

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Matter of the Joint Application of)
Columbus Southern Power Company,)
Ohio Power Company, The Dayton Power)
and Light Company, and Duke Energy) Case No. 11-4627-EL-WVR
Ohio, Inc., for a Waiver with Regard to)
Rule 4901:1-39-05(C), Ohio)
Administrative Code.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, Columbus Southern Power Company, Ohio Power Company, the Dayton Power and Light Company and Duke Energy, Ohio, Inc. (the "Companies") have requested a waiver of Ohio Admin. Code 4901:1-39-05 (C). Ohio Admin. Code 4901:1-39-05(C) specifically requires every Electric Distribution Utility ("EDU") to file an annual portfolio status report addressing the performance of all of its approved energy efficiency and peak demand education programs, by no later than March 15 of each year. The Companies request in their Joint Application that the March 15 filing deadline be waived and be extended by two months, or until May 15 of each year.¹

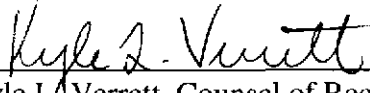
¹ In the Matter of the Joint Application of Columbus Southern Power Company, Ohio Power Company, The Dayton Power and Light Company and Duke Energy Ohio Inc., for a Waiver with Regard to Rule 4901:1-39-05(C), Ohio Administrative Code, Case No. 11-4627-EL-WVR, page 2.

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OCC is filing on behalf of all the residential utility customers of the Companies.
The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should
grant OCC's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



Kyle L. Verrett, Counsel of Record
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MEMORANDUM IN SUPPORT

Ohio Admin. Code 4901:1-39-05(C) specifically requires every Electric Distribution Utility (“EDU”) to file an annual portfolio status report addressing the performance of all of its approved energy efficiency and peak demand education programs by no later than March 15 of each year. On August 1, 2011, the Companies requested in their Joint Application that the March 15 filing deadline in division (C) be waived, and be extended by two months, or until May 15 of each year.² The Companies’ stated that “[t]he extended deadline will provide for additional improvement of the accuracy of the data and the evaluation of program impacts, as filed in the annual report, which will also further enable the progress toward realizing statewide efficiency goals.”³

OCC has an interest in this proceeding because the portfolio benefits utility customers by helping to reduce energy usage and the cost of energy. To this end, timely, accurate and comprehensive annual status reports are important indicators of a utility company’s efforts to achieve compliance with benchmarks in Ohio law.

² Id.

³ Id.

OCC is filing on behalf of all the residential utility customers of the Companies. OCC has authority under law to represent the interests of all the residential utility customers of the Companies, 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 customers were unrepresented in a proceeding where the status of programs employed by the Companies to meet statutory benchmark requirements is at issue. The programs presented in these annual status reports include the Companies’ energy efficiency efforts which involve significant residential customer participation. 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 all residential customers of the Companies, in this case where their interest in programs related to controlling their energy usage and their costs is at issue. 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 Companies' annual reports should not only be timely, but should also include the most accurate and up to date information as is reasonably possible. In addition, energy efficiency and peak demand reduction programs for customers should be cost-effective and achieve significant customer participation. The Commission must ensure that rates that include program costs are lawful and reasonable. 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 where energy efficiency programs and their effect on residential customers are at stake.

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.

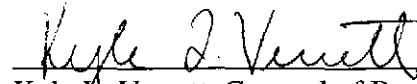
Moreover, the Supreme Court of Ohio confirmed OCC’s right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC’s intervention and that OCC should have been granted intervention.⁴

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.

⁴ 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

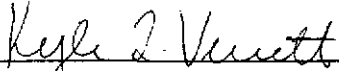
A handwritten signature in cursive script, reading "Kyle E. Verrett", is written over a horizontal line.

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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, postage prepaid, this 10th day of August 2011.



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