

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the 2015 Through 2017) Case No. 18-0080-EL-RDR
Review of the Alternative Energy Rider of)
Ohio Power Company.)

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

By law, Ohio utilities must comply with renewable energy mandates.¹ Customers, including residential customers that the Office of the Ohio Consumers' Counsel ("OCC") represents, pay for the costs that utilities incur to comply with this law. But the law also provides for a three percent "cost cap" on these charges to customers.²

In a related case involving Ohio Power Company's ("AEP" or the "Utility") quarterly update to its renewable energy rider, OCC noted that AEP's customers were paying substantially more for renewable energy than customers of any other electric distribution utility in Ohio. At the time, AEP's charges were at least **400%** higher than every other utility's charges.³ Thus, OCC was concerned that AEP's charges might not be just and reasonable and might also exceed the three percent cost cap.

To investigate this issue, OCC asked AEP, through discovery, to provide information to OCC regarding the cost cap and whether AEP's charges to consumers

¹ R.C. 4928.64.

² R.C. 4928.64(C)(3).

³ *In re Application of Ohio Power Co. to Update its Alternative Energy Rider & Auction Cost Reconciliation Rider*, Case No. 15-1052-EL-RDR, Motion to Compel AEP Ohio to Respond to Discovery About its Charges to Consumers for Renewable Energy by the Office of the Ohio Consumers' Counsel at 2 (July 12, 2017).

exceeded it.⁴ But AEP refused to provide any information.⁵ In fact, AEP argued not only that it could refuse to respond to OCC's discovery requests, but that OCC should be barred entirely from participating in that case.⁶

The PUCO rejected AEP's claim that OCC could be barred from a case in which AEP's residential customers would be charged higher rates for renewable energy.⁷ But the PUCO did not resolve the issue of whether AEP's charges to consumers exceeded the statutory cost cap. Instead, the PUCO concluded that the cost cap issue would be resolved in this case, Case No. 18-80-EL-RDR.⁸

In this case, the PUCO has ordered a third-party audit of AEP's charges to customers for renewable energy. The auditor will address, among other things, whether AEP Ohio's charges to customers for renewable energy are reasonable and whether they are consistent with the statutory three percent cost cap.⁹ OCC moves to intervene on behalf of AEP's 1.3 million residential customers. The PUCO should grant OCC's motion to intervene in this case for the reasons set forth in the attached memorandum in support.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*, Ohio Power Company's Memorandum Contra the Office of the Ohio Consumers' Counsel's Motion to Intervene (June 8, 2017).

⁷ *Id.*, Opinion & Order ¶ 16 (Mar. 28, 2018).

⁸ *Id.* ¶ 17.

⁹ See Entry (Feb. 28, 2018), Request for Proposal at 4 ("The auditor shall analyze and address, at least, the following RPS compliance-related issues: ... the Company's status relative to the three percent provision contained within R.C. 4928.64(C)(3).").

Respectfully submitted,

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/s/ Christopher Healey

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MEMORANDUM IN SUPPORT

Customers pay for the costs that AEP incurs to comply with renewable energy mandates—but those costs must be just and reasonable.¹⁰ And they must comply with the statutory three percent cost cap.¹¹ In this case, an independent auditor will examine AEP’s renewable energy purchases and the related charges to customers. If the auditor finds that AEP overpaid for renewable energy, or that its charges to customers are unjust and unreasonable, then customers should get their money back.

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 consumers may be “adversely affected” by this case, especially if customers were unrepresented in a proceeding where an independent auditor will address charges that residential consumers pay. 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;

¹⁰ R.C. 4905.22.

¹¹ R.C. 4928.64(C)(3).

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

OCC meets these criteria. First, the nature and extent of OCC's interest is representing residential consumers in this case where they are being asked to pay for the Utility's compliance with renewable energy mandates. This interest is different from that of any other party and especially different from that of the Utility whose advocacy includes the financial interest of stockholders.

Second, OCC will advocate for residential consumers by advancing the position that rates should be no more than what is reasonable and permissible under Ohio law.¹² OCC's position is therefore directly related to the merits of the proposal before the PUCO in this case.

Third, OCC's intervention will not unduly prolong or delay the proceeding. OCC, with its longstanding expertise and experience in PUCO proceedings, will contribute to the efficient processing of the case with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to fully developing and equitably resolving the factual issues. OCC's intervention will provide the PUCO with information relating to the interests of the residential consumers that pay AEP's renewable energy rider charges. OCC will obtain and develop information that the PUCO should consider to equitably and lawfully decide the case in the public interest.

¹² R.C. 4905.22.

OCC also satisfies the intervention criteria in the Ohio Administrative Code, which are subordinate to the criteria 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 residential utility consumer advocate, OCC has a real and substantial interest in this case where the outcome could affect the rates that residential customers pay.

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), which OCC has already addressed, and which 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 concede the lawfulness of this criterion, OCC satisfies this criterion because it has been uniquely designated as the statutory representative of Ohio's residential utility consumers.¹³ That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio (“Court”) 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.¹⁴

The Ohio Consumers' Counsel 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

¹³ R.C. Chapter 4911.

¹⁴ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 2006-Ohio-5853, 13-20 (2006).

intervention. On behalf of Ohio residential consumers, the PUCO should grant OCC's motion to intervene.

Respectfully submitted,

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/s/ Christopher Healey

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this Motion to Intervene has been served upon the below-named persons via electronic transmission this 23rd day of April 2018.

/s/ Christopher Healey _____

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/23/2018 2:25:43 PM

in

Case No(s). 18-0080-EL-RDR

Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.