

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio )  
Power Company for Administration of the ) Case No. 13-2249-EL-UNC  
Significantly Excessive Earnings Test for )  
2011 Under Section 4928.143(F), Revised )  
Code, and Rule 4901:1-35-10, Ohio )  
Administrative Code. )

In the Matter of the Application of ) Case No. 13-2250-EL-UNC  
Columbus Southern Power Company for )  
Administration of the Significantly )  
Excessive Earnings Test for 2011 Under )  
Section 4928.143(F), Revised Code, and )  
Rule 4901:1-35-10, Ohio Administrative )  
Code. )

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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 in these cases where it will be determined whether customers of Ohio Power Company and Columbus Southern Power Company ("Companies") are entitled to a refund because of the amount of 2011 earnings (profits) of the Companies.<sup>1</sup> OCC is filing on behalf of all the approximately 1.2 million residential utility customers of the Companies.

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.

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

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

/s/ Kyle L. Kern

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**MEMORANDUM IN SUPPORT**

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On July 30, 2008, S.B. 221 became effective. S.B. 221 amended R.C. 4928.14 and requires electric distribution utilities (“EDUs”) to provide customers with a Standard Service Offer (“SSO”). That SSO can be either a market rate offer or an electric security plan (“ESP.”) If the EDU files for an ESP, and the ESP is approved, the PUCO must annually evaluate the utility’s earnings. In the annual earnings review, the PUCO is tasked with determining whether the ESP produces “significantly excessive earnings” for the utility.<sup>2</sup>

These cases involve the review of the 2011 earnings of Ohio Power Company and Columbus Southern Power Company (“Companies”) resulting from the rates paid by customers under the Companies’ ESP. This annual review is intended to protect

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<sup>2</sup> R.C. 4928.143(F).

customers and can result in customers benefitting from reduced prospective electric rates.<sup>3</sup> OCC has authority under law to represent the interests of all the approximately 1.2 million residential utility customers of Ohio Power Company and Columbus Southern Power Company, 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 the customers are unrepresented in a proceeding where the PUCO is seeking to determine whether the Companies had significantly excessive earnings in 2011. Residential customers are entitled to a return of ESP earnings found to be significantly excessive under R.C. 4928.143(F). 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

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<sup>3</sup> See, e.g., *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Administration of the Significantly Excessive Earnings Test Under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code*, Case No. 11-4571-El-UNC, et al., Opinion and Order (Oct. 23, 2013)(ordering \$6.37 million worth of pre-tax earnings to be returned to CSP customers); *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Administration of the Significantly Excessive Earnings Test Under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code*, Case No. 10-1261-EL-UNC, Opinion and Order (Jan. 11, 2011)(ordering \$42.683 million to be returned to CSP customers).

- (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 to represent the residential customers of the Companies in these cases where the PUCO will determine if the rates that were paid for electric service in 2011 allowed the Companies to earn excessive profits. This interest is different than that of any other party and especially different than that of the electric utilities whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential customers will include advancing the position that the rates paid by residential customers must be reasonable and the service provided for those rates must be adequate. This legal position directly relates to the merits of these cases where the 2011 earnings of the Companies will be examined. If the earnings are found to be significantly excessive, the PUCO must order a return to customers of the excess by prospective adjustments. 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 these proceedings where the PUCO will decide if customers are entitled to a prospective rate reduction for rates paid in 2011.

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. OCC has been uniquely 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>4</sup>

OCC meets the criteria set forth in R.C. 4903.221 and 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.

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<sup>4</sup> See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

/s/ Kyle L. Kern

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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 electronic transmission, this 4<sup>th</sup> day of December 2013.

/s/ Kyle L. Kern  
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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 Kern, Kyle L.