

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

RECEIVED-DOCKETING DIV  
2010 APR -5 PM 4: 14  
PUCO

In the Matter of the Application of AEP )  
Ohio Transmission Company, Inc. for )  
Confirmation that its Operations will ) Case No. 10-245-EL-UNC  
Render it an Electric Light Company and )  
a Public Utility within the Meaning of )  
Sections 4905.03(A)(4) and 4905.02, )  
Revised Code. )

In the Matter of the Joint Application of )  
AEP Ohio Transmission Company, Inc. )  
and Columbus Southern Power Company ) Case No. 10-246-EL-UNC  
and Ohio Power Company for Approval )  
of Proposed Transfers, to the Extent )  
Required by Section 4905.48(B), Revised )  
Code. )

In the Matter of the Application of AEP )  
Ohio Transmission Company, Inc. for ) Case No. 10-246-EL-UNC  
Authority to Issue Short-term Notes and )  
Other Evidences of Indebtedness. )

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

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The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in these cases where AEP Ohio Transmission Company, Inc. ("AEP Transco") seeks to determine whether it is a public utility subject to the jurisdiction of the Public Utilities Commission of Ohio ("PUCO" or "Commission") and whether it can participate in the AEP System Utility Money Pool ("AEP Money Pool").<sup>1</sup> These cases also involve the Joint Application of AEP Transco and the Columbus Southern Power and Ohio Power Companies ("AEP Ohio" or "Companies") which asks whether AEP Transco needs and/or has approval to transfer

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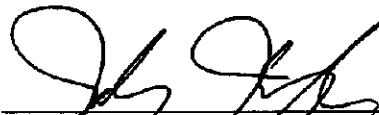
<sup>1</sup> See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

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transmission assets from AEP Ohio to AEP Transco under R.C. 4905.48(B). OCC is filing on behalf of all the approximately 1.2 million residential utility consumers of AEP Ohio. The reasons the PUCO should grant OCC's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



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**MEMORANDUM IN SUPPORT**

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This case involves the review of the reasonableness and lawfulness of AEP Transco's Applications in the above-captioned dockets which ask whether AEP Transco:

1) is a public utility subject to the jurisdiction of the Public Utilities Commission of Ohio ("PUCO") under R.C. 4905.02 and 4905.03; and 2) can participate in the AEP Money Pool and make short-term borrowings up to \$50 million from the AEP Money Pool from time to time through April 30, 2011. This case also involves the review of the reasonableness and lawfulness of AEP Transco and AEP Ohio's Joint Application which asks whether AEP Transco needs and/or has approval to transfer existing transmission

assets from Ohio utilities to AEP Transco under R.C. 4905.48(B).<sup>2</sup> OCC has authority under law to represent the interests of all the approximately 1.2 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 proceedings where a new Ohio public utility subject to the Commission’s jurisdiction may be established that could acquire some of the existing transmission assets of the utilities that provide electric service to consumers. Moreover, the new transmission-related utility may be borrowing money from the AEP Money Pool, which is funded in part by AEP Ohio residential consumers. Thus, consumers may be adversely affected and 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.

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<sup>2</sup> The AEP Money Pool is organized so that each participant in the Money Pool, other than AEP and AEP Utilities, can make unsecured short-term borrowings from and can contribute surplus funds to the Money Pool. The AEP Ohio Companies already have Commission authorization to participate in the AEP Money Pool through Case Nos. 09-314-L-AIS and 09-313-EL-AIS, respectively.

First, the nature and extent of OCC's interest is representing the residential consumers of AEP Ohio in order to ensure that there is no adverse impact to AEP Ohio's residential consumers as a result of a transfer of AEP Ohio's existing and what could be future transmission assets to the AEP Transco or as a result of any participation of AEP Transco in AEP's Money Pool. 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 consumers will include that the PUCO should ensure consumers are served and not harmed now or in the future by the proposals in the Applications.<sup>3</sup> For example, AEP Ohio's residential consumers should benefit from any assets transferred to or made available to AEP Transco which may have already been paid for, at least in part, by AEP Ohio residential consumers. 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 proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of these 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 these cases in the public interest.

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<sup>3</sup> R.C. 4905.22 charges the PUCO with the responsibility of ensuring that every public utility is providing necessary and adequate services and facilities and that all charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the PUCO.

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 a new Ohio public utility subject to the Commission’s jurisdiction may be established that could acquire some of the existing transmission assets of the Companies that serve consumers, AEP Ohio, and may participate in the AEP Money Pool.

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.<sup>4</sup>

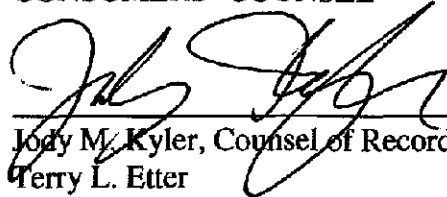
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<sup>4</sup> See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

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 in these cases.

Respectfully submitted,

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CONSUMERS' COUNSEL




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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below via regular U.S. mail service, postage prepaid, this 5<sup>th</sup> day of April, 2010.

  
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