

**FILE**

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission Review )  
of the Capacity Charges of Ohio Power )  
Company and Columbus Southern Power ) Case No. 10-2929-EL-UNC  
Company. )

**PUCO**

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

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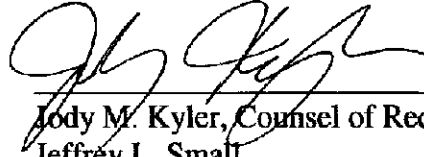
The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where the Public Utilities Commission of Ohio ("PUCO" or "Commission") seeks public comment regarding the capacity rates that the Ohio Power Company and the Columbus Southern Power Company (collectively, "AEP Ohio") charge to competitive retail electric service ("CRES") providers in Ohio. AEP Ohio's capacity charges may ultimately be charged to residential consumers in Ohio.<sup>1</sup> OCC is filing on behalf of all the approximately 1.2 million residential utility consumers of AEP Ohio. The reasons the Commission should grant OCC's Motion are further set forth in the attached Memorandum in Support.

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

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

A handwritten signature in dark ink, appearing to read "Jody M. Kyler", is written over a horizontal line.

Jody M. Kyler, Counsel of Record  
Jeffrey L. Small  
Assistant Consumers' Counsel

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**MEMORANDUM IN SUPPORT**

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This case involves the Commission's review of: 1) what changes to the current state mechanism are appropriate to determine AEP Ohio's capacity charges to Ohio CRES providers; 2) the degree to which AEP Ohio's capacity charges are currently being collected from customers through retail rates approved by the Commission or through wholesale rates; and 3) the impact of AEP Ohio's capacity charges upon CRES providers and retail competition in Ohio. Capacity charges represent the costs of a utility making its generation units available to provide electric service to a customer. 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 this case, especially if the consumers were unrepresented in a proceeding that impacts the capacity charges that could ultimately be collected from residential consumers. 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 and maintaining that consumers pay no more for AEP Ohio's capacity than what is just and reasonable. 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 advancing the position that AEP Ohio's capacity rates 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 Commission is reviewing AEP Ohio capacity charges that may ultimately be passed through to Ohio residential 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.<sup>2</sup>

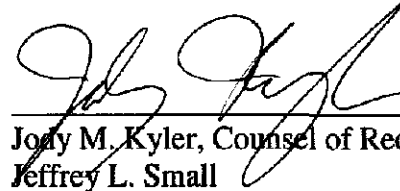
OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential consumers, the Commission should grant OCC’s Motion to Intervene.

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

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

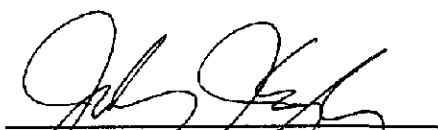
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Joay M. Kyler, Counsel of Record  
Jeffrey L. Small  
Assistant Consumers' Counsel

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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 by regular U.S. Mail service, postage prepaid, this 20<sup>th</sup> day of December 2010.

  
Jody M. Kyler  
Assistant Consumers' Counsel

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