of a hearing. The OCC opposes AEP's approach to this case that would rule out such a hearing.⁴

⁴ Application at 2, ¶10 ("Companies do not believe that a hearing in this matter is required").

Third, the OCC's intervention will not unduly prolong or delay the proceeding, but should provide insights that will expedite the Commission's effective treatment of this proceeding. The OCC will significantly contribute to the full development and equitable resolution of the issues in this case based on its expertise in regulatory and energy matters.

Fourth, the OCC will significantly contribute to the full development and equitable resolution of the factual issues. The OCC has advocated for consumers regarding matters contained in AEP's Application that are tied to AEP's electric security plan cases, Case Nos. 08-917-EL-SSO, et al., cases in which the OCC actively participated.⁵ The Commission should grant OCC's Motion to Intervene that will permit the full participation of the OCC in an evaluation of AEP's proposed riders.

The OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that the 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, the OCC has a real and substantial interest in these cases where the generation rates paid by residential customers are under review by the Commission.

In addition, the 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 has already addressed, and that the OCC satisfies.

⁵ In the Matter of the Application of Columbus Southern Power Company For Approval of its Electric Security Plan Including Related Accounting Authority; an Amendment to its Corporate Separation Plan; and the Sale or Transfer Certain Generating Assets, Case No. 08- 917-EL-SSO et al. OCC participated in all aspects of the AEP's ESP case, including the hearing with the filing of expert testimony and the cross-examination of witnesses.

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 the OCC does not concede the lawfulness of this criterion, the OCC satisfies this criterion because the OCC has been uniquely designated as the statutory representative of the interests of Ohio’s residential utility consumers.⁶ That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio has confirmed the OCC’s right to intervene in PUCO proceedings, in ruling on an appeal in which the OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying the OCC’s intervention and that the OCC should have been granted intervention.⁷

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

III. A PROCEDURAL ORDER SHOULD BE ISSUED.

The PUCO should issue an entry that provides parties with expedited response times (with electronic service required) for discovery that is OCC’s right under law to conduct, an opportunity to state their protests and identify issues, and an opportunity to ultimately address any outstanding dispute in a hearing. In contrast to this normal framework for setting rates, AEP proposes that the PUCO Staff review the Company’s

⁶ R.C. Chapter 4911.

⁷ *Ohio Consumers’ Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20 (2006).

calculations and that only a briefing opportunity be provided to interested parties.⁸ The Company's procedural proposal is designed to limit the participation of interested parties and should be rejected.

AEP's procedural proposal does not directly address the matter of discovery. The discovery opportunity required by R.C. 4903.082 (requiring the "grant[ing] of ample rights of discovery")⁹ should be expeditious so that the Commission may determine rates by the July 2010 time frame discussed by the Company.¹⁰ Discovery should be conducted with ten-day turn-around. The Commission should require service of all discovery requests and responses by e-mail. Service by e-mail is allowed but not required by Ohio Adm. Code 4901-1-5(C).

Ohio Adm. Code 4901-1-14 authorizes attorney examiners and others to enter procedural rulings such as what OCC requests here. Pursuant to Ohio Adm. Code 4901-1-27(B)(7)(d), examiners are authorized to "assure that the hearing proceeds in an orderly and expeditious manner," and this objective should be followed at this stage of the proceeding with ten-day turn-around and e-mail service for discovery. The PUCO has altered the manner of service for discovery in many previous cases.¹¹ The PUCO should do so again in this case where timeliness is important.

AEP proposes an opportunity "for the filing of comments and reply comments."¹² A schedule should be issued that permits interested parties the opportunity to protest

⁸ Application at 4, ¶10.

⁹ *Ohio Consumers' Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20 (2006).

¹⁰ Id.

¹¹ See, e.g., *In re AEP's Proposed IGCC Generating Facility*, Case No. 05-376-EL-UNC, Entry at ¶(10) (May 10, 2005) and *In re Prudence Review of DP&L's Billing System Modification Costs*, Case No. 05-792-EL-ATA, Entry at 4-5 (October 4, 2005).

¹² Application at 4, ¶10.

those aspects of the Company's proposal that remain outstanding after completing discovery. A hearing should be provided to assist the Commission in resolving disputed matters. If no such protests arise or if any protests are otherwise resolved before the date set for protests, the hearing will likely not be necessary. The Commission should not decide this procedural matter, as proposed by AEP, based merely on the Company's Application.

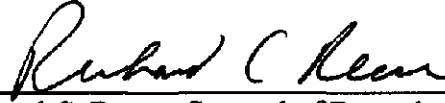
IV. CONCLUSION

The above-captioned case may adversely affect residential customers through the increase in electric rates as a result of the ESR, or adjustments to the ESR, as proposed by AEP. AEP's Application proposes an increase in the ESR Rider for CSP from 2.82976% to 3.34395% for 2010 as well as increase in OP's ESR Rider from 5.48919% to 5.59907% for 2010. Of concern to OCC, in addition to the amount of the increases in the ESR Riders, is AEP's reference to: "... confirming the baseline of spending that will define the incremental costs to be in the ESR Rider." OCC is unaware of the amount of the "baseline" as determined by PUCO Staff and AEP. OCC is concerned that the determination of the baseline may result in inappropriate collection of vegetation costs through the ESR Rider.

For the reasons stated above, the PUCO should grant OCC's Motion to Intervene on behalf of the approximately 1.2 million residential customers of AEP. The PUCO should also grant OCC's procedural motion, and order that discovery response times be expedited and an opportunity to protest be established regarding AEP's proposed riders. In the event that issues remain outstanding, a hearing should be held before setting new electric rates for AEP's customers.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

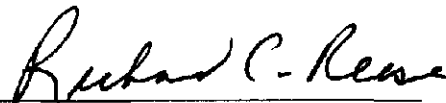


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's *Motion to Intervene* was served upon the persons listed below via first class U.S. Mail, postage prepaid, this 23rd day of February 2010.



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