

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the)	
Ohio Power Company to Update Its)	Case No. 22-41-EL-RDR
Basic Transmission Cost Rider.)	

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

The Office of the Ohio Consumers' Counsel ("OCC") hereby moves the Public Utilities Commission ("PUCO" or "Commission") to intervene out of time. Under O.A.C. 4901-1-12 and 4901-1-13, the PUCO's rules provide for an extension of time to file pleadings for good cause shown.

Recently, on March 11, 2022, the PUCO Staff issued a report finding that AEP "has not been able to support its application in the time available"¹ for increases in charges under its Basic Transmission Cost Rider ("BTCR"). Yet, despite AEP's noncompliance, the PUCO Staff recommended that AEP's proposed charges to consumers be approved. Also, the PUCO Staff stated that it will "continue its investigation" of AEP's application.²

Accordingly, there is good cause to grant OCC's motion to intervene out of time in these circumstances. The grounds for this Motion are more fully described in the accompanying Memorandum in Support.

¹ Staff Report (March 11, 2022), at 2.

² *Id.*

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Angela D. O'Brien
Angela D. O'Brien (0097579)
Counsel of Record
John Finnigan (0018689)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone: [O'Brien]: (614) 466-9531
Telephone [Finnigan]: (614) 466-9585
angela.obrien@occ.ohio.gov
john.finnigan@occ.ohio.gov
(willing to accept service by e-mail)

In the Matter of the Application of the)
Ohio Power Company to Update Its Basic) Case No. 22-41-EL-RDR
Transmission Cost Rider.)

I. INTRODUCTION

Recently, on March 11, 2022, the PUCO Staff issued a report stating that AEP “has not been able to support its application in the time available.”⁴ Nevertheless, the PUCO Staff recommended that AEP’s proposed charges be approved and effective for the first billing cycle in April to charge to consumers.⁵ Further, the PUCO Staff stated that it will “continue its investigation” of AEP’s application.⁶ In these circumstances,

⁶ *Id.*

there is good cause for OCC to intervene out of time to protect consumers from paying charges unsupported by AEP's application.

II. ARGUMENT

A. There is good cause for the PUCO to grant OCC's motion to intervene out of time.

The PUCO should find good cause to grant OCC's motion to intervene. And no party will be prejudiced by OCC's motion. Transmission cost recovery rider applications, such as AEP's application in this case, are subject to an expedited process under O.A.C. 4901:1-36-03 that favors utilities to the detriment of intervenors. Under O.A.C. 4901:1-36-03(F), affected parties have just 40 days after the application's filing to file a motion to intervene and comments. In addition, the application can be filed as late as just 75 days prior to the proposed effective date of the updated rider.⁷ AEP filed an annual application to update its BTCR on January 18, 2022. Under the rule, OCC's motion to intervene was due by February 28, 2022.

OCC intervenes in transmission cost recovery rider cases from time to time, without intervening in every such case, to monitor charges to residential consumers. Given the press of business in OCC's consumer advocacy, the recentness of the PUCO Staff's March 11 report this month that AEP "has not been able to support its application in the time available,"⁸ and the brevity of the PUCO's time period for allowing stakeholders to intervene in utility transmission charge cases, OCC has exceeded the 40 days allowed for intervention. We note that the PUCO Staff's report, with the finding that

⁷ O.A.C. 4901:1-36-03(D).

⁸ Staff Report, at 2.

AEP itself did not comply with the timeline for submitting an adequately supported application, was filed *after* the intervention deadline.

Yet despite this finding of AEP's inadequate application, the PUCO Staff still recommended that AEP's proposed rate increases (approximately \$1.44 per month for the average residential consumer) be implemented effective the first billing cycle of April 2022 "to minimize any potential under-recovery."⁹ This situation is further testament to the regulatory process of riders being unfair to consumers.

This situation and the PUCO Staff's intention to at least address the issue by continuing the investigation past the AEP rider's implementation date are by themselves sufficient good cause for granting OCC intervention out of time. Alternatively, the PUCO could dismiss or suspend AEP's noncomplying application.

Granting OCC's motion and finding good cause for the out of time filing would also be consistent with the Ohio Supreme Court holdings that statutes and rules governing intervention should be "generally liberally construed in favor of intervention." *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940, ¶ 16 (quoting *State ex rel. Polo v. Cuyahoga Cty. Bd. Of Elections*, 74 Ohio St.3d 143, 144, 656 N.E.2d 1277 (1995)).

For these reasons, there is good cause to for the PUCO to grant OCC's motion to intervene out of time.

B. OCC satisfies the standards for intervention set forth in Ohio law.

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

⁹ Staff Report, at 2.

Ohio's residential customers may be "adversely affected" by this case, especially if the customers were unrepresented in a proceeding that proposes an unreasonable and unsupported increase in charges through AEP's BTCR. 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 proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the 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 involving its proposed increase in charges to consumers under the BTCR. 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 advancing the position that rates should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. 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 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 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.

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 O.A.C. 4901-1-11(A)(2). As the advocate for residential utility customers, OCC has a very real and substantial interest in this case where AEP has proposed to increase charges to consumers through the BTCR but has failed to support those charges in the application.

In addition, OCC meets the criteria of O.A.C. 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.

O.A.C. 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 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.¹⁰

III. CONCLUSION

For the reasons explained above, there is good cause for the PUCO to grant OCC's motion to intervene out of time. In addition, OCC meets the criteria set forth in R.C. 4903.221, O.A.C. 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 out of time.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Angela D. O'Brien
Angela D. O'Brien (0097579)
Counsel of Record
John Finnigan (0018689)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone: [O'Brien]: (614) 466-9531
Telephone [Finnigan]: (614) 466-9585
angela.obrien@occ.ohio.gov
john.finnigan@occ.ohio.gov
(willing to accept service by e-mail)

¹⁰ 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 the foregoing Motion to Intervene out of Time has been served electronically upon those persons listed below this 22nd day of March 2022.

/s/ Angela D. O'Brien
Angela D. O'Brien
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

john.jones@ohioAGO.gov
mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com
mpritchard@mcneeslaw.com
bmckenney@mcneeslaw.com

stnourse@aep.com
bojko@carpenterlipps.com
donadio@carpenterlipps.com

Attorney Examiners:
sarah.parrot@puco.ohio.gov
greta.see@puco.ohio.gov

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

3/22/2022 4:02:26 PM

in

Case No(s). 22-0041-EL-RDR

Summary: Motion Motion to Intervene out of Time by Office of the Ohio Consumers'
Counsel electronically filed by Ms. Alana M. Noward on behalf of O'Brien, Angela
D.