

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

The Office of the Ohio Consumers' Counsel,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 16-0782-EL-CSS
	)	
Ohio Power Company	)	
	)	
Respondent.	)	

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**MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT  
OF INDUSTRIAL ENERGY USERS-OHIO**

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**May 10, 2016**

**Attorneys for Industrial Energy Users-Ohio**

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**MOTION TO INTERVENE OF  
INDUSTRIAL ENERGY USERS-OHIO**

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Industrial Energy Users-Ohio ("IEU-Ohio") hereby respectfully moves the Public Utilities Commission of Ohio ("Commission"), pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code ("O.A.C."), for leave to intervene in the above-captioned matter with the full powers and rights granted by the Commission, specifically by statute or by the provisions of the O.A.C., to intervening parties.

On April 12, 2016, the Ohio Consumers' Counsel ("OCC") filed a complaint asking the Commission to direct Ohio Power Company ("AEP-Ohio") to amend or enforce its existing Terms and Conditions of Service to prohibit the resale and redistribution of electric services to residential customers by submetering entities or third-party agents (other than landlords) that are operating as public utilities. In response, AEP-Ohio has filed a motion to amend its Terms and Conditions of Service

that, if authorized, will unreasonably and unlawfully interfere with shared services arrangements used by industrial and commercial customers that provide substantial benefits to those customers and are in the public interest.

Because AEP-Ohio has sought to use this proceeding to unlawfully and unreasonably revise its Terms and Conditions of Service in a manner that is adverse to commercial and industrial customers, IEU-Ohio has a direct, real, and substantial interest in the issues and matters involved in the above-captioned proceeding, and is so situated that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect that interest. IEU-Ohio believes that its participation will not unduly prolong or delay this proceeding and that it will significantly contribute to the full development and equitable resolution of the factual and other issues in this proceeding. The interests of IEU-Ohio will not be adequately represented by other parties to the proceeding and, as such, IEU-Ohio is entitled to intervene with the full powers and rights granted by the Commission, specifically by statute and by the provisions of the O.A.C., to intervening parties.

Respectfully submitted,

/s/ Frank P. Darr

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**MEMORANDUM IN SUPPORT**

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Intervention in Commission matters is governed by R.C. 4903.221, which provides that any person "who may be adversely affected" by a Commission proceeding is entitled to seek intervention in that proceeding. In ruling on a motion to intervene, the Commission is to consider the nature and extent of the prospective intervenor's interest, the legal position advanced by the prospective intervenor and its probable relation to the merits of the case, whether the intervention will unduly prolong or delay the proceeding, and whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues. R.C. 4903.221; *Ohio Consumers' Counsel v. Pub. Util. Comm'n of Ohio*, 111 Ohio St. 3d 384 ¶15 (2006) (summarizing the statutory requirements of R.C. 4903.221) ("*OCC Intervention Case*").

Rule 4901-1-11, O.A.C., further provides that intervention "shall" be allowed by the Commission if the prospective intervenor "has a real and substantial interest in the proceeding, and ... is so situated that the disposition of the proceeding may, as a

practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.”<sup>1</sup> “The regulation's text is very similar to Civ.R. 24—the rule governing intervention in civil cases in Ohio—which ‘is generally liberally construed in favor of intervention.’” *OCC Intervention Case*, ¶16. The Commission is to proceed based on the allegations contained in the Motion. “In the absence of some evidence in the record calling those claims into doubt or showing that intervention would unduly prolong or delay the proceedings, intervention should [be] granted.” *Id.*, ¶20.

IEU-Ohio is an association of ultimate commercial and industrial customers. A current listing of IEU-Ohio member companies is available on IEU-Ohio's website at [http://www.ieu-ohio.org/member\\_list.aspx](http://www.ieu-ohio.org/member_list.aspx). IEU-Ohio's members purchase substantial

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<sup>1</sup> Rule 4901-1-11, OAC, provides in relevant part:

(A) Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:

...

(2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

(B) In deciding whether to permit intervention under paragraph (A)(2) of this rule, the commission, the legal director, the deputy legal director, or an attorney examiner shall consider:

(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 proceedings.

(4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

(5) The extent to which the person's interest is represented by existing parties.

amounts of electric and related services from Ohio's electric distribution utilities ("EDU") including AEP-Ohio.

IEU-Ohio's members work together to address matters that affect the availability and price of utility services. Additionally, IEU-Ohio seeks to promote customer-driven policies that will assure an adequate, reliable, and efficient supply of energy for all consumers at competitive prices. To this end, IEU-Ohio has worked to produce legislative, regulatory, and market outcomes that are consistent with the State policy contained in Section 4928.02, Revised Code.

Due to the recent response by AEP-Ohio to the complaint filed by OCC, IEU-Ohio seeks to protect the interests of commercial and industrial customers through intervention in this matter. In the complaint, OCC alleges that residential customers are injured by abusive billing practices of submetering companies because AEP-Ohio has failed to enforce its current Terms and Conditions of Service. OCC seeks Commission orders directing AEP-Ohio to enforce its Terms and Conditions of Service or orders directing AEP-Ohio to file an amendment to the Terms and Conditions. Complaint (April 12, 2016). The tariff revision that OCC seeks would limit the availability of submetering to residential landlord-tenant arrangements "where the landlord is not otherwise operating as a public utility." *Id.*, Attachment A. Further, the tariff revision would prohibit the resale or redistribution of residential utility service "at a charge that is above the landlord's cost of purchasing the service." *Id.*

In response to the Complaint, AEP-Ohio filed an answer and a motion for a tariff amendment on April 27, 2016. In the motion, AEP-Ohio alleges that the Commission should revise its tariff to "clarify" the resale restrictions contained in its tariff and to limit

supposed harms caused by submetering. Ohio Power Company's Motion for Tariff Amendment at 3 (April 27, 2016). In support of the motion, AEP-Ohio further alleges that submetering is harmful to commercial and industrial customers, but provides neither any example nor citation to support that allegation. *Id.* at 8-9. Based on this unsupported claim, it proposes substantial restrictions on submetering and resale that would apply to all customers. *Id.* at 7 & 9.

The proposed relief that AEP-Ohio is seeking on a completely unsupported claim that commercial and industrial customers are harmed by submetering may impair an interest of commercial and industrial customers. It is often the case in Ohio that multiple non-residential consumers are located on property, such as a campus, which includes facilities, plant, and equipment that allow each consumer to receive electricity, natural gas, water or wastewater treatment services through a "master-meter," or jointly or individually owned facilities, plant, or equipment. These arrangements arise voluntarily and have become more common over time because corporations have spun off or separated individual business units that may have separate corporate identities even if commonly owned. Typically, these arrangements are ancillary to and not the primary purpose of the relationship between the individual non-residential consumers. Although AEP-Ohio provides no support for its claim that commercial and industrial customers are adversely affected by these shared services arrangements, it nonetheless proposes unreasonable restrictions on submetering that would permit it to terminate services to those customers.<sup>2</sup> Accordingly, IEU-Ohio has a direct, real, and substantial interest in

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<sup>2</sup> See IEU-Ohio's Memorandum Opposing Ohio Power Company's Motion for Tariff Amendment by Industrial Energy Users-Ohio filed concurrently with this Motion to Intervene for a further discussion demonstrating the unlawfulness of AEP-Ohio's proposed amendments.

the issues and matters involved in the above-captioned proceeding, and IEU-Ohio is so situated that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect that interest.

IEU-Ohio's participation will not unduly prolong or delay this proceeding, and it will significantly contribute to the full development and equitable resolution of the factual and other issues in this proceeding. IEU-Ohio is familiar with the shared services agreements of commercial and industrial customers and has been an active participant in the Commission's investigation of submetering. *In the Matter of the Commission's Investigation of Submetering in the State of Ohio*, Case No. 15-1594-AU-COI. IEU-Ohio was also a participant in prior proceedings regarding the implementation of resale of retail electric service, including the electric transition proceedings when the Commission directed AEP-Ohio and other utilities to bring their tariff provisions into compliance with resale restrictions contained in Amended Substitute Senate Bill 3. *See In the Matter of the Application of First-Energy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues*, PUCO Case Nos. 99-1212-EL-ETP, *et al.*, Entry (Jan. 18, 2001) ("*FirstEnergy*").

The interests of IEU-Ohio will not be adequately represented by other parties to the proceeding. OCC's participation is limited solely to the representation of residential customers by statute. R.C. 4911.02. The only other party in the proceeding, AEP-Ohio, the respondent, has set out a position in its motion that is adverse to the interests of the members of IEU-Ohio. As a result, no party in this proceeding currently represents the interests of commercial and industrial customers.



Accordingly, IEU-Ohio is entitled to intervene with the full powers and rights granted by the Commission, specifically by statute and by the provisions of the O.A.C., to intervening parties

Respectfully submitted,

/s/ Frank P. Darr

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**Attorneys for Industrial Energy Users-Ohio**

## CERTIFICATE OF SERVICE

In Accordance with Rule 4901-1-05, Ohio Administrative Code, "The PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties." In addition, I hereby certify that a service copy of the foregoing *Motion to Intervene of Industrial Energy Users-Ohio* was sent by, or on behalf of, the undersigned counsel for Industrial Energy Users-Ohio to the following parties of record May 10, 2016, *via* electronic transmission.

/s/ Frank P. Darr

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**ON BEHALF OF THE PUBLIC UTILITIES  
COMMISSION OF OHIO**

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Summary: Motion to Intervene and Memorandum in Support of Industrial Energy Users-Ohio electronically filed by Mr. Frank P Darr on behalf of Industrial Energy Users-Ohio