

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Power       )  
Company to Update its gridSMART Phase 2       )   Case No. 18-0783-EL-RDR  
Rider rates.       )

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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 where the Public Utilities Commission of Ohio ("PUCO") will conduct its annual review of the charges to consumers by Ohio Power Company ("AEP Ohio") under its gridSMART rider. AEP Ohio collects from consumers costs through the gridSMART rider that the utility uses for grid modernization. The charges to consumers under AEP Ohio's gridSMART rider doubled, going from \$0.32 per month in the second quarter of 2018 to \$0.73 per month in the fourth quarter. OCC is filing on behalf of AEP Ohio's 1.3 million residential electric customers.<sup>1</sup> The reasons the PUCO should grant OCC's motion are further 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,

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Ohio Consumers' Counsel

/s/ Bryce A. McKenney  
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**MEMORANDUM IN SUPPORT**

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The PUCO will conduct an annual review of AEP Ohio's charges to consumers under its gridSMART rider. AEP Ohio's charges to consumers under the gridSMART rider for Phase 2 of the gridSMART program increased from \$0.32 per month in the second quarter of 2018 to \$0.73 per month in the fourth quarter. OCC has authority under law to represent the interests of all of AEP Ohio's nearly 1.3 million residential electric utility customers under 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 consumers may be "adversely affected" by this case, especially if the customers were unrepresented in a proceeding regarding the charges consumers pay AEP Ohio for grid modernization. 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; and
- (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 involving charges to consumers for AEP Ohio's grid modernization efforts through Phase 2 of its gridSMART program. This interest is different from that of any other party and especially different from AEP Ohio, whose advocacy includes the financial interest of stockholders.

Second, OCC's legal position will include, without limitation, advancing the position that utility rates charged to consumers should be just and reasonable.<sup>2</sup> OCC will work to determine whether the proposed charges to consumers for AEP grid modernization efforts are just and reasonable, and to advocate that consumers benefit from the charges they pay to AEP 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 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 the case in the public interest.

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<sup>2</sup> See R.C. 4905.22 ("All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission . . .").

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 consumers, OCC has a very real and substantial interest in this case where the PUCO will review the charges that customers pay for AEP Ohio’s grid modernization.

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 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 consumers. 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>3</sup>

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<sup>3</sup> See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 13-20 (2006).

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 consumers, the PUCO should grant OCC's motion to intervene.

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

/s/ Bryce A. McKenney  
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(willing to accept service by e-mail)

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below via electric transmission this 5th day of September 2019.

/s/ Bryce A. McKenney  
Bryce A. McKenney  
Counsel of Record

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**9/5/2019 10:21:18 AM**

**in**

**Case No(s). 18-0783-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 McKenney, Bryce