

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Power Company for Establishment of) Case No. 19-2037-EL-AEC
Renewable Reasonable Arrangements)
With Multiple Non-Residential)
Customers.)

**MOTION TO INTERVENE
AND
MOTION TO SUSPEND THE CASE DEADLINES
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Ohio Consumers' Counsel, for residential consumers, moves to intervene and suspend the case deadlines in this case that AEP filed just six days before a PUCO decision that protected a million monopoly customers from subsidizing AEP solar power.¹ Given that AEP linked this case for so-called "reasonable arrangements" to its (now defunct) solar power case, a consumer concern is that AEP may be seeking another path to charging its monopoly consumers for solar subsidies. Of course, AEP is no stranger to power plant subsidies. AEP already charges its consumers to subsidize uneconomic coal plants.² Thus, as part of connecting the dots between cases, note that AEP has a history of charging millions of dollars for consumer subsidies of economic development arrangements.³

¹ See, *In the Matter of the Long-Term Forecast Report of Ohio Power Company and Related Matters*, Case No. 18-501-EL-FOR, AEP Correspondence (Nov. 15, 2019).

² Since January 1, 2017 through August 31, 2019, AEP customers have paid approximately \$72 million in OVEC coal plant subsidies.

³ Since 2009, AEP customers have paid over \$400 million to subsidize AEP's economic development arrangements with mercantile customers.

Twenty years ago, the Ohio General Assembly decided that the competitive market – not monopolies like AEP and not government regulation by the PUCO – will be the arbiter for power plant construction and generation charges to Ohio consumers. Renewable energy is a good thing. But that good thing can be supplied through the competitive market (including by one of AEP’s competitive non-monopoly affiliates).⁴ In the market, risks are assumed by investors and not by a monopoly’s captive customers under state regulation. In Ohio’s 1999 deregulation law, the vision is for delivering lower prices and greater innovation to millions of Ohioans through power plant competition.

The PUCO should grant OCC’s Motion to Intervene,⁵ as further set forth in the attached Memorandum in Support. And the PUCO should suspend the case deadlines to allow for a fair process where OCC and other interested parties are given a real opportunity to file comments and objections consistent with the PUCO’s rules on economic development arrangements.⁶

⁴See, e.g., *In the Matter of the 2018 Long-Term Forecast Report of Ohio Power Company and Related Matters*, Opinion and Order at ¶126 (Nov. 21, 2019).

⁵ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

⁶ Ohio Adm. Code 4901:1-38-03(E).

Respectfully submitted,

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/s/ Maureen R. Willis

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**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE AND
MOTION TO SUSPEND THE CASE DEADLINES**

This case seems designed for another one of AEP's efforts to have its monopoly customers subsidize power plant projects for renewable energy, this time through Ohio laws that allow so-called reasonable arrangements. The Office of the Ohio Consumers' Counsel (OCC) has authority under law to represent the interests of the 1.3 million residential consumers of AEP, under R.C. Chapter 4911.

INTERVENTION

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 residential consumers may be "adversely affected" by this case. That is especially so if customers are unrepresented in this proceeding involving AEP's efforts to make its monopoly customers subsidize other customers' power arrangements. In 1999, the Ohio General Assembly set the state's course for deregulation and competition for power plants, not for monopolization and subsidies. 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 that AEP has connected to its efforts to make its monopoly customers subsidize other customers' power arrangements. 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, among other things, advancing the position that AEP should charge consumers no more than what is reasonable and lawful for their utility service (without charging consumers to subsidize power arrangements for AEP and other customers). 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 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 this 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). A party may intervene if it shows that it has 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 real and substantial interest in this case where AEP is seeking authority from the PUCO to have certain customers subsidize other (monied and powerful) customers' power purchases.

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.⁷

OCC meets the criteria set forth in R.C. 4903.221 and 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.

SUSPENDING THE CASE DEADLINES

The linchpin for AEP's new proposal is so-called "reasonable arrangements" under R.C. 4905.31 that enable monopolies like AEP to cut deals with certain consumers to subsidize them while having other consumers (usually residential consumers) pay for the subsidy. But AEP provides no details about the "reasonable arrangements." AEP claims there will be a future application filed in this proceeding which will request the PUCO to approve individual arrangements with non-residential customers.⁸ And AEP requests that the PUCO hold this Application proceeding open until it files an Amended Application that incorporates multiple reasonable arrangements.⁹

A concern for consumers is that AEP does not say if subsidies should be ordered or how much the subsidies will cost consumers. There is merely AEP's promise of a "future Amended Application" where the details will be worked out, after AEP has reached deals with various mercantile (non-residential) customers giving them discounted electric rates. Importantly, the Ohio General Assembly just mandated that any direct or indirect costs (including costs for infrastructure development or generation, associated

⁷ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

⁸ AEP Application at ¶6 (Nov. 15, 2019).

⁹ *Id.* at 2.

with in-state customer-sited renewable energy resources) shall be paid solely by the utility and the customer. *See* R.C. 4928.47.

Under the PUCO's rules, a utility may file an application for an economic development arrangement between it and a new or expanding group of customers.¹⁰ The PUCO's rules require that the application contain basic information including a copy of the proposed arrangement(s) and annual estimated "delta revenues" (meaning subsidies that others would pay).¹¹ AEP's proposal lacks that information.

AEP's "application" is, in reality, not an application as described under the PUCO's rules. AEP provides no details of any of the economic development arrangements it submits for PUCO approval. The application fails to present anything that could be approved. But AEP has not stated that its inadequate application should be left unapproved until the later filing. Consequently, the PUCO should suspend the twenty-day deadline for filing objections and comments until and unless AEP files an Application that complies with the PUCO's rules. This approach could allow for a fair process where OCC and other interested parties are given the opportunity to file comments and objections consistent with the PUCO's rules on economic development arrangements.¹²

In conclusion, OCC's intervention should be granted. And, for a fair process for consumers, the case deadlines should be suspended until and unless AEP submits an application that qualifies for a ruling.

¹⁰Ohio Adm. Code 4901:1-38-03(A).

¹¹ *Id.*

¹² Ohio Adm. Code 4901:1-38-03(E).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Intervene and Motion to Suspend the Case Deadlines by the Office of the Ohio Consumers' Counsel was served on the persons stated below via electronic transmission, this 5th day of December 2019.

/s/ Maureen R. Willis
Maureen R. Willis
Senior Counsel

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

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Summary: Motion Motion to Intervene and Motion to Suspend The Case Deadlines by The Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Willis, Maureen R.