

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the 2018 Through 2022)
Review of the Alternative Energy Rider of) Case No. 23-251-EL-RDR
Ohio Power Company.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene¹ in this case where the PUCO will conduct a management, performance, and financial audit of Ohio Power Company's ("AEP") PUCO-approved Alternative Energy Rider ("AER") for the period January 1, 2018 through December 31, 2022.² From 2018-2022, AEP consumers were charged almost five to ten times more for the AER than consumers of any other electric distribution utility in Ohio.³ Total AEP AER charges for 2018-2022 were approximately \$181 million.

In the most recent audit of AEP's AER charges (2015 through 2017) the auditor concluded that AEP's compliance activities "created higher than average AER rates during most of the audit period...."⁴ That audit also concluded that AEP had "areas that could be improved upon, to reduce costs to customers."⁵

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

² See *In the Matter of the 2018 Through 2022 Review of the Alternative Energy Rider of Ohio Power Company*, Case No. 23-251-EL-RDR, Entry (July 12, 2023).

³ Renewable portfolio standard – EDU rate impacts (2018-2022), <https://puco.ohio.gov/utilities/electricity%20resources/ohio-renewable-energy-portfolio-standard/rps-edu-rate-impacts>.

⁴ *In the Matter of the 2015 Through 2017 Review of the Alternative Energy Rider of Ohio Power Company*, Case No. 18-80-EL-RDR, Report of the Management Performance and Financial Audit of the Alternative Energy Rider of Ohio Power Company (Jan. 16, 2019) at 9 (Section 1.3).

⁵ *Id.*

OCC files this motion on behalf of AEP's 1.3 million residential electric customers. The reasons the Public Utilities Commission ("PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

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/s/ Donald J. Kral
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In the Matter of the 2018 Through 2022)
Review of the Alternative Energy Rider of) Case No. 23-251-EL-RDR
Ohio Power Company.)

MEMORANDUM IN SUPPORT

This case concerns the PUCO’s management, performance, and financial audit of AEP’s PUCO-approved Alternative Energy Rider (“AER”) for the period January 1, 2018 through December 31, 2022.⁶ During this period, AEP collected through the PUCO-approved AER on average \$139.26⁷ from each residential consumer. In total, AEP collected approximately \$181 million from residential consumers under the AER during the period January 1, 2018 through December 31, 2022. AEP’s charges to residential consumers far exceeded any other electric distribution utility in Ohio. Charges for AEP consumers were 10 times greater than charges for Duke’s consumers; 9 times greater than charges for DP&L consumers; and 4 times greater than charges for FirstEnergy consumers.⁸

The audit ordered by the PUCO in this matter comes after the most recent audit of the AER (for 2015 through 2017) that concluded that AEP’s compliance activities “created higher than average AER rates during most of the audit period...”⁹ That audit also

⁶ See *In the Matter of the 2018 Through 2022 Review of the Alternative Energy Rider of Ohio Power Company*, Case No. 23-251-EL-RDR, Entry (July 12, 2023).

⁷ Renewable portfolio standard – EDU rate impacts (2018-2022), <https://puco.ohio.gov/utilities/electricity%20resources/ohio-renewable-energy-portfolio-standard/rps-edu-rate-impacts>.

⁸ *Id.* (sum of AEP’s annual charges for 2018-2022 divided by Sum of annual charges for Duke, DP&L and FirstEnergy).

⁹ *In the Matter of the 2015 Through 2017 Review of the Alternative Energy Rider of Ohio Power Company*, Case No. 18-80-EL-RDR, Report of the Management Performance and Financial Audit of the Alternative Energy Rider of Ohio Power Company (Jan. 16, 2019) at 9 (Section 1.3).

concluded that AEP had “areas that could be improved upon, to reduce costs to customers.”¹⁰

The PUCO has further directed that the auditor will review and make a recommendation regarding AEP’s rate proposal in Case No. 20-1745-EL-RDR.¹¹ In that case, AEP seeks to change the way the Alternative Energy Rider and Auction Cost Recovery Rider¹² are calculated and updated. If approved by the PUCO, this will further increase costs to consumers to cover AEP’s imprudent business decisions.¹³ OCC has separately filed to intervene in Case 20-1745-EL-RDR.¹⁴

OCC has authority under law to represent the interests of AEP’s residential utility consumers, pursuant to R.C. Chapter 4911. OCC seeks to exercise that authority on behalf of the nearly 1.3 million residential consumers of AEP.

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 determine how

¹⁰ *Id.*

¹¹ See *In the Matter of the 2018 Through 2022 Review of the Alternative Energy Rider of Ohio Power Company*, Case No. 23-251-EL-RDR, Entry (April 5, 2023) attached Request for Proposal No. RA23-AER-2 at p. 2.

¹² The Auction Cost Recovery Rider enables AEP, among other things, to reconcile any over or under charges to consumers based on the amount billed to standard service offer customers versus the amount paid to auction winners for the procurement of power. This rider also enables AEP to charge all costs associated with the competitive bidding process such as auction manager fees, incremental auctions costs, and the costs associated with the contingency plan to procure replacement supply to consumers.

¹³ See *In the Matter of the Application of the Alternative Energy Rider and Auction Cost Recovery Rider for Ohio Power Company*, Case No. 20-1745-EL-RDR, Application (Nov. 25, 2020) at 4.

¹⁴ Case No. 20-1745-EL-RDR, Motion to Intervene by the Office of the Ohio Consumers’ Counsel (Jan. 20, 2021).

much AEP can charge consumers under the PUCO-approved AER. 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 where a determination will be made as to the appropriateness and reasonableness of - AEP's charges that pay for the utility's compliance with the Renewable Portfolio Standard ("RPS"). As set forth above, from 2018-2022, AEP consumers paid \$139.26¹⁵ through Rider AER or approximately \$181 million. OCC's 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 the rates consumers pay for electric service (including charges for renewable energy) should be no more than what is reasonable and lawful under Ohio law. OCC's position is therefore directly related to the merits of this case that is pending before the

¹⁵ Renewable portfolio standard – EDU rate impacts (2018-2022), <https://puco.ohio.gov/utilities/electricity%20/resources/ohio-renewable-energy-portfolio-standard/rps-edu-rate-impacts>.

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. The PUCO-approved auditor, London Economics International, has not yet submitted its management/performance and financial audit of the Alternative Energy Rider. The case has not, therefore, progressed that far. Moreover, 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 critically evaluate on behalf of residential consumers the use of, and charges claimed by AEP under the AER as well as the failure to implement prior audit recommendations. In doing so, 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 real and substantial interest in this case where consumers are charged hundreds of millions of dollars in costs through charges under the AER for AEP's costs to acquiring renewable energy credits.

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 customers. 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.¹⁶

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.

¹⁶ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20.

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 12th day of December 2023.

/s/ Donald J. Kral
Donald J. Kral
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 Alana M. Noward on behalf of Kral, Donald J. Mr..