

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio       )  
Power Company to Adopt a Final                ) Case No. 14-1186-EL-RDR  
Implementation Plan for the Retail            )  
Stability Rider.                                    )

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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 the utility, Ohio Power Company ("Ohio Power"), has proposed to collect from customers capacity<sup>2</sup> costs (plus carrying charges) resulting from Ohio Power providing discounted capacity (market-based capacity) to competitive retail electric service ("CRES") providers. The capacity costs that Ohio Power charged to CRES providers reflected a discount from Ohio Power's fully embedded cost of capacity. That discount was authorized by the Public Utilities Commission of Ohio ("PUCO" or "Commission") in Ohio Power's capacity case.<sup>3</sup> In that case, the PUCO permitted Ohio Power to defer the discount-the difference between the market-based rate it would charge the CRES and Ohio Power's fully embedded cost.<sup>4</sup>

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

<sup>2</sup> Capacity charges represent the costs to a utility for making its generation units available to provide electric service.

<sup>3</sup> *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Opinion and Order (July 2, 2012).

<sup>4</sup> The PUCO subsequently ordered that Ohio Power could collect the deferred capacity costs from all customers, though a non-bypassable charge. *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, Opinion and Order (Aug. 8, 2012).

Ohio Power now proposes to collect the deferred cost from customers in this case. The amount of deferred capacity costs that Ohio Power proposes to collect from customers is an estimated \$418.4 million. This proceeding will establish how the costs are to be collected from customers—including residential customers. OCC is filing on behalf of all the 1.2 million residential utility customers of Ohio Power. The reasons the Public Utilities Commission of Ohio (“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/ Maureen R. Grady

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**MEMORANDUM IN SUPPORT**

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Ohio Power Company (“Ohio Power”), has proposed to collect from customers capacity costs (plus carrying charges) resulting from Ohio Power providing discounted capacity (market-based capacity) to competitive retail electric service (“CRES”) providers. That discount was authorized by the Public Utilities Commission of Ohio (“PUCO” or “Commission”) in Ohio Power’s capacity case.<sup>5</sup> In that case, the PUCO permitted Ohio Power to defer the discount-the difference between the market-based rate it would charge the CRES and Ohio Power’s fully embedded cost.<sup>6</sup>

Ohio Power now proposes to collect the deferred cost from customers in this case by continuing its current Retail Stability Rider Charge. Those costs (that Ohio Power proposes to collect from customers) amount to an estimated \$418.4 million. It is expected that customers will start paying these costs June 1, 2015 and will continue to pay through January 2018. This proceeding will establish how the costs are to be collected, and what portion of those costs will be charged to the residential customer

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<sup>5</sup> *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Opinion and Order (July 2, 2012).

<sup>6</sup> The PUCO subsequently ordered that Ohio Power could collect the deferred capacity costs from all customers, though a non-bypassable charge. *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, Opinion and Order (Aug. 8, 2012).

class. OCC has authority under law to represent the interests of all the 1.2 million 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 where residential customers are being asked to pay for discounted capacity supplied to CRES providers. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the PUCO 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 involving the capacity costs to be charged all customers, including residential customers. 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 rates charged to residential customers should be 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 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 Ohio Power is proposing how it will collect from customers \$418 million in capacity costs.

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 PUCO 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>7</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 PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

/s/ Maureen R. Grady

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<sup>7</sup> See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

## **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 18<sup>th</sup> day of July, 2014.

/s/ Maureen R. Grady

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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 Grady, Maureen R. Ms.