

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Power Company to Update its) Case No. 13-1406-EL-RDR
Transmission Cost Recovery Rider Rates.)

**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 the Ohio Power Company ("AEP Ohio" or "Utility") seeks approval to collect from customers certain costs related to its Transmission Cost Recovery Rider ("TCRR") as identified in its June 17th Application ("Application").¹ OCC is filing on behalf of all of the approximately 1.2 million residential utility customers of AEP Ohio. 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
OHIO CONSUMERS' COUNSEL

/s/ Edmund "Tad" Berger

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

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MEMORANDUM IN SUPPORT

On June 17, 2013, AEP Ohio filed its annual Transmission Cost Recovery Rider (“TCRR”) adjustment. This annual rate proceeding was established in Case No. 06-273-EL-UNC to reconcile over- or under-recoveries from customers for previous periods and to adjust the forecasted level of transmission costs as necessary.

This case involves the review of the reasonableness and lawfulness of AEP Ohio’s request to collect from customers the Utility’s costs of transmission and transmission-related expenses. OCC has authority under the law to represent the interests of all of AEP Ohio’s approximately 1.2 million residential utility customers, pursuant to R.C. Chapter 4911.

AEP Ohio’s filing would increase by 35% what customers pay for the Utility’s electric transmission rate.² For a customer utilizing 1,000 kWh in a billing month, this would represent an increase of \$4.10, or a 3% increase in a total bill for CSP rate zone customers and 3.2% increase for OP rate zone customers³. And while residential customers are responsible for only 50% of energy usage, they are being allocated 59% of

² Application at Schedule B-2. The residential TCRR is proposed to increase by .4099 cents/kWh, from 1.15708 cents to 1.56698 cents/kWh.

³ Application at Schedule B-5.

current TCRR costs and will be allocated 60% of the proposed total TCRR costs under AEP Ohio's methodology for allocation of transmission costs.⁴

The proposed rate increase is attributable, in significant part, to AEP Ohio's claim that its current TCRR, effective November 2012, has under-recovered more than \$47 million in PJM-related costs, including carrying charges. AEP Ohio claims that \$11 million of this undercollection is due to a tariff change implemented by PJM since the last TCRR effective date and not included in the forecasted charges.⁵ Another \$23 million is for PJM Reactive Supply charges, which AEP Ohio claims it "inadvertently omitted" from TCRR rates.⁶ Finally, \$7 million is attributed by AEP Ohio to "regulatory lag" from implementation of the current TCRR rates.⁷

O.A.C. 4901:3-6-03 provides that if the electric utility or staff determines that "costs are or will be substantially different than the amounts authorized," the electric utility "should file, on its own initiative or by order of the commission, an interim application to adjust the transmission cost recovery rider in order to avoid excessive carrying costs and to minimize rate impacts for the following update filing." Despite these provisions of the Ohio Administrative Code and the significant under-recovery confronting AEP Ohio, the Utility refrained from filing an interim application.

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

⁴ Application at Schedule B-2. Residential customers are forecast to use 8,881 GWh of the projected 17,344 GWh of total energy usage and will be paying \$139 million of the \$231 million in total TCRR charges. The allocation calculation is shown in the Application at Schedule C-3.

⁵ Application at 4, ¶12.

⁶ *Id.*

⁷ *Id.*

Ohio's residential customers may be "adversely affected" by this case, especially if the customers were unrepresented in a proceeding where costs of transmission and transmission-related expenses are included in their rates. 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 involving the TCRR update. This includes the proposed increase to, and allocation of costs for, the TCRR. OCC seeks to ensure that residential customers pay only those charges that are appropriate. This interest is different than that of any other party and especially different than that of AEP Ohio whose advocacy includes the financial interest of its stockholders.

Second, OCC's advocacy for residential customers will include advancing the position that customers are responsible for no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. OCC's position is therefore directly related to the review by the PUCO, the authority with regulatory control of public utilities' rates and service obligations 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 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, inter alia, the rates and terms of transmission service to residential customers are being evaluated.

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.⁸

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,

BRUCE J. WESTON
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/s/ Edmund "Tad" Berger

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⁸ 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 transmission to the persons listed below, this 15th day of July 2013.

/s/ Edmund "Tad" Berger

Edmund "Tad" Berger
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 Berger, Tad Mr.