

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of PRO-)
TEC Coating Company, LLC for the) Case No. 19-0124-EL-AEC
Approval of a Reasonable Arrangement)
for its Leipsic, Ohio Plant)

**REPLY TO PRO-TEC’S MEMORANDUM CONTRA
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL’S
MOTION TO INTERVENE**

Applicants for reasonable arrangements (economic development subsidies) are the beneficiaries of an unduly limited case process, in addition they benefit from asking that Ohio consumers and other businesses subsidize their business. Applicant PRO-TEC wants the PUCO to bar the representation of the consumers who would pay AEP for this subsidy to PRO-TEC. Our sin in PRO-TEC’s view is that the Ohio Consumers’ Counsel filed its motion to intervene one (1) day late. (Counsel for OCC apologizes for the mistake of miscalculating the due date.) These twenty-four hours of lateness, in PRO-TEC’s view, will “cause unnecessary delay,” “undue prejudice to PRO-TEC,” and “potential harm by stalling” PRO-TEC’s application. (PRO-TEC Memorandum Contra at 7-8). PRO-TEC also wants the PUCO to know that the “accelerated process” (that OCC delayed by a day) “facilitates the states’ [sic] effectiveness in the global economy.” Id. at 7. It is understatement to suggest that PRO-TEC’s position is given to some exaggeration about a one-day delay, which if endorsed would be at the expense of consumers and the PUCO’s decision-making in the public interest.

For good cause shown, the PUCO can accept untimely motions to intervene –those that are filed after the deadlines set by the PUCO. R.C. 4903.221(A). The PUCO also

may waive any requirement of Chapter 4901:1-38, including the deadline for motions to intervene. (Ohio Adm. Code 4901:1-38-03(E)).

R.C. 4903.221(A) allows the PUCO wide discretion when evaluating motions to intervene, including the discretion to grant a motion to intervene filed after a specified deadline for intervention has passed, upon good cause shown. The PUCO has granted late-filed motions to intervene on numerous occasions.¹ The PUCO should exercise its discretion here, find good cause under R.C. 4903.221(A), and grant OCC's motion to intervene.

As noted, OCC's Counsel miscalculated the twenty-day intervention period under Ohio Adm. Code 4901:1-38(E). As a result of the miscalculation, OCC was unaware that its intervention was late. Consequently, OCC did not immediately file for leave to submit its motion to intervene out of time. OCC subsequently became aware that its motion to intervene was filed one day late. On February 15, 2019, OCC filed to seek leave for its motion to be granted out of time.

¹ The PUCO has at times permitted untimely interventions. *See, e.g., In the Matter of the Application for Unique Arrangement*, Case No. 17-1981-EL-AEC, Entry at ¶3 (Nov. 27, 2017) (allowing FirstEnergy's motion to intervene nearly two months late); *Re Ohio Power Co.*, Case No. 15-507-EL-EDI, Opinion and Order at 10 (Sept. 27, 2017) (allowing motions to intervene that were seven days late to be granted); *In the Matter of the Application of Ohio Power Co.*, Case No. 11-346-EL-SSO, Entry (July 8, 2011) (permitting late interventions (one week to 2 months late) for Dominion Retail, ELPC, OEC, Ormet and EnerNOC); *In the Matter of Columbus S. Power*, Case No. 08-917-EL-SSO, Entry at Finding 4 (Oct. 29, 2008) (allowing late intervention (over one month late) for EnerNOC and AICUO); *In the Matter of DP&L*, Case No. 89-105-EL-EFC, Entry (Dec. 28, 1989) (granting Montgomery County Board of Commissioners intervention one month after hearing had concluded and two weeks after briefs had been filed); *Columbus S. Power*, Case No. 09-872-EL-UNC, Entry at ¶14 (Dec. 1, 2010)(granting Kroger intervention after the conclusion of the evidentiary hearing).

Precedent shows that mistakes do occasionally happen with filings, even by those who argue that there should be no redemption for mistakes.² We are sorry for OCC counsel's mistake.

Contrary to the Applicant's assertions, OCC's one day of lateness does not prejudice PRO-TEC. For this reason and related precedent, OCC's intervention should be granted.³

Further, the granting of OCC's motion will not prolong this case any more than would a filing a day earlier. The unduly expedited 20-day process that favors the applicant to the detriment of intervenors will remain (unduly) expedited even at 21 days. A one-day delay in this abbreviated process is not prejudicial to the Applicant. OCC's motion should be granted.

The Applicant has not shown how, because of a one-day delay in OCC's filing, its economic development arrangement is prejudiced. In this regard, applicants control when they file their applications. And sometimes applicants conduct an informal process

² *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company*, Case No. 10-2929-EL-UNC, Entry at ¶ 9 (Apr. 13, 2012) (granting counsel's motion for leave to file testimony one day late); *In the Matter of the Commission's investigation of the financial impact of the Tax Cuts and Jobs Act of 2017*, Case No. 18-47-AU-COI, Entry on Rehearing at ¶6,7 (Mar. 8, 2018) (recounting counsel's filing of its memorandum contra one minute late, and nonetheless accepting it as no party would be prejudiced by its late filing).

³ The PUCO has ruled a one day late filing (testimony) did not prejudice the objecting party and granted a parties' motion for leave to file one day out of time. *In the Matter of the Complaint of the City of Huron v. Ohio Edison Co.*, Case No. 03-1238-EL-CSS, Entry at ¶13 (Aug. 2, 2005). *See also Re the Dayton Power and Light Company*, Case No. 05-792-EL-ATA, Entry at footnote 1 (allowing utility leave to file its memorandum one day late); *In the Matter of the Commission's Investigation of the financial impact of the Tax Cuts and Jobs Act of 2017*, Case No. 18-47-AU-COI, Entry on Rehearing at ¶6,7 (Mar. 8, 2018) (recounting counsel's filing of its memorandum contra one minute late, and nonetheless accepting it as no party would be prejudiced by its late filing).

with the PUCO Staff or others before they file formally. That situation (which may or may not be applicable here) reflects that the 20-day formal process may not necessarily represent all the time an applicant has taken on its own that can increase the resolution time (and further diminish the significance of a single extra day).

Granting OCC's motion to intervene in this proceeding allows the interests of Ohio residential customers to be considered consistent with law. The consumers we represent are the very customers who may be adversely affected by this case. The applicant is asking that these consumers pay AEP for the subsidy that PRO-TEC seeks.

Consumer concerns include: there is no floor or minimum amount the applicant has to pay for electricity under the arrangement; applicant's usage above 833,000 kWh per month is exempt from the power purchase agreement rider meaning the charges will be allocated to other business and residential consumers to pay; the applicant would not credit back to other customers the PJM demand response revenues made possible under the subsidies that other customers pay for economic development arrangement; the length of the economic development (and subsidy) arrangement is not limited or short term in nature; there is no lessening of the applicant's electricity discount and no apparent recourse if it does not meet its commitments under the arrangement for economic development; there is no accurate identification of the total cost of the arrangement that customers will be asked to subsidize; there is no annual cap on the delta revenues (subsidy) created; there is no sharing of the cost of the discount between customers and AEP; and the applicant has not taken into account the benefits it receives from the recent federal corporate tax cuts and the recently imposed U.S. tariffs on foreign steel.

Economic development certainly has a value and we appreciate that value.

Likewise, the concerns of consumers who subsidize economic development arrangements have value and should be heard.

OCC's intervention will assist the PUCO in considering and lawfully deciding this case in the public interest. Granting OCC's motion would also be consistent with the Ohio Supreme Court holdings that statutes and rules governing intervention should be "generally liberally construed in favor of intervention." *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940, P 16 (quoting *State ex rel. Polo v. Cuyahoga Cty. Bd. Of Elections*, 74 Ohio St.3d 143, 144, 656 N.E.2d 1277 (1995)). The PUCO should take all of these factors into account and find that there is good cause under R.C. 4903.221(A)(2) to allow OCC's intervention that was filed one day late.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply to Memorandum Contra was served on the persons stated below via electronic transmission, this 19th day of February 2019.

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Summary: Reply Reply to Pro-Tec's Memorandum Contra The Office of the Ohio Consumers' Counsel's Motion to Intervene electronically filed by Ms. Jamie Williams on behalf of Willis, Maureen Mrs.