

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Ohio Power Company for Approval of	)	Case No. 12-1126-EL-UNC
Full Legal Corporate Separation and	)	
Amendment to Its Corporate Separation	)	
Plan.	)	

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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<sup>1</sup> in this case where Ohio Power Company ("OP" or "the Company") is seeking approval of its corporate separation plan which will achieve structural separation. The corporate separation plan, as proposed, will require the transfer of generating units, renewable energy purchase agreements, fuel-related assets and contracts, and other assets related to the generation business. This transfer will be made to a new entity, AEP Generation Resources ("AEP Generation").

The transfer will then facilitate an auction-based standard service offer with AEP Generation being a potential supplier of generation for standard service offer customers in 2015. Furthermore, the corporate separation plan will define how OP will interact with the newly created AEP Generation, which has implications for the provision of retail electric service to customers, including residential customers.

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<sup>1</sup> OCC's intervention is pursuant to R.C. 4903.221.

OCC is filing on behalf of all the approximately 600,000 residential utility customers of Ohio Power Company. 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,

BRUCE J. WESTON

/s/ Maureen R. Grady

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**MEMORANDUM IN SUPPORT**

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The corporate separation plan, as proposed, will require the transfer of generating units, renewable energy purchase agreements, fuel-related assets and contracts, and other assets related to the generation business to a new entity, AEP Generation. The transfer, proposed at net book value (not market value), will affect the future market offering of the AEP Generation, which offering may be made, under the terms of the newly filed ESP, as part of an auction-based standard service offer in 2015.

Furthermore, the corporate separation plan will define how OP will interact with the newly created AEP GenCo, which has implications for the provision of retail electric service to customers, including residential customers. Indeed, OP notes in its filing that between the time of corporate separation and January 1, 2015, AEP Generation will sell wholesale power to OP under a full requirements agreement to supply OP's non-shopping retail load.<sup>2</sup> And from January 1, 2015 through May 31, 2015 AEP Generation will provide capacity, but no longer energy for SSO customers.<sup>3</sup>

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<sup>2</sup> See *In the Matter of the Application of Ohio Power Company for Approval of An Amendment to its Corporate Separation Plan*, Case No. 11-12-1126-EL-UNC, Application at 15 (March 30, 2012).

<sup>3</sup> Id.

OCC has authority under law to represent the interests of all the approximately 600,000 residential utility customers of Ohio Power, 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 which will impact the retail electric market. That market may be the source of supply for standard service offer customers of AEP Ohio beginning in 2015, if the newly filed ESP<sup>4</sup> is approved. 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 Ohio Power in this case affecting the competitive retail electric market, which may be the source of supply for OP’s standard service offer customers in 2015.

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<sup>4</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the form of an Electric Security Plan*, Case No. 11-346-EL-SSO, Electric Security Plan (Mar. 30, 2012).

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 corporate separation plan should not impede the development of competitive electric markets nor adversely impact customer choice of retail electric service. Moreover, the corporate separation plan should not restrict the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory and reasonably priced retail electric service. 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 OP, on behalf of its residential standard service offer customers, will be purchasing wholesale power from AEP Generation after

corporate separation is approved and prior to January, 2015. That wholesale power will be charged to OP's non-shopping retail load. The non-shopping retail load is comprised of a large number of residential customers.

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.<sup>5</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.

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<sup>5</sup> See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

Respectfully submitted,

BRUCE J. WESTON

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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 U.S. Mail, this 4th day of April, 2012.

/s/ Maureen R. Grady

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**4/4/2012 3:48:26 PM**

**in**

**Case No(s). 12-1126-EL-UNC**

Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Grady, Maureen R. Ms.