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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Progressive Casualty Insurance Company)
and The Cleveland Electric Illuminating) Case No. 09-595-EL-EEC
Company For Approval of a Special)
Arrangement Agreement With a)
Mercantile Customer.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene¹ in this case in which The Cleveland Electric Illuminating Company ("CEI" or "Company") and Progressive Casualty Insurance Company ("Progressive" or "Customer") (collectively with CEI, "Applicants") jointly seek approval of a special arrangement under Ohio Adm. Code 4901:1-39-08(B). Approval of this arrangement would permit Progressive to opt-out of paying CEI's Rider DSE2 that recovers from customers the costs associated with compliance with energy efficiency reduction requirements stated in R.C. 4928.66. Approval would also allow CEI to attribute the energy reductions associated with Progressive's projects to the energy efficiency reduction achievements required for CEI to meet its benchmarks under Sub. S.B. 221 (i.e. R.C. 4928.66).

OCC files this Motion to Intervene ("Motion") on behalf of over 670,000 residential utility consumers of the Company. The reasons the Public Utilities Commission of Ohio

¹ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

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("Commission" or "PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



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MEMORANDUM IN SUPPORT

I. INTRODUCTION

This case involves the review of the reasonableness and lawfulness of the Applicants' request for approval of their special arrangement filed under Ohio Adm. Code 4901:1-39-08(B). OCC has authority under law to represent the interests of over 925,000 residential utility customers of CEI, pursuant to R.C. Chapter 4911.

II. INTERVENTION

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 that results in Progressive not paying its share of environmental remediation costs either through CEI's Rider DSE2 or through a special arrangement it has with CEI that does not result in sufficient energy savings. For the same reason, the application could also result in consumers having to pay additional costs toward CEI's Rider DSE2. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission 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 includes representing the residential consumers of CEI in this case where the Applicants' proposal will result in sufficient energy savings to justify Progressive's opt-out of Rider DSE2. If the energy savings are not sufficient to justify the opt-out consumers will suffer from the economic and environmental consequences resulting from less energy savings than intended by R.C. 4928.66(A)(10). Under R.C. 4928.66(A)(10), CEI must meet certain energy savings in years 2009-2025 with money it collects from its customers through its Rider DSE2. In this regard, the issues for consideration include whether an opt-out for Progress from paying the energy efficiency rider is justified by the energy savings achieved under the special arrangement. 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 consumers will include advancing the position that the rates customers pay 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 the terms under which public utilities provide their services.

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, consistent with any matters that OCC determines to be issues for PUCO consideration and for 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 Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a very real and substantial interest in this case in which environmental mediation results are at issue.

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 OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission 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.

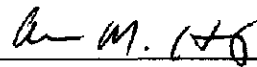
Moreover, the Supreme Court of Ohio confirmed OCC's right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC's intervention and that OCC should have been granted intervention.²

III. CONCLUSION

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 residential consumers, the Commission should grant OCC's Motion.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



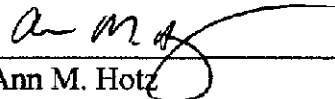
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² See *Ohio Consumers' Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below by regular U.S. Mail, postage prepaid, on this 13th day of August 2009.



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