

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Ohio Power Company to Update Its) Case No. 17-1156-EL-RDR
gridSMART Phase 2 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 that will affect the electric bills of consumers in the Ohio Power Company ("Ohio Power") service territory. OCC is filing on behalf of residential utility customers.¹ 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 WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Terry L. Etter

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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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On April 28, 2017, Ohio Power filed an Application to update the rider used to collect from customers the costs associated with the gridSMART program. Per the PUCO Order approving gridSMART Phase 2, the Application is a quarterly filing of gridSMART-related costs.²

Ohio Power states that it will move the approved Phase 1 assets to its Distribution Investment Rider as of April 1, 2017.³ Ohio Power seeks to collect from customers actual Phase 1 operations and maintenance spending from June 2015 through March 2017, allocated between the Residential and Non-Residential classes as the PUCO ordered in Case No. 10-2929-EL-RDR.⁴ Ohio Power also seeks to collect the actual capital carrying costs from calendar year 2016 and January through March of 2017.⁵ As part of the true-up in this case, Ohio Power has removed the amounts collected from customers through the gridSMART rider for the period January 2016 through March 2017, as allocated to the classes under the Phase I allocation methodology.⁶

² See Application (April 28, 2017) at 3.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

As a result, Ohio Power proposes to credit 63 cents per month to residential customers and \$2.13 per month to nonresidential customers through the rider.⁷ OCC has authority under law to represent the interests of Ohio Power's 1.2 million residential utility 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 Ohio Power's gridSMART Phase 2 program, and costs associated with this program, are being examined. 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 Ohio Power's residential customers of in this case involving the costs of the gridSMART program that customers pay for. 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.

⁷ See *id.*, Attachment 1.

Second, OCC's advocacy for residential customers will include advancing the position that rates 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 costs associated with Ohio Power's gridSMART program, paid for by residential consumers, will be examined.

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 "[t]he 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 PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Terry L. Etter

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⁸ 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 12th day of May 2017.

/s/ Terry L. Etter
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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 Etter, Terry L.