

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the 2016 Review of)
the Distribution Investment Rider) Case No. 17-38-EL-RDR
Contained in the Tariff of Ohio)
Power Company.)

**MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

This case involves the independent review of distribution investment costs charged to customers of Ohio Power Company (“AEP Ohio”) through its Distribution Investment Rider (“DIR”) during 2016. Collection from customers through the rider was capped at \$146.2 million for 2016.¹ The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene on behalf of AEP Ohio’s approximately 1.3 million residential electric distribution consumers.² The reasons why the Public Utilities Commission of Ohio (“PUCO”) should grant this Motion are set forth in the attached Memorandum in Support.

¹ *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, et al., Opinion and Order (February 25, 2015) at 47.

² See R.C. Chapter 4911, R.C. 4903.221, Ohio Adm. Code 4901-1-11.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Terry L. Etter _____

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MEMORANDUM IN SUPPORT

AEP Ohio’s customers pay a monthly charge for distribution investment made by the utility. AEP Ohio collects the money through its DIR. The DIR allows AEP Ohio to collect a return on and return of its costs for distribution infrastructure investments without filing a rate case.³ OCC has statutory authority to represent the interests of AEP Ohio’s 1.3 million residential electric distribution consumers who pay charges under the DIR.⁴

Any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding.⁵ The interests of AEP Ohio’s residential customers may be “adversely affected” by this case, especially if they were unrepresented in a case that examines whether AEP Ohio has prudently spent funds to be collected from them. Thus, this element of the intervention standard articulated in R.C. 4903.221 is satisfied.

The PUCO is required to consider the following criteria in ruling on motions to intervene:

³ See Case No. 13-2385-EL-SSO, et al., Opinion and Order (February 25, 2015) at 47.

⁴ R.C. Chapter 4911.

⁵ R.C. 4903.221.

- (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;
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.⁶

First, the nature and extent of OCC's interest is representing AEP Ohio's residential customers. Here, AEP Ohio's distribution investments will be examined to ensure, among other things, that AEP Ohio has prudently spent money collected from residential customers. OCC's interest is different from that of any other party and is especially different from that of AEP Ohio whose advocacy includes the financial interests of its stockholders.

Second, OCC's advocacy for residential consumers will include advancing the position that AEP Ohio's rates should be no more than what is reasonable and lawful under Ohio law and that residential consumers are entitled to reliable and affordable electric utility service under R.C. 4928.02. Therefore, OCC's position is directly related to the merits of this case 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.

⁶ R.C. 4903.221(B).

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 this 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 must show that it has a "real and substantial interest" in the proceeding.⁷ As the advocate for Ohio's residential utility consumers, OCC has a very real and substantial interest in this proceeding that reviews AEP Ohio's expenditures of the money collected from customers through the DIR.

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 has demonstrated above that it 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 concede the lawfulness of this criterion, OCC satisfies this criterion because it has been uniquely designated as the representative of the interests of Ohio's residential utility consumers. This 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.⁸ The Court found that the PUCO erred in denying OCC's

⁷ Ohio Adm. Code 4901-1-11(A)(2).

⁸ *See Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853.

intervention in two proceedings and that OCC should have been granted intervention in both proceedings.⁹

OCC meets the criteria for intervention set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11, and the precedent for intervention established by the Supreme Court of Ohio. To protect consumers, 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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⁹ See *id.*, ¶¶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 mail, this 27th day of November 2017.

/s/ Terry L. Etter _____

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.