

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio       )  
Power Company for Administration of the       ) Case No. 17-1230-EL-UNC  
Significantly Excessive Earnings Test for       )  
2016 Under Section 4928.143(F), Revised       )  
Code, and Rule 4901:1-35-10, Ohio                )  
Administrative Code.                                )

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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 2016 earnings of Ohio Power Company will be examined to determine if its earnings were significantly excessive as to warrant a refund to customers. OCC files on behalf of all the approximately 1.2 million residential utility customers of the Ohio Power Company.

The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

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

Respectfully submitted,

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OHIO CONSUMERS' COUNSEL

/s/ Jodi Bair

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**MEMORANDUM IN SUPPORT**

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R.C. 4928.141 requires electric distribution utilities (“EDUs”) to provide customers with a Standard Service Offer (“SSO”). That SSO can be either a market rate offer or an electric security plan (“ESP.”) If the EDU files for an ESP, and the ESP is approved, the PUCO must annually evaluate the utility’s earnings. Although the utility is entitled to excessive earnings, it is not entitled to keep “significantly excessive earnings”. Such earnings must be returned to customers under R.C. 4928.143(F). In the annual earnings review, the PUCO is tasked with determining whether the ESP produces significantly excessive earnings for the utility.<sup>2</sup>

OCC has authority under law to represent the interests of all the approximately 1.2 million residential utility customers of Ohio Power who paid rates that may have allowed the utility to reap significantly excessive profits.

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 these cases, especially if the

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<sup>2</sup> R.C. 4928.143(F).

customers are unrepresented in a proceeding where the PUCO is seeking to determine whether customers paid rates that enabled the Ohio Power Company to reap significantly excessive earnings in 2016. Residential customers are entitled to a return of ESP earnings found to be significantly excessive under R.C. 4928.143(F). Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission 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 to represent the residential customers of the Ohio Power Company in these cases where the PUCO will determine if the rates that were paid for electric service in 2016 allowed the Ohio Power Company to earn significantly excessive profits. This interest is different than that of any other party and especially different than that of the electric utilities whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential customers will include advancing the position that the rates paid by residential customers must be reasonable and the service provided for those rates must be adequate. This legal position directly relates to the merits of these cases where the 2016 earnings of the Ohio Power Company will be

examined. If the earnings are found to be significantly excessive, the PUCO must order a return to customers of the excess by prospective adjustments. 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 these proceedings where the PUCO will decide if customers are entitled to a prospective rate reduction for rates paid in 2017 and beyond as a result of any significantly excessive earnings of Ohio Power in 2016..

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 Commission 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. OCC has been uniquely 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>3</sup>

OCC meets the criteria set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of the Ohio Power Company' residential customers, the Commission should grant OCC's Motion to Intervene.

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

Respectfully submitted,

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/s/ Jodi Bair

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**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 23rd day of June 2017.

/s/ *Jodi Bair* \_\_\_\_\_  
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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 Bair, Jodi Ms.