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**BEFORE**  
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Matter of the Application Not for An )  
Increase in Rates Pursuant to Section 4909.18, )  
Revised Code, of Ohio Power Company and )  
Southern Power company to Establish New ) Case No. 11-531-EL-ATA  
Market Based Rates for Returning CRES )  
Customers That Elected to Avoid the POLR )  
Charge. )

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**MOTION TO INTERVENE,**  
**COMMENTS AND REQUEST FOR A PROCEDURAL SCHEDULE**  
**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 in which the Public Utilities Commission of Ohio ("Commission" or "PUCO") must rule on Ohio Power Company's ("OP") and Columbus Southern Power Company's ("CSP") (together, "AEP" or "Companies") application to establish new market rate schedules for residential and nonresidential customers. The proposed rates would be charged to customers that are returning to the Companies' standard service offers after having taken generation service from a competitive retail electric service provider and having elected to avoid the Companies' provider of last resort ("POLR") charge.<sup>1</sup> OCC is filing on behalf of all the approximately 1.3 million residential utility customers of the Companies. The reasons the PUCO 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.

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Additionally, AEP requests that the Commission approve their filed rates as soon as possible and without a hearing. OCC needs to further investigate the rates proposed in this application to consider whether they are fair to residential customers and requests that the Commission set this matter for a hearing.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
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**MEMORANDUM IN SUPPORT**

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**I. MOTION TO INTERVENE**

In this case, the Commission will likely establish market rate schedules for customers who have elected not to pay the Companies' POLR rider and who are returning to the Company-provided generation service from CRES providers. For residential customers it is important that these rates be lawful and reasonable in order to ensure fairness to residential customers and to encourage competition in the residential retail market. OCC has authority under law to represent the interests of all the approximately 1.3 million residential utility customers of AEP, 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 customers may be "adversely affected" by this case, especially if the customers were unrepresented in a proceeding in which the market rate offer they may have to pay is established. 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 customers of AEP in this case involving its return market rate offer. 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 customers will include advancing the position that the market rate offer should not be unfair for residential customers and should not discourage competition in the residential retail generation market. 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 advocate for residential utility customers, OCC has a very real and substantial interest in this case in which the PUCO will establish AEP's return market rate offer.

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 customers. 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 customers, the Commission should grant OCC's Motion to Intervene.

## **II. PROCEDURAL SCHEDULE**

The Commission should not approve AEP's application without the opportunity to ask for a hearing if discovery reveals that the cost allocation in the proposed tariffs would provide for unjust and unreasonable rates. The tariffs and the application are not self-explanatory and raise

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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).

many issues that should be subject to discovery. Moreover, the Commission still has plenty of time to meet AEP's goal should the Commission agree with AEP that the tariff should be approved within 2011.<sup>3</sup> The Commission has 10 months left in 2011 to approve the application, so there is no reason for the Commission to approve the application with undue haste. But if the Commission believes that it should approve this application quickly, OCC requests that the Commission provide for an expedited discovery schedule to allow for discovery to answer several questions OCC has regarding the tariffs as described below.

### **III. COMMENTS**

#### **A. General Observations**

AEP has requested the Commission to "approve its filed tariff as soon as possible in order to enable the Company to implement the tariffs in 2011" without a hearing.<sup>4</sup> The Commission should not do this without giving interested parties the opportunity to conduct discovery and present any recommendations resulting from the discovery.

Generally, the schedules filed are not clear so as to ensure that different customer classes are paying rates that are fair, just and reasonable under R.C. 4909.18, R.C. 4905.32, and R.C. 4905.35. Formula rates are based upon poorly defined terms and the schedules do not explain from where the values are derived. The energy and capacity calculations are different as between large and small customers but neither the schedules nor the application explain the basis for the calculations, nor the rationale for this difference.

Further, the "Conditions of Service" do not make sense under the schedules:

The customer shall be billed under this schedule until the customer switches to service from a CRES Provider.<sup>5</sup>

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<sup>3</sup> Application at 2.

<sup>4</sup> Application at 2.

<sup>5</sup> See eg. Schedule MB-1, Exh. A, page 1.

This language implies that customers who switch to a CRES Provider once will never be permitted to return to the standard service offer. This may discourage customers from going to a CRES Provider in the first place and should be revised so that it will not be so anti-competitive.

Another sentence should be added to clarify:

The customer shall be billed under this schedule until the customer switches to service from a CRES Provider. This schedule will again apply to the customer every time the customer returns to the standard service offer from a CRES provider.

## **B. Schedules For Small Customers**

The schedules for Small Customers are applicable to all customers with maximum monthly demands of less than 200 kW, which would include residential customers. The meaning of the term "Simple Swap"<sup>6</sup>, in the tariff, is not clear and AEP should explain better what it is and how it would work. The meaning of the term "Load Following/Shaping Adjustment" also needs to be exactly clarified and AEP should explain why AEP is not determining it by using the load shape and hour locational marginal pricing ("LMP") values as it does for Large Customers.<sup>7</sup> The Companies do not justify their Retail Administration charge<sup>8</sup> and why it is not a fixed rate like the "Program Charge" for larger customers.<sup>9</sup>

AEP does not make it clear what "Capacity"<sup>10</sup> cost it will be using in the formulae. For example, does AEP propose to use the prevailing reliability pricing model ("RPM") price or the proposed "cost based" approach? What does AEP mean by the "Transaction Risk Adder?"<sup>11</sup> AEP does not explain what risk that refers to and what the cost basis is for the adder. These

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<sup>6</sup> See eg., Schedule MB-1, Exhibit A, page 1.

<sup>7</sup> See eg., Schedule MB-2, Exhibit B, page 1

<sup>8</sup> See eg., Schedule MBO-1, Exhibit A, page 1.

<sup>9</sup> See eg., Schedule MBO-1, Exhibit B, page 2.

<sup>10</sup> See eg., Schedule MB-1, Exh. A, page 1.

<sup>11</sup> See eg., Schedule MB-1, Exh. A, page 1.

ambiguities must be cleared up and clarified in the tariffs before they are approved. Without such clarifications, the Commission cannot determine whether the cost allocation is fair, just and reasonable. Moreover, the Supreme Court has determined that where the meaning of the provisions in a rate schedule is doubtful or ambiguous, they are to be construed favorably to the patron.<sup>12</sup>

The tariff has a note that reads:

The Market Generation Rate for each billing month shall be published by the Company on its website no later than the 25<sup>th</sup> day of the preceding calendar month.<sup>13</sup>

The tariff for the large customers does not have a similar note,<sup>14</sup> and AEP has not justified these differences in plans in the application or in the tariffs.

#### **IV. CONCLUSION**

The Commission should grant OCC's Motion to Intervene. The PUCO should not grant AEP's requested approval on an expedited basis because AEP's application and tariffs are not clear on their face as discussed above in OCC's comments. Instead the Commission should allow time for interested parties to conduct discovery and possibly for a hearing.

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<sup>12</sup> *Saalfeld Publicshing Co. v. Public Utilities Commission* (1948), 149 Ohio St. 113 at 118-119.

<sup>13</sup> See eg., Schedule MB-1, Exh. A, page 1.

<sup>14</sup> See eg., Schedule MB-2, Exh. B.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Motion to Intervene, Comments and Request for a Procedural Schedule by the Office of the Ohio Consumers' Counsel*, was served on the persons stated below via regular U.S. Mail, postage prepaid this 1st day of March 2011.

  
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