

In the Matter of the Review of the)
Distribution Investment Rider Contained) Case No. 22-89-EL-RDR
in the Tariff of Ohio Power Company.)

AEP has charged its consumers hundreds of millions of dollars over the years under its so-called Distribution Investment Rider (“DIR Charge”). Money collected by AEP from consumers for the DIR Charge was supposed to increase utility service reliability (and is above and beyond the charges that AEP collects from consumers under the so-called Enhanced Service Reliability Rider). It hasn’t lived up to expectations.

Now, the Public Utilities Commission of Ohio (“PUCO”) is auditing the accounting accuracy, prudence, and compliance of AEP’s 2021 distribution investment spending. The PUCO has selected Blue Ridge Consulting Services, Inc. to perform the audit.¹ It is imperative that AEP’s 2021 distribution investment spending is thoroughly scrutinized. The audit should confirm that the money consumers paid under the DIR Charge was just and reasonable, and that AEP is providing service to consumers that is adequate and, in all respects, just and reasonable, as required by R.C. 4905.22.

OCC is moving to intervene on behalf of AEP's 1.3 million residential electric consumers. The reasons the PUCO should grant OCC's Motion are further set forth in the attached Memorandum in Support.

¹ Entry (April 20, 2022).

Respectfully submitted,

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The DIR Charge is a single-issue ratemaking initiative authorized by the PUCO to support infrastructure modernization.² Many of the investments are largely intended to support programs that either help maintain or improve the electric service reliability that is provided to AEP's consumers. Ohio law (R.C. 4905.22) guarantees consumers adequate utility service.

OCC seeks consumer protection for AEP's approximately 1.3 million residential electric consumers by intervening in this proceeding.

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 AEP’s residential consumers may be “adversely affected” by this case where AEP’s spending on distribution investment is being audited for accounting accuracy, prudence, and compliance. 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 Entry (March 9, 2022).

- (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 AEP's residential utility consumers where AEP's spending on distribution investment is being audited for accounting accuracy, prudence, and compliance. This interest includes confirming through the audit that consumers are getting what they paid for under the DIR Charge – including improved reliability. 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 consumers are entitled to safe, reliable, and adequate service at a reasonable price. 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 AEP's distribution investment spending was just

and reasonable, was accurately accounted for, prudent, and in compliance with governing requirements.

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 AEP’s 2021 distribution investment spending is being audited for accounting accuracy, prudence, and compliance.

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 it 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.³

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

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.

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 7th day of June 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.