

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Columbus Southern Power Company)	Case No. 12-1177-EL-WVR
and Ohio Power Company for a Limited)	
Waiver Pursuant to Section 4901:1-35-02)	
(B).)	

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

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the approximately 1.2 million residential utility customers of Columbus Southern Power Company ("CSP") and Ohio Power Company ("Ohio Power") (collectively "Companies") move the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in these proceedings.¹ In this matter the Commission will be deciding when the Companies should file the information necessary to determine whether the Companies had "significantly excessive earnings" in 2011 as a result of their approved electric security plans ("ESP").

The annual review of the electric distribution utility's earnings is an important component of S.B. 221. The review is one of the tools intended by the General Assembly to prevent electric utilities from charging excessive rates to customers.

OCC's Motion should be granted because OCC meets the legal standards for intervention, as explained in detail in the attached Memorandum in Support.

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

Respectfully submitted,

BRUCE J. WESTON

/s/ *Melissa R. Yost*

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On July 30, 2008, Amended Substitute Senate Bill No. 221, which amended various statutes in Title 49 of the Ohio Revised Code, including R.C. 4928.14, became effective. Under the amended language of R.C. 4928.14, electric utilities are required to provide customers with a Standard Service Offer (“SSO”) consisting of either a market rate offer (“MRO”) or an electric security plan (“ESP”).

Pursuant to R.C. 4928.143(F), the Commission shall evaluate the earnings of each electric utility’s approved ESP to determine whether the plan produces “significantly excessive” earnings for the utility. This statutory provision is intended to provide protections for customers. And in order for the Commission to make such an evaluation, electric utilities² are required by May 15 of each year to make a filing with the Commission “demonstrating whether or not any rate adjustments authorized by the

² CSP and Ohio Power are defined as electric utilities per R.C. 4928.01(A)(11).

Commission as part of the electric utility's electric security plan resulted in significantly excessive earnings during the review period"³

In their April 6, 2012 Application for Waiver, the Companies request that the Commission "extend Ohio Power's SEET [Significantly Excessive Earnings Test] filing date until the later of July 31, 2012, **or one month after the Commission issues its decision in Case Nos. 11-4571-EL-UNC and 11-4572-EL-UNC.**"⁴ (Emphasis added).

The Companies request waiver of the filing date because they contend that information that is required to be submitted in its filing will not be available until after May 15.⁵

Further, the Companies state that the Commission's decision in Case Nos. 11-4571-EL-UNC and 11-4572-EL-UNC "may affect Ohio Power's SEET filing for 2011."⁶

OCC is the state agency that represents Ohio's residential utility customers. As such, OCC is an interested stakeholder in this proceeding. The Commission should grant OCC's Motion to Intervene in this proceeding so that OCC can protect the interests of the residential electric utility customers of Columbus Southern Power Company and Ohio Power Company. Specifically, OCC seeks intervention to oppose the granting of any waiver that does not establish a **date certain**⁷ by which the Companies must file the

³ See generally, Case No. 08-777-EL-ORD where the Commission adopted administrative rules in accordance with the directives of Senate Bill 221 ("S.B. 221"), establishing the May 15 filing deadline for electric utilities. Among the rules adopted in Case No. 08-777-EL-ORD was Chapter 4901:1-35 of the Ohio Administrative Code. See Ohio Admin Code 4901:1-35-10 (setting forth the May 15 filing deadline) and 4901:1-35-03(C)(10)(a)(i)-(iv) (setting forth the filing requirements).

⁴ In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for a Limited Waiver Pursuant to Section 4901:1-35-02 (B), Case No. 12-177-EL-ORD, Application for Waiver (April 6, 2012) at 1.

⁵ Id. at 3.

⁶ Id.

⁷ OCC does not oppose the granting of the waiver until July 31, 2012, as requested.

information necessary to determine whether the earnings of Columbus Southern Power and Ohio Power Company⁸ were significantly excessive in 2011. The Companies' alternative proposal--to allow a filing that is one month after the PUCO rules in another case--does not result in a date that is certain for the filing. That approach is inappropriate for customers who may be entitled to a refund because of the level of the earnings of the Companies.

II. INTERVENTION

Pursuant to R.C. Chapter 4911, the OCC moves to intervene under its legislative authority to represent residential utility customers of Ohio. OCC meets the standards for intervention found in Ohio's statutes and the PUCO's rules.

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 proceeding, especially if the customers are unrepresented in a proceeding that will determine when a review of the Companies' earnings in 2011 will be initiated by the filing of the information mandated by Ohio Adm. Code 4901:1-35-10. Such a review will determine whether Columbus Southern Power and/or Ohio Power Company had significantly excessive earnings in 2011 as a result of their approved ESPs. And residential customers are entitled to refunds if the earnings are found to be significantly excessive under R.C. 4928.143(F).

⁸ The Commission has already determined that, for the purposes of the 2011 SEET review, the earnings of Columbus Southern Power and Ohio Power Company will be evaluated separately. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals* ("the Merger case"), Case No. 10-2376-EL-UNC, Entry (March 7, 2012) at ¶31.

Thus, residential customers “may be adversely affected” by this proceeding if the Commission grants a waiver that does not establish a **date certain** by which the Companies must file the information necessary to determine whether the earnings of Columbus Southern Power and Ohio Power Company⁹ were significantly excessive in 2011. Accordingly, OCC satisfies the intervention standard in R.C. 4903.221.

OCC also meets the criteria for intervention in R.C. 4903.221(B), which requires the PUCO, in ruling on motions to intervene, to consider the following:

- (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 the OCC’s interest is to represent the residential customers of electric utilities regarding rates paid by residential customers. Customers are likely to be affected by determinations in this proceeding. This interest is different than that of any other party and especially different than that of electric utilities whose advocacy includes the financial interest of stockholders.

Second, OCC’s legal positions include, without limitation, that the rates paid by residential customers and the service provided for those rates should be reasonable and lawful. This legal position directly relates to the 2011 SEET case, where the 2011

⁹ The Commission has already determined that, for the purposes of the 2011 SEET review, the earnings of Columbus Southern Power and Ohio Power Company will be evaluated separately. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals* (“the Merger case”), Case No. 10-2376-EL-UNC, Entry (March 7, 2012) at ¶31.

earnings of the Companies are in issue, and if found to be excessive will be ordered to be refunded to customers.

Third, OCC's intervention will not unduly prolong or delay this proceeding, but should provide insight that will expedite the PUCO's effective evaluation of the Companies' application for limited waiver. OCC, with its longstanding expertise and experience in various PUCO proceedings, including the Companies' 2009 and 2010 SEET cases, SSO proceedings and the SEET workshop, will duly allow for the efficient processing of this proceeding with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. This case relates to analysis of the earnings of the Companies under the approved ESP, a matter with which OCC has experience. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding this proceeding 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 for the State of Ohio, OCC has a real and substantial interest in this proceeding where the outcome can have an effect on the electric service rates paid by 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.¹⁰

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 the Companies’ residential customers, the Commission should grant OCC’s Motion to Intervene.

¹⁰ *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶13-20 (2006).

Respectfully submitted,

BRUCE J. WESTON

/s/ *Melissa R. Yost*

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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 service, postage prepaid, this 23rd day of April, 2012.

/s/ *Melissa R. Yost*

Melissa R. Yost

Assistant Consumers' Counsel

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