

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Power Company for Authority to)	
Establish a Standard Service Offer)	Case No. 23-23-EL-SSO
Pursuant to R.C. 4928.143 in the Form of)	
an Electric Security Plan.)	

In the Matter of the Application of Ohio)	
Power Company for Approval of Certain)	Case No. 23-24-EL-AAM
Accounting Authority.)	

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

The Ohio Power Company (“AEP”) has proposed a new “electric security plan” (“ESP”). The plan would add *five* new charges (riders) to consumers’ bills. (Riders are add-on charges to consumers.)

These charges include the Energy Efficiency Rider that incorporates *decoupling* of base rate charges.¹ Decoupling guarantees AEP undeserved profits, at consumer expense, even when consumers use less electricity. It’s what FirstEnergy’s fired CEO Chuck Jones called “recession proofing” in tainted House Bill 6. Further, AEP proposes a so-called “Ohio First Rider”² that allows it to charge consumers for new projects that the federal government is already funding.

AEP also asks the PUCO to modify existing charges to collect more money from consumers. AEP wants to triple its Distribution Investment Recovery Rider (“DIR

¹ Application at 17.

² Application at 16.

Charge”) cap from \$54 million to \$144 million in 2024.³ And AEP wants this cap to increase every subsequent year, peaking at \$617 million in 2029.⁴ That’s *more than 10 times* what AEP’s current DIR charge will collect from consumers next year.

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene in this case on behalf of the 1.5 million residential utility consumers of AEP.⁵ 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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/s/ William J. Michael
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³ Direct Testimony of Jaime L. Mayhan at 16.

⁴ *Id.*

⁵ *See* R.C. Chapter 4911, R.C. 4903.221 and O.A.C. 4901-1-11.

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MEMORANDUM IN SUPPORT

AEP seeks over the next six years to increase its charges to Ohio consumers. That includes the 1.5 million AEP residential consumers that OCC represents 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 utility is seeking approval to increase charges and add new charges onto consumers’ bills. 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 in representing the residential consumers of AEP in this case involving its fifth electric security plan. 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 consumers will include, among other things, advancing the position that charges should be no more than what is just and reasonable under Ohio law, for service that is adequate under Ohio law. OCC's position is therefore directly related to the merits of this case, which is pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio. OCC's positions will include, but not be limited to, that the PUCO should mitigate the out-of-balance advantage that AEP enjoys over other parties in settlement negotiations and litigation. Former PUCO Commissioner Cheryl Roberto described the PUCO's need to account for the utility's advantage in negotiations this way:

In the case of an ESP, the balance of power created by an electric distribution utility's authority to withdraw a Commission-modified and approved plan creates a dynamic that is impossible to ignore. I have no reservation that the parties are indeed capable and knowledgeable but, because of the utility's ability to withdraw, the remaining parties certainly do not possess equal bargaining power in an ESP action before the Commission. The Commission must consider whether an agreed-upon stipulation arising under an ESP represents what the parties truly view to be in their best interest - or simply the best that they can hope to achieve when one party has the singular authority to reject not only any and all modifications proffered by the other

parties but the Commission's independent judgment as to what is just and reasonable.⁶

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 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 consumers, OCC has a real and substantial interest in this case where the utility is seeking increases in its charges on consumers over the next six years.

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 which 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

⁶ *In re FirstEnergy Electric Security Plan Case*, Case No. 08-935-EL-SSO, et al., Concurring in Part and Dissenting in Part Opinion of Commissioner Cheryl Roberto at 2 (March 25, 2009).

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.⁷

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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⁷ 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 this Motion to Intervene was served on the persons stated below via electronic transmission, this 3rd day of March 2023.

/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.