

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Alternative Energy        )  
Rider and Auction Cost Recovery Rider        )  
for Ohio Power Company                        )**

**Case No. 15-1052-EL-RDR**

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**OHIO POWER COMPANY’S MEMORANDUM CONTRA THE OFFICE OF THE  
OHIO CONSUMERS’ COUNSEL’S MOTION TO INTERVENE**

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**I. INTRODUCTION**

On February 25, 2015, the Commission issued an Opinion and Order approving and adopting portions of Ohio Power Company’s (AEP Ohio or the Company) electric security plan in Case Nos. 13-2385-EL-SSO, *et al.* (“*ESP III*”). Among other things, the Commission approved the continuation of the Alternative Energy Rider (AER). *ESP III*, Opinion and Order at 35 (Feb. 25, 2015). The Commission initially approved the AER for recovery of prudently incurred alternative energy costs, including the renewable energy credit expense associated with acquiring or creating renewable energy, in the Company’s *ESP II* case, Case Nos. 11-346-EL-SSO, *et al.* See *ESP II*, Opinion and Order at 17-18 (Aug. 8, 2012). Staff audits the AER. *ESP III*, Opinion and Order at 35. No party objected to the creation or continuation of the AER. *ESP II*, Opinion and Order at 18 (stating that “[n]o party took exception to the implementation of the AER mechanism”); *ESP III*, Opinion and Order at 35 (noting that AEP Ohio’s “proposal to continue the AER is unopposed”).

Consistent with the Commission’s Opinion and Order in *ESP III*, the Company filed its Application to initiate this proceeding for purposes of filing quarterly updates to the AER and the Auction Cost Recovery Rider (ACRR) on June 1, 2015. AEP Ohio has filed quarterly updates in this docket seven more times since then, all of which were administrative and ministerial in

nature. AEP Ohio has calculated its AER rates identically in each quarterly filing, and each time it has provided the same schedules demonstrating the calculation of the rate and its components.

Two years after this compliance filing docket was opened, and nearly five years after the Commission approved the creation of the AER, the Office of the Ohio Consumers' Counsel (OCC) seeks to intervene ostensibly to challenge the "reasonable[ness] and lawful[ness]" of AEP Ohio's collection of the most recently updated AER rate from residential customers. (*See* OCC Mot. at 1-2.) The memorandum in support of OCC's motion to intervene is simply a series of general and conclusory assertions restating the requirements for intervention tied together by *non sequiturs*, none of them adding up to a clear or convincing justification for intervention. OCC is too late in seeking to challenge the AER mechanism itself (that should have been challenged through the *ESP III* proceeding or an appeal therefrom). It is also inappropriate for OCC to challenge the prudence or reasonableness of the costs that will flow through the AER, which were approved in AEP Ohio's prior ESP proceedings, by virtue of this administrative rider update proceeding. Intervention is not appropriate and OCC's request should be denied.

OCC's motion falls far short of the requirements for intervention set forth in R.C. 4903.221 and O.A.C. 4901-1-11. For these reasons, as explained below, the Commission should deny OCC's motion.

## **II. LAW AND ARGUMENT**

The Commission should deny OCC's motion to intervene because OCC has not demonstrated that it satisfies the requirements for intervention set forth in the Revised Code or the Commission's Rules. In order to intervene in a Commission proceeding, an entity must demonstrate that it "may be adversely affected by" the proceeding. R.C. 4903.221. More specifically, unless a federal or Ohio statute confers a right to intervene (and OCC does not claim

a statutory right to intervene), the entity must demonstrate that it “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 [its] ability to protect that interest \* \* \*.” O.A.C. 4901-1-11(A)(2). OCC has not demonstrated any real interest in this proceeding.

The Commission must consider five additional factors in weighing a motion 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 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.

O.A.C. 4901-1-11(B); *see also* R.C. 4903.221(B) (instructing the Commission to consider the first four factors listed above when ruling upon applications to intervene). Each of these factors weighs against allowing OCC to intervene here.

**A. OCC has not explained why Ohio’s residential consumers might be adversely affected by this proceeding.**

As a first step, an entity seeking to intervene in a Commission proceeding must demonstrate that it “may be adversely affected by” the proceeding. R.C. 4903.221. OCC simply asserts that “[t]he interests of Ohio’s residential consumers may be ‘adversely affected’ by this case.” (OCC Mem. Supp. at 1.) OCC does not explain how, or why, this proceeding would adversely affect Ohio’s residential consumers. No reason is apparent, either. This is a rider update proceeding whose function is administrative and ministerial in nature, not substantive.

OCC adds that the real likelihood of an “adverse effect” on residential consumers would occur “if the consumers were unrepresented in a proceeding where the Utility seeks to double the amount of money that its customers pay for renewable energy.” (*Id.*) But OCC’s characterization vastly overstates, and misstates, the nature of this case. The amount that AEP Ohio may collect from customers for prudently incurred alternative energy costs is not at issue here. Nor is the prudence of AEP Ohio’s alternative energy costs at issue in this proceeding. The issue here is merely whether AEP Ohio has properly updated its quarterly rate adjustments, subject to financial audit and reconciliation.

As a threshold step, a party must demonstrate that it would be “adversely affected” by a Commission proceeding before it may intervene in that proceeding. OCC has not explained why residential consumers would be adversely affected by this proceeding. For this reason alone, the Commission should deny OCC’s Motion.

**B. OCC has no real or substantial interest in this proceeding.**

An entity moving to intervene in a Commission proceeding must also demonstrate that it "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 [its] ability to protect that interest[.]" O.A.C. 4901-1-11(A)(2). For this requirement, OCC asserts that it “has a real and substantial interest in this case involving the charges that residential customers pay for renewable energy.” (OCC Mem. Supp. at 3.) Similarly, the Commission is required to consider the “nature and extent” of OCC’s interest. R.C. 4903.221(B)(1); O.A.C. 4901-1-11(B)(1). OCC states only that “the nature and extent of OCC's interest is representing the residential customers of AEP Ohio in this case where AEP Ohio is raising the rate that customers pay for renewable energy.” (OCC Mem. Supp. at 2.) OCC misses the mark as to both requirements.

Again, the subject of this proceeding is not whether AEP Ohio may collect its costs of renewable energy from residential customers – that was already decided years ago in the *ESP II* case. Nor, again, is this case about the specific costs that go into the AER. The subject of this proceeding is simply to update mathematically the Company’s AER rates consistent with the Commission’s *ESP III* Opinion and Order. OCC has no real or substantial interest in this proceeding and its vague assertions are not sufficient grounds for intervention.

**C. OCC’s vaguely described legal position has no apparent relation to the merits of this proceeding.**

Next, the Commission must consider “the legal position [OCC intends to advance in this proceeding] and its probable relation to the merits of this case.” R.C. 4903.221(B)(2); O.A.C. 4901-1-11(B)(2). OCC states that it will “advanc[e] the position that the rates consumers pay for electric service (including charges for renewable energy) should be no more than what is reasonable and lawful under Ohio law.” (OCC Mem. Supp. at 2.) This position, OCC asserts, is “directly related to the merits of this case[.]” (*Id.*) But the reasonableness and lawfulness of AEP Ohio’s SSO rates is simply not at issue here. Nor is the reasonableness and lawfulness of the AER. The Commission already determined that the AER is reasonable and lawful in *ESP II* and *ESP III*. It is long past the time for OCC to challenge those determinations.

**D. OCC's intervention will unduly prolong and delay this proceeding and will not help develop or resolve any factual issues.**

The Commission is also required to consider whether OCC's intervention would "unduly prolong or delay the proceedings." R.C. 4903.221(B)(3); O.A.C. 4901-1-11(B)(3). OCC asserts that "OCC's intervention will not unduly prolong or delay the proceedings" because OCC "will duly allow for the efficient processing of the case with consideration of the public interest." (OCC Mem. Supp. at 2.) Again, with all due respect to OCC, this is meaningless. A promise to "allow for the efficient processing of the case" means nothing, and is not in any regard tempered by OCC's ambiguous caveat, "with consideration of the public interest." In reality, OCC appears only to promise not to prolong or delay this case no longer than its conception of the public interest requires.

Similarly, OCC asserts that it "will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest," purportedly in satisfaction of the requirement that the Commission weigh whether OCC "will significantly contribute to the full development and equitable resolution of the factual issues" under R.C. 4903.221(B)(4) and O.A.C. 4901-1-11(B)(4). (*Id.*) But again, OCC does not explain what information it intends to "obtain and develop" here. Nor does it explain why additional information is needed in this quarterly rider update docket.

OCC's assurances aside, OCC does threaten to prolong and delay these proceedings merely by intervening and can add nothing to develop or resolve any factual issues. As set forth above, the legal issues related to the AER were decided in *ESP II* and *ESP III*, over OCC's non-objection. Requiring AEP Ohio to respond to discovery and argue repetitive legal and/or factual issues in this case will unavoidably prolong and delay this proceeding, result in administrative

inefficiency, and cause the Company and Commission to incur unnecessary cost. For this reason too, the Commission should deny OCC's motion.

**E. OCC does not have any interest in this proceeding that is or is not represented by existing parties.**

Finally, the Commission must consider “[t]he extent to which [OCC’s] interest is represented by existing parties.” O.A.C. 4901-1-11(B)(5). OCC asserts, on this point, that it “uniquely has been designated as the state representative of the interests of Ohio’s residential utility customers.” (OCC Mem. Supp. at 3.) While this is true, OCC has not explained why the interests of Ohio’s residential utility customers are implicated in this proceeding, as discussed above. In any case, because OCC has no real interest in this proceeding, its interests cannot be said to be represented or unrepresented by existing parties.

In conclusion, OCC asserts that the Ohio Supreme Court “has confirmed that [OCC’s] intervention ought to be liberally allowed.” (*Id.*, citing *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶ 13-20.) To the contrary, the Court in *Ohio Consumers’ Counsel* merely confirmed OCC's right to intervene in Commission proceedings where OCC's “interests were not represented by any other party to the proceedings, \* \* \* there [was] no suggestion in the record that intervention would have unduly delayed the proceedings or caused prejudice to any party[,]” and OCC explained how the subjects of the dispute “would adversely affect \* \* \* residential customers[.]” *Ohio Consumers’ Counsel*, 2006-Ohio-5853, at ¶ 18. In other words, OCC is permitted to intervene only when it demonstrates that it meets the requirements of R.C. 4903.221 and O.A.C. 4901-1-11. The Court indicated that where there is “some evidence in the record” calling into doubt OCC’s purported interest in a case or OCC’s claim that its “views would not be adequately represented by the existing parties,” “or showing

that intervention would unduly prolong or delay the proceedings," intervention need not be granted. *Id.* at ¶20.

As shown above, OCC's intervention at this late stage, coupled with its asserted desire to "significantly contribute to the full development \* \* \* of the factual issues" (*i.e.*, serve lengthy discovery requests), will unduly prolong and delay these proceedings. OCC has provided no clear explanation of its interest in this case, beyond an empty reference to its role representing the interests of residential consumers. And OCC has not explained what unique facts or legal arguments it intends to offer or why those facts or legal arguments are useful in this rider update docket. Thus, even under the liberal standard for intervention described by the Supreme Court in *Ohio Consumers' Counsel*, intervention is not warranted here.

### **III. CONCLUSION**

For the reasons set forth above, Ohio Power Company respectfully requests that the Commission deny OCC's motion to intervene.

Respectfully submitted,

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### **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 *Ohio Power Company's Memorandum Contra the Office of the Ohio Consumers' Counsel's Motion to Intervene* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 8th day of June, 2017, via electronic transmission.

/s/ Steven T. Nourse

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Summary: Memorandum - Ohio Power Company's Memorandum Contra the Office of the Ohio Consumers' Counsel Motion to Intervene electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company