

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio       )  
Power Company for a Limited Waiver of       ) Case No. 17-1380-EL-WVR  
Ohio Adm. Code 4901:1-18-06(A)(2).       )

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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 this case involving the rights of Ohioans to receive in-person notice on the day their electric service is to be disconnected for nonpayment.<sup>1</sup> In 2015, the Public Utilities Commission of Ohio ("PUCO") granted Ohio Power Company ("AEP Ohio") a temporary, limited waiver of Ohio Adm. Code 4901:1-18-06(A)(2).<sup>2</sup>

The waiver was for a two-year pilot period ending August 1, 2017, and was limited to AEP Ohio's residential customers who have advanced metering infrastructure ("AMI") through its gridSMART Phase 1 program. In approving the temporary, limited waiver the PUCO stated, "Following the two-year pilot, the Commission, the Company, and Consumer Advocates will have the opportunity to evaluate the success of the pilot and consider revisions to the remote disconnection process if the process is continued or expanded."<sup>3</sup> The data to be used for evaluating the pilot was provided only to the PUCO Staff, and not to OCC.

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<sup>1</sup> Ohio Adm. Code 4901:1-18-06(A)(2).

<sup>2</sup> *In the Matter of the Application of Ohio Power Company for a Limited Waiver of Rule 4901:1-18-06(A)(2), Ohio Administrative Code*, Case No. 13-1938-EL-WVR, Entry (March 18, 2015).

<sup>3</sup> *Id.*, ¶ 33. OCC was one of the Consumer Advocates.

AEP Ohio now seeks a permanent extension of the waiver.<sup>4</sup> In the alternative, AEP Ohio asks that the waiver continue for six months after an order is issued because, according to AEP Ohio, it has “reallocated resources” and no longer has personnel assigned to notify customers in person on the day service is to be disconnected for nonpayment.<sup>5</sup> AEP Ohio also requests expedited treatment of its motion because of the impending August 1 deadline to end the pilot.<sup>6</sup>

To protect consumers, OCC is filing to intervene on behalf of AEP Ohio’s approximately 1.2 million residential electric utility customers. The reasons the PUCO should grant OCC intervention 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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<sup>4</sup> Motion (June 1, 2017) at 1.

<sup>5</sup> *See id.* at 4.

<sup>6</sup> *Id.* It is unclear whether AEP Ohio is formally requesting an expedited ruling that would trigger the shortened timeframe to file a memorandum contra under Ohio Adm. Code 4901-1-12(C). Nevertheless, a Memorandum Contra to AEP Ohio’s motion is being filed concurrently with this Motion to Intervene, out of an abundance of caution.

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**MEMORANDUM IN SUPPORT**

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In its motion, AEP Ohio seeks to continue avoiding in-person notice to residential customers in the gridSMART Phase 1 area on the day electric service is disconnected for nonpayment. Approximately 132,000 residential customers are affected.<sup>7</sup> Through its waiver request, AEP Ohio would deprive customers whose homes are equipped with an AMI meter from an additional opportunity to avoid disconnection.<sup>8</sup> OCC has authority under law to represent the interests of all of AEP Ohio’s 1.2 million residential utility customers, pursuant to R.C. Chapter 4911.<sup>9</sup>

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 this case where AEP Ohio is seeking to continue avoiding a PUCO rule that protects customers from termination of electric service without adequate notice.

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<sup>7</sup> See Motion at 2.

<sup>8</sup> See Ohio Adm. Code 4901:1-18-06(A)(4)(a)-(c).

<sup>9</sup> At the same time AEP Ohio filed the motion in this case, it also filed a motion in Case No. 17-1381-EL-WVR to expand the waiver to all customers who receive an AMI meter as part of gridSMART Phase 2. Hence, the PUCO’s action in this case may adversely affect AEP Ohio customers who live outside the gridSMART Phase 1 area.

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 AEP Ohio in this case involving the requisite notice for disconnection of service, as required by Ohio Adm. Code 4901:1-18-06(A)(2). 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 AEP Ohio's customers are entitled to the protections set forth in Ohio Adm. Code 4901:1-18-06(A)(2), which mandates that on the day of disconnection of service for nonpayment, electric utilities "shall provide the customer with personal notice" or provide personal notice to an adult consumer at the home if the customer is not there. Ohio Adm. Code 4901:1-18-06(A)(2) alternatively provides that if neither the customer nor an adult consumer is at the home on the day of disconnection, the utility "shall attach written notice to the premises in a conspicuous location prior to disconnecting service."

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 proceeding. 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 was granted intervention in the case underlying AEP Ohio's current request to extend the waiver,<sup>10</sup> and thus is fully familiar with the issues in this case.

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 AEP Ohio is seeking waiver of the notice of disconnection requirements as they apply to homes equipped with AMI meters.

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

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<sup>10</sup> Case No. 13-1938-EL-WVR, Entry (March 18, 2015), ¶ 6.

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>11</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 WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

/s/ Terry L Etter

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<sup>11</sup> See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

## **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 8<sup>th</sup> day of June 2017.

/s/ Terry L Etter

Terry L. Etter

Assistant Consumers' Counsel

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Summary: Motion Motion to Intervene by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Etter, Terry Mr.