

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Power Company to Update the Energy) Case No. 21-497-EL-RDR
Efficiency and Peak Demand Reduction)
Rider.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene where the PUCO will implement R.C. 4928.66(G)(3) (passed as part of tainted House Bill 6), which requires charges to customers for mandated energy efficiency programs to end. In its application, Ohio Power Company ("AEP Ohio" or the "Utility") states that as of February 28, 2021, it has over-collected more than \$18 million from customers, meaning customers deserve a refund of this money (and potentially more).¹

OCC is filing on behalf of the 1.3 million residential utility customers of AEP Ohio who have been overcharged.² The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's motion are further set forth in the attached memorandum in support.

¹ Application ¶ 29 (Apr. 27, 2021).

² See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

Respectfully submitted,

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/s/ Christopher Healey

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MEMORANDUM IN SUPPORT

Under House Bill 6, 133rd General Assembly (“HB 6”),³ electric utilities like AEP Ohio were required to end their mandated energy efficiency programs and to stop charging customers for those programs.⁴ Customers stopped paying for the programs earlier this year after the PUCO ordered AEP (and other utilities) to set their energy efficiency riders to \$0.⁵ In that same Order, the PUCO directed each utility to file an application for a “final reconciliation” of its energy efficiency rider.⁶ The purpose of this final reconciliation is for the utility to collect any final remaining costs or to pass back to customers any amounts it over-collected under its energy efficiency rider.

According to AEP’s Application, it has over-collected from consumers about \$18.2 million, as of February 28, 2021.⁷ But as AEP states in its application, the final amount to be returned to customers could differ because there are various pending audits of AEP’s energy efficiency rider.⁸ Depending on the results of these audits, the credits to customers could be

³ Available at <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-6>.

⁴ See R.C. 4928.66(G)(3).

⁵ Case No. 16-574-EL-POR, Finding & Order ¶ 8 (Nov. 18, 2020).

⁶ *Id.* ¶ 9.

⁷ Application ¶ 29 (Apr. 27, 2021).

⁸ *Id.*

substantially larger than AEP's reported \$18.2 million (for example, if any of AEP's past costs are found to have been imprudent).

OCC has authority under law to represent the interests of all the 1.3 million residential utility customers of AEP Ohio, 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 customers may be "adversely affected" by this case, especially if the customers were unrepresented in a proceeding where the PUCO will determine how much money AEP Ohio must return to customers because it over-collected charges for its now-terminated energy efficiency programs. 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 involving millions of dollars in potential credits to consumers for the Utility's former energy efficiency programs. This interest is different from that of any other party and especially different from 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 customers should promptly receive credits for any amounts that they previously over-paid for AEP's energy efficiency programs. 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 customers could receive relief on their energy bills in the form of a bill credit.

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 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.⁹

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,

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/s/ Christopher Healey
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⁹ 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 19th day of May 2021.

/s/ Christopher Healey
Christopher Healey
Assistant Consumers' 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 by Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.