

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review)
of Ohio Power Company's Distribution) Case No. 12-3129-EL-UNC
Investment Rider Plan.)

**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. Ohio Power Company ("AEP Ohio" or "Utility") has requested approval of a Work Plan for the Distribution Investment Rider spending that is intended to improve customer service reliability by focusing spending on where it will have the greatest impact on maintaining and improving reliability for customers.¹ OCC is filing on behalf of all of AEP's approximately 1.3 million residential electric distribution customers.² 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.

¹ Case No. 12-3129-EL-UNC, Notice of Ohio Power company's Commission Requested Distribution investment Rider Work Plan at 1 (December 3, 2012).

² See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

On August 8, 2012, the PUCO approved AEP Ohio's Electric Security plan ("ESP"), which included a Distribution Investment Rider ("DIR").³ In approving the DIR, the Commission directed the Utility to work with the PUCO Staff and to file the Work Plan that would govern the DIR-related spending.⁴ In this case, the Utility has set forth that Work Plan, and pursuant to an Entry dated December 12, 2012, directed interested parties to file a Motion to Intervene by Friday January 11, 2013 and Comments by Friday January 18, 2013. OCC has authority under law to represent the interests of all of AEP Ohio's 1.3 million residential electric distribution 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 this case, especially if the customers were unrepresented in a proceeding where a work plan for the spending of

³ *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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, Opinion and Order at 46 (August 8, 2012).

⁴ *Id.* at 47.

DIR-related funds designed to maintain and improve customer service reliability will be addressed. Moreover this proceeding should ensure that customers' expectations regarding service reliability are aligned with the Utility's. 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 AEP Ohio's residential customers in this case where the Utility's DIR-related spending Work Plan will be reviewed and established. 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 utility rates should be no more than what is reasonable and lawful under Ohio law and that customer service reliability should be adequate under Ohio law. 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 AEP Ohio is proposing a Work Plan for the spending of DIR-related funds that is intended to maintain and improve customer service reliability.

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.⁵

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

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below *via* electronic mail, this 11th day of January 2013.

/s/ Joseph P. Serio

Joseph P. Serio

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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel
electronically filed by Ms. Gina L Brigner on behalf of Mr. Joseph P. Serio