

In the Matter of the Application of)
Columbus Southern Power Company for) Case No. 11-4920-EL-RDR
Approval of a Mechanism to Recover)
Deferred Fuel Costs Ordered Under Ohio)
Revised Code 4928.144.)

In the Matter of the Application of Ohio)
Power Company for Approval of a) Case No. 11-4921-EL-RDR
Mechanism to Recover Deferred Fuel)
Costs Ordered Under Ohio Revised Code)
4928.144.)

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in these cases where the Columbus Southern Power Company ("CSP") and Ohio Power Company ("OPC")¹ (collectively, "AEP Ohio" or "Company") seek approval from the Public Utilities Commission of Ohio ("Commission" or "PUCO") to collect the fuel costs (amounting to \$5.06 per month for an OPC residential consumer with typical monthly usage of 1,000 kwh).² AEP Ohio deferred these fuel costs as part of the phase-in of rates to enable the yearly rate caps ordered in the Company's 2008 electric security plan ("ESP") cases.³ OCC is filing on behalf of all of AEP Ohio's approximately 1.2 million

³ Case Nos. 08-917-EL-SSO and 08-917-EL-SSO.

residential utility customers.⁴ The reasons the PUCO should grant OCC's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

BRUCE J. WESTON
INTERIM CONSUMERS' COUNSEL

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⁴ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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MEMORANDUM IN SUPPORT

These cases involve AEP Ohio's proposal to collect from customers residual fuel adjustment charges, plus carrying charges, for which the PUCO granted the Company accounting authority to defer associated with the phase-in of rate increases under the Company's 2008 ESP cases. In the Applications in these proceedings, AEP Ohio estimates a negative balance (i.e., an over-collection) of \$3,896,041 in deferred fuel charges for CSP customers as of December 31, 2011,⁵ but does not seek to refund this amount to CSP customers. Instead, the Company intends to return the over-collection in its March 2012 fuel adjustment clause case.⁶

In addition, AEP Ohio claims that it will have \$628,073,325 in deferred fuel charges for OPC as of December 31, 2011.⁷ In order to begin to collect these deferred

⁵ Applications, Exhibit A at 1.

⁶ Id. at 3.

⁷ Id. Exhibit A at 1.

fuel charges, AEP Ohio proposes to institute a phase-in recovery rider to increase rates for all customer classes. Under AEP Ohio's proposed phase-in recovery rider, OPC's residential customers would see bill increases ranging from \$0.51 per month for customers using 100 kWh to \$10.12 per month for customers using 2,000 kWh.⁸ OCC has authority under law to represent the interests of all of AEP Ohio's approximately 1.2 million residential utility customers, 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 these cases, especially if customers are unrepresented in proceedings where the collection of deferred fuel adjustment charges will increase the rates customers pay for electric service. 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 Ohio in these cases where AEP Ohio's collection of deferred charges

⁸ See *id.*, Exhibit A at 6.

will increase the residual rates that the Company's residential customers pay for electric service. 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, among other things, advancing the position that deferred fuel charges should be reasonable, justified and prudently incurred costs of fuel necessary for the rendition of electric service. OCC will advocate that the rates customers pay for electric service should be no more than what is reasonable and lawful under Ohio law, and should include carrying charges at an appropriate level (cost of debt) and should reflect the appropriate treatment of deferred tax benefits. 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. These proceedings were procedurally stayed by the Commission when it appeared that the proceedings could be resolved by a partial stipulation,⁹ filed in the context of the Company's second ESP proceeding.¹⁰ With the Commission's recent rejection of that Stipulation,¹¹ it appears that this proceeding may be the venue in which the phase-in recovery rider will be resolved. OCC's intervention at this point will not unduly delay or prolong this proceeding, as this proceeding has been stayed since shortly after its filing in September 2011. OCC, with its longstanding expertise and experience in PUCO

⁹ Entry (September 16, 2011) at 4.

¹⁰ ESP 2 Case, Stipulation and Recommendation (September 8, 2011) ("Stipulation").

¹¹ Id., Entry on Rehearing (February 23, 2012).

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 AEP Ohio's charges for fuel adjustment clause deferrals will affect the rates that AEP Ohio's residential customers will pay for electric service.

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 deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying OCC's interventions and that OCC should have been granted intervention in both proceedings.¹²

Further, OCC was granted intervention in AEP Ohio's ESP 2 case,¹³ with which these cases were consolidated for hearing purposes. OCC has thus been found to meet the criteria for intervention in what has been a companion case to these cases.

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.

Respectfully submitted,

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¹² See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

¹³ ESP 2, Entry (March 23, 2011) at 8.

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 8th day of March 2012.

/s/ Terry L. Etter

Terry L. Etter

Assistant Consumers' Counsel

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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.