BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for a Waiver of Rules 4901:1-10-24(E)(3), and 4901:1-10-33(A)Ohio Administrative Code.	))))	Case No. 21-1209-EL-WVR

MOTION TO INTERVENE
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL

For consumer protection, the Office of the Ohio Consumers Counsel ("OCC") moves to intervene where AEP Ohio seeks clarification and/or waiver of PUCO rules. O.A.C. 4901:1-10-22(E)(3) "allows EDUs to disclose, for a time-of-use rate customer, the customer's hourly usage to a Marketer, since . . . that information may be necessary for billing purposes." O.A.C. 4901:1-10-33(A) states that "[a]n electric utility cannot discriminate or unduly restrict a customer's [Marketer] from including non-jurisdictional charges on a consolidated electric bill."

Non-jurisdictional charges can include, but are not limited to, home warranties, line insurance, and other non-regulated goods and services. AEP filed its requests to protect consumers from being billed for Marketers' non-jurisdictional fees and charges for other services that could potentially result in consumers being disconnected for non-payment of these charges. To avoid the risk of consumers being disconnected for the non-payment of such charges it is necessary for AEP to modify its billing system to segregate these charges. Those billing system modifications will take some time. However, the time

that AEP has requested is much longer than other utilities in Ohio.[1] PUCO Staff has recently recommended that six months is sufficient to make similar changes.[2] During the waiver period, consumers should be protected from potential disconnection of utility service for the non-payment of non-utility charges.

Consumer information—including billing data—can be used by marketers for unintended purposes, such as to market additional unregulated products, goods, and services to consumers. These additional services can cost consumers real money for products, goods, and services that they do not necessarily need nor want. The PUCO should protect consumers from marketers misusing their information—including their EDU billing data. At a minimum, consumers should be provided full and frequent disclosure of all information that is shared with marketers and should be given the opportunity on-line to block the release of this information at all stages.

OCC is filing on behalf of AEP Ohio's 1.3 million residential consumers. The reasons the Public Utilities Commission of Ohio should grant OCC's Motion are further set forth in the attached Memorandum in Support.

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[1] *See e.g.,* Case No. 21-1125-EL-WVR, Application at 1 (November 1, 2021) (FirstEnergy seeks a six-month waiver to build and test an online active rate calculator for consumers); Case No. 21-1100-EL-WVR, Application at 2 (November 1, 2021) (Similar to AEP's request in this case, Duke seeks a twelve month waiver to permit adequate time to remove non-jurisdictional charges from consumer bills. PUCO Staff commented and recommended a six-month waiver was appropriate—not twelve).

[2] *Id.*

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Ambrosia E. Wilson
Ambrosia E. Wilson (0096598)
Counsel of Record
Amy Botschner O'Brien (0074423)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215-4213
Telephone: [Wilson]: (614) 466-1292
Telephone: [O'Brien]: (614) 466-9575
ambrosia.wilson@occ.ohio.gov
amy.botschner.obrien@occ.ohio.gov
(willing to accept service by e-mail)

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MEMORANDUM IN SUPPORT

AEP Ohio seeks clarification of and/or a waiver from O.A.C. 4901:1-10-24(E)(3) and 4901:1-10-33(A).[3] O.A.C. 4901:1-10-22(E)(3) includes language such as "allow[ing] EDUs to disclose, for a time-of-use rate customer, the customer's hourly usage to a Marketer, since . . . that information may be necessary for a Marketer's billing purposes."[4]

AEP Ohio asserts that this rule may impose a new obligation requiring the EDUs to provide residential consumers' additional hourly interval data to marketers based on whether a marketer bills its customer for a time-of-use product.[5] AEP Ohio requests that the PUCO clarify the intent of the language added to O.A.C. 4901:1-10-24(E)(3).

This rule refers to the consent requirements, which must be met prior to the release of consumer energy usage data ("Energy Data") for marketing and other purposes, including billing. AEP Ohio is seeking clarification that if consumers consent to providing their Energy Data to marketers, the EDU is not required to later disclose to consumers if the marketer is using the data for billing purposes.[6] But contrary to AEP's

[3] Application at 1.

[4] *Id.*

[5] *Id.* at 4-5.

[6] *Id.*

concern, and given the potential that consumer information can be used for unintended purposes, consumers should be provided full and frequent disclosure of all information that is shared with marketers. Consumers should also be informed as to when and for how long the information will be shared with marketers. And consumers should be informed of the explicit purpose(s) that the consumer information will be used by marketers.

AEP Ohio seeks a waiver of 18 months to comply with the changes required under O.A.C. 4901:1-10-33(A). This is an unusually long period of time for a waiver. Especially when compared to past waivers approved by the PUCO to complete programming of certain consumer protections associated with offering consolidated billing that contains non-jurisdictional services.[7] AEP Ohio is concerned that it cannot comply with this PUCO rule change, which was amended to add that "[a]n electric utility cannot discriminate or unduly restrict a customer's marketer from including non-jurisdictional charges on a consolidated electric bill."[8]

However, to avoid the risk of consumers being disconnected for the non-payment of such charges it is necessary for AEP to modify its billing system to segregate these charges. Those billing system modifications will take some time. However, the time that AEP has requested is much longer than other utilities in Ohio.[9] PUCO Staff has recently

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[7] *See e.g.,* Case No. 21-1125-EL-WVR, Application at 1 (November 1, 2021) (FirstEnergy seeks a six-month waiver to build and test an online active rate calculator for consumers); Case No. 21-1100-EL-WVR, Application at 2 (November 1, 2021) (Similar to AEP's request in this case, Duke seeks a twelve month waiver to permit adequate time to remove non-jurisdictional charges from consumer bills. PUCO Staff commented and recommended a six-month waiver was appropriate—not twelve).

[8] Application at 4-5.

[9] *See e.g.,* Case No. 21-1125-EL-WVR, Application at 1 (November 1, 2021) (FirstEnergy seeks a six-month waiver to build and test an online active rate calculator for consumers); Case No. 21-1100-EL-WVR, Application at 2 (November 1, 2021) (Similar to AEP's request in this case, Duke seeks a twelve month waiver to permit adequate time to remove non-jurisdictional charges from consumer bills. PUCO Staff commented and recommended a six-month waiver was appropriate—not twelve).

recommended that six months is sufficient to make similar changes.[10] During the waiver period, consumers should be protected from potential disconnection of utility service for the non-payment of non-utility charges.

These are important issues that directly affect residential consumers. OCC is filing on behalf of AEP Ohio's 1.3 million residential 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. That is especially so if the consumers were unrepresented in a proceeding where the disclosure requirements related to sharing detailed consumer interval usage information to marketers is decided. Additionally, consumers may by adversely affected if protections are not implemented in a prompt manner that prevent electric services from being disconnected for non-payment of non-regulated, non-utility service charges on the electric bill. 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; and
>
> (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

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[10] *Id.*

First, the nature and extent of OCC's interest is representing Ohio's residential utility consumers in this case where AEP Ohio seeks PUCO interpretation of and/or waiver from rules that govern what information appears on consumers' electric bills. And also, the disclosure requirements for sharing detailed consumers usage information with marketers. In addition, OCC's interest is to protect consumers from being potentially disconnected for non-payment of non-regulated charges on their electric bills. 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 advancing the position that consumer protections should not be reduced through PUCO rule waivers. 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 important consumer protections should not be waived unless waiver results in better protection for consumers.

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 statutory advocate for residential utility consumers, OCC has a very real and substantial interest in this case where the utility seeks permission to waive some of the consumer protection requirements under the PUCO rules.

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.[11]

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.

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

Respectfully Submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Ambrosia E. Wilson
Ambrosia E. Wilson (0096598)
Counsel of Record
Amy Botschner O'Brien (0074423)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215-4213
Telephone: [Wilson]: (614) 466-1292
Telephone: [O'Brien]: (614) 466-9575
ambrosia.wilson@occ.ohio.gov
amy.botschner.obrien@occ.ohio.gov
(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 electronic transmission, this 5th day of January 2022.

/s/ Ambrosia E. Wilson
Ambrosia E. Wilson
Counsel of Record
Assistant Consumers' Counsel

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

SERVICE LIST

Jodi.Bair@OhioAGO.gov
Sarah.Feldkamp@OhioAGO.gov
Fdarr2019@gmail.com

stnourse@aep.com

Attorney Examiner:
Matthew.sandor@puco.ohio.gov

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Summary: Motion Motion to Intervene by Office of the Ohio Consumers' Counsel electronically filed by Ms. Alana M. Noward on behalf of Wilson, Ambrosia E.