BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for a Limited Waiver of Rule 4901:1-35-10, Ohio Administrative Code.	)))	Case No. 18-713-EL-WVR

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where Ohio Power Company ("AEP") requests that the Public Utilities Commission of Ohio ("PUCO") waive its May 15, 2018 filing deadline to file an application for review of its 2017 earnings. Timely review by the PUCO is necessary to determine if customers are entitled to a refund from being overcharged by AEP to fund significantly excessive earnings in 2017.[1] OCC is filing on behalf of the nearly 1.3 million residential utility customers of AEP. The reasons that the PUCO should grant OCC's Motion are further set forth in the attached Memorandum in Support.

[1] *See* R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

Respectfully submitted,

BRUCE WESTON (0016973)
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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for a Limited Waiver of Rule 4901:1-35-10, Ohio Administrative Code.	))))	Case No. 18-0713-EL-WVR

MEMORANDUM IN SUPPORT

In this case, AEP requests that the PUCO grant AEP a waiver of the May 15th filing deadline for AEP to file an application for review of AEP's earnings under the significantly excessive earnings test ("SEET"). The SEET is a consumer protection built into the 2008 energy law that protects customers from paying electric security plan rates that allow utilities to earn significantly excessive profits. Under R.C. 4928.143(F), the PUCO must compare, on an annual basis, a utility's earnings under its electric security plan ("ESP") to the earnings of comparable companies (including utilities) during the same period.[2] If the utility's earnings from the electric security plan are found to be significantly excessive, customers are entitled to a refund. OCC has authority under law to represent the interests of all the nearly 1.3 million residential utility customers of AEP, pursuant to R.C. Chapter 4911.

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 a proceeding with the potential to delay the PUCO's

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[2] R.C. 4928.143(F) (the PUCO must determine if "the earned return on common equity of the electric distribution utility is significantly in excess of the return on common equity that was earned during the same period by publicly traded companies, including utilities, that face comparable business and financial risk").

review of whether AEP overcharged its customers for significantly excessive earnings. 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 proceedings;
>
> (4) Whether the prospective intervenor will significantly contribute to 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 in this case involving AEP's request to delay the PUCO's review of AEP's 2017 earnings to determine if they were significantly excessive. 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 the PUCO should expediently review AEP's earnings to determine if they were significantly excessive, prompting a refund to consumers. 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 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 this case where AEP seeks to delay the PUCO's review of its earnings in 2017.

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 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 ("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.[3]

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/ Bryce McKenney
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[3] *See Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶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 transmission, this 25th day of April 2018.

/s/ Bryce McKenney
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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 McKenney, Bryce