

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Power Company to Update its)	Case No. 21-499-EL-RDR
gridSMART Phase 2 Rider Rates.)	

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene where the Public Utilities Commission of Ohio ("PUCO") will conduct its annual audit of the Ohio Power Company ("AEP Ohio") gridSMART charges to consumers. AEP Ohio collects, from consumers, charges related to its investment in grid modernization. The charges to consumers under AEP Ohio's gridSMART rider were over \$55 million for the four quarters that will be audited (2021), ranging from \$1.23 to \$1.46 per month per residential consumer.¹ OCC is filing on behalf of AEP Ohio's 1.3 million residential electric consumers.² The reasons the PUCO should grant OCC's motion are further set forth in the attached memorandum in support.

¹ See AEP Ohio's Quarterly Filings.

² See R.C. Chapter 4911, R.C. 4903.221, and O.A.C. 4901-1-11.

Respectfully submitted,

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/s/ William J. Michael

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MEMORANDUM IN SUPPORT

The PUCO will conduct an annual review of AEP Ohio’s charges to consumers for expenses related to its investment in gridSMART. These charges are collected from consumers through AEP Ohio’s gridSMART rider. The amount of these charges collected from consumers was approximately \$55 million for the four quarters that will be audited (2021), ranging from \$1.23 to \$1.46 per month per residential consumer. The charges include expenses as well as a profit or return on capital investment. OCC has authority under law to represent the interests of all of AEP Ohio’s nearly 1.3 million residential electric utility consumers 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 consumers may be “adversely affected” by this case, especially if the consumers were unrepresented in a proceeding where the PUCO will be setting the rates that consumers will pay AEP Ohio for grid modernization. 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; and
- (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 consumers of AEP Ohio that involves an annual audit of charges to consumers for AEP Ohio's investment in grid modernization through Phase 2 of its gridSMART program. This interest is different from that of any other party and especially different from AEP Ohio, which advocates for the financial interest of its shareholders.

Second, OCC's legal position will include, without limitation, advancing the position that utility rates charged to consumers should be just and reasonable.³ OCC will work to determine whether the proposed charges to consumers for AEP Ohio's grid modernization efforts were just and reasonable, and to advocate that consumers receive all of the grid modernization benefits from the charges they pay to AEP 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

³ See R.C. 4905.22 ("All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission . . .").

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 consumers, OCC has a very real and substantial interest in this case where the PUCO will review the charges that consumers pay for AEP Ohio’s grid modernization.

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), which OCC already has addressed and 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 consumers. 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.⁴

⁴ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 13-20 (2006).

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 consumers, the PUCO should grant OCC's motion to intervene.

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 electric transmission this 7th day of April 2022.

/s/ William J. Michael
William J. Michael
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. Alana M. Noward on behalf of Michael, William J.