

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio       )  
Power Company to Update the Energy       ) Case No. 18-0874-EL-RDR  
Efficiency and Peak Demand Reduction       )  
Rider.   )

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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 Ohio Power Company ("AEP Ohio") seeks to charge customers for its energy efficiency and peak demand reduction programs, including the costs of the programs and utility profits (shared savings). OCC files on behalf of all the approximately 1.3 million residential utility customers of AEP Ohio.

The Public Utilities Commission of Ohio ("PUCO") should grant OCC's motion for the reasons 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,

Bruce Weston (#0016973)  
Ohio Consumers' Counsel

/s/ Christopher Healey  
Christopher Healey (0086027)  
Counsel of Record

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**MEMORANDUM IN SUPPORT**

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Customers pay for AEP Ohio’s energy efficiency programs. This includes the costs to run the programs (administration and marketing), the rebates that customers receive, profits to the utility (sometimes referred to as “shared savings”), and the utility’s taxes on those profits.

Under the approved settlement from AEP’s most recent energy efficiency portfolio case, AEP is permitted to charge customers up to \$20 million per year in profits, and that number is then “grossed up” to account for the fact that customers must also pay the utility’s taxes on those profits.<sup>2</sup> As the PUCO is aware, federal corporate income tax rates were reduced from 35% to 21% as a result of the Tax Cuts and Jobs Act of 2017.<sup>3</sup> Thus, AEP Ohio is now subject to the lower 21% rate.

But, as Industrial Energy Users-Ohio (“IEU”) explained in its objections in this case, AEP continued to use the old 35% tax rate for its 2017 profits, even though those profits will not be charged to customers until 2018, when the federal income tax rate is 21%.<sup>4</sup> AEP Ohio’s energy efficiency rider rates are unjust and unreasonable because they

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<sup>2</sup> Case No. 16-574-EL-POR, Stipulation & Recommendation (Dec. 9, 2016), Opinion & Order (Jan. 18, 2017).

<sup>3</sup> *See generally* Case NO. 18-47-AU-COI.

<sup>4</sup> Objections of Industrial Energy Users-Ohio (June 14, 2018).

charge customers for taxes on profits using a defunct tax rate. The PUCO has not ruled on IEU's objections.

OCC has authority under law<sup>5</sup> to represent the interest of all the approximately 1.3 million residential utility customers of AEP Ohio who pay for AEP Ohio's energy efficiency programs.

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 where they are being charged for energy efficiency programs, utility profits on those programs, and the utility's taxes on those profits. 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 Ohio in this case where AEP Ohio seeks to charge customers using a federal income tax rate that is no longer in effect. This interest is different from that of

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<sup>5</sup> R.C. Chapter 4911.

any other party and especially different from that of the electric utility 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. OCC's position is therefore directly related to the merits of this case, which 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 the PUCO should decide whether AEP Ohio is overcharging customers for taxes on its profits.

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 already has 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. 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 (“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.<sup>6</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.

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<sup>6</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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Ohio Consumers' Counsel

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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 21<sup>st</sup> day of December, 2018.

*/s/ Christopher Healey* \_\_\_\_\_

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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 Healey, Christopher Mr.