

In the Matter of The Commission's)
Investigation into AES Ohio's) Case No. 21-1220-EL-UNC
Compliance with the Ohio Administrative)
Code and Potential Remedial Action.)

For consumer protection, the Ohio Consumers’ Counsel moves to intervene where AES Ohio and the PUCO Staff have entered into a Joint Stipulation and Recommendation (“Settlement”). They claim the Settlement resolves AES Ohio’s past failure to meet its utility service reliability standard.¹ OCC was not invited to participate in the Settlement, and so consumers were not represented. The PUCO/AES Settlement was filed the *same day* as this case was initiated, which is another interesting example of the PUCO’s process for administering justice.

Unfortunately for consumers, the Settlement will impose a mere \$10,000 forfeiture on AES Ohio for failing to meet the Consumer Average Interruption Duration Index reliability standard for 2019 and 2020.² \$10,000 is insufficient both as a deterrent to AES Ohio for failure to provide adequate and reliable service, and as an incentive to AES Ohio to improve its reliability performance for Dayton-area electric consumers.

² *Id.*

OCC is filing on behalf of AES Ohio's approximately 590,000 electric consumers. The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

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Ohio Consumers' Counsel

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In this proceeding, the PUCO Staff and AES Ohio have entered into a Joint Stipulation and Recommendation (“Settlement”) regarding AES Ohio’s violations of PUCO rules.³ The PUCO Staff issued a Notice of Probable Non-Compliance on June 10, 2021, which was attached to the Settlement as Exhibit A. The PUCO/AES Settlement was filed on December 9, 2021, the *same day* as the case was initiated. That arrangement obviously limits participation in the case, including by the Ohio Consumers’ Counsel.

The PUCO Staff also raised concerns regarding AES Ohio's non-publicly available action plan, which the PUCO Staff now claims have been addressed.⁵ But there

⁵ *Id.*

were multiple action plans and no mention in the Settlement what actions are being taken to address the poor service quality.

The proposed Settlement, in its closed process and inadequate substance, does not protect consumers and should not be accepted by the PUCO Commissioners. OCC seeks consumer protection for AES Ohio's approximately 590,000 electric consumers.

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 consumers were unrepresented in a proceeding where AES Ohio and PUCO Staff have reached a Settlement without input for consumer protection. Additionally, the proposed Settlement does not sufficiently protect consumers from AES Ohio's future non-compliance with the PUCO rules.

Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Public Utilities Commission of Ohio ("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 DP&L's residential utility consumers in this case where AES Ohio and the PUCO Staff settled AES Ohio's

non-compliance with the PUCO's reliability standards for electric service to consumers. The agreed penalty is insufficient to protect consumers from future non-compliance. 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 consumers will include but not be limited to advancing the position that a forfeiture in the amount of \$30,000, with \$10,000 payable within 30 days of the approval of this Settlement and the remaining \$20,000 held in abeyance pending future reliability performance in 2021 and 2022 is insufficient to serve as a deterrent to AES Ohio.⁶ OCC's position is therefore directly related to the merits of this case that is before the PUCO.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings and consumer protection advocacy 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. This includes advocating that penalties for non-compliance should be sufficient to deter future rule violations.

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.

⁶ Settlement at 3.

Code 4901-1-11(A)(2). As the statutory advocate for residential utility consumers, OCC has a very real and substantial interest in this case where AES Ohio and the PUCO Staff have agreed to a Settlement that will not protect consumers from future rule violations by AES Ohio.

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 the 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 OCC has been uniquely designated as the state representative of the interests of Ohio’s residential utility consumers. OCC’s 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, 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.

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

Respectfully Submitted,

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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 17th day of December 2021.

/s/ Ambrosia E. Wilson

John Finnigan

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Ambrosia E. Wilson

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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 Mrs. Tracy J. Greene on behalf of Wilson, Ambrosia E.