

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Matter of the Application of the)
Ohio Department of Development for an) Case No. 09-463-EL-UNC
Order Approving Adjustments to the)
Universal Service Fund Riders of)
Jurisdictional Ohio Electric Distribution)
Utilities.)

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

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of all residential customers of electric distribution utilities in the State of Ohio, moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in the above-captioned proceeding concerning the Ohio Department of Development's ("ODOD") Notice of Intent to File an Application ("Notice") to adjust the Universal Service Fund Riders ("USF").¹ OCC's Motion to Intervene ("Motion") should be granted because OCC meets the legal standards for intervention, as explained in detail in the attached Memorandum in Support. In addition, OCC's offers comments regarding ODOD's Notice

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

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Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of for the)	
Ohio Department of Development for an)	Case No. 08-658-EL-UNC
Order Approving Adjustments to the)	
Universal Service Fund Riders of)	
Jurisdictional Ohio Electric Distribution)	
Utilities.)	

MEMORANDUM IN SUPPORT

I. INTRODUCTION

On June 1, 2009, ODOD filed its Notice with the PUCO that ODOD intends to apply for approval to adjust the Universal Service Fund Riders ("USF") that Ohio electric distribution utilities charge to customers. The USF collects costs of the low income energy efficiency program and the Percentage of Income Payment Plan as well as various costs associated with these programs.

The Notice was the subject of a Stipulation and Recommendation ("2006 Stipulation") filed with, and approved by, the Commission in Case No. 06-751-EL-UNC.² The Notice process was first initiated in Case No. 04-1616-EL-UNC in order to provide interested parties an opportunity to contest applications for adjustment in the context of a hearing.³

² *In the Matter of the Application of the Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 07-661-EL-UNC, Opinion and Order (December 20, 2006).

³ *In the Matter of the Application of the Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 04-1616-EL-UNC, Opinion and Order (December 8, 2004).

II. INTERVENTION

OCC moves to intervene under its legislative authority to represent residential utility consumers in Ohio, under R.C. Chapter 4911. R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding may seek intervention in that proceeding. OCC meets this standard because the interests of Ohio’s residential consumers may be “adversely affected,” especially if residential consumers are unrepresented in a proceeding regarding an adjustment to the USF that requires payments by residential customers. An increase in the USF, which ODOD requests in its Application, would be paid by Ohio’s approximately 4.3 million residential electric customers. Thus, the “adversely affected” 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.

OCC meets these criteria.

First, the nature and extent of OCC’s interest is representing Ohio’s residential electric distribution customers. 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 legal position is that the USF rates should be no more than what is reasonable and permissible under Ohio law, for service that is adequate under Ohio law. This position includes concern that rates for the USF should be no more than what is reasonable and lawful. 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 public utilities' rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceeding. OCC has longstanding expertise and experience in PUCO proceedings, and will contribute to the process of the case.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will present arguments 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 in a proceeding, 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 because the rates residential electric distribution customers must pay will be adjusted.

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 because it has been uniquely 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 has 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.⁴

OCC meets the criteria set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11. Additionally, granting OCC intervention is consistent with the intervention standards explained by the Supreme Court of Ohio. On behalf of Ohio's residential utility customers, the Commission should grant OCC's Motion to Intervene.

III. COMMENTS

A. The Proposed Two-Block Rate Design Is Unlawful

OCC objects to the two-block rate design ODOD incorporated into its NOI because the two-block rate design causes a shift of USF costs from the industrial class to the residential class. This shift is not lawful under R.C. 4928.52(C). R.C. 4928.52(C) states that after the enactment of S.B. 3, the Commission is prohibited from a "shift among the customer classes of electric distribution utilities the costs of funding * * *" the USF programs.

⁴ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20.

OCC objects that the second block of the rate (containing a lower rate than the first block of the rate) will apply to all monthly consumption above 833,000 kWh. The effect from this rate structure is that residential consumers will pay the revenue lost from the reduced rate to the high-use customers in the second block. OCC objects that, for each EDU, the rate per kWh for the second block may be set at the PIPP charge in effect in October 1999. OCC objects that, in cases where the second block is set at the October 1999 PIPP charge, the rate for the first block rate (that residential customers pay) will be set at the level necessary to produce the remainder of the EDU's annual USF rider revenue requirement. PIPP riders in effect as of October 1999 did not use the declining block rate methodology; therefore the rate for all kWh was uniform. The use of the declining block methodology shifts costs to residential customers in the form of higher rates and is therefore unlawful. The USF rider rate should be set using a single rate that does not shift costs to residential customers.

B. Electric Partnership Program Study.

ODOD details its recommendation to continue to include the same amount for the administrative costs of the Electric Partnership Program ("EPP") in the USF calculations for the Electric Distribution Utilities ("EDUs").⁵ ODOD refers to an "impact evaluation" for the period Sept. 1, 2006 through March 31, 2008 that was completed on June 30, 2009.⁶ The study apparently concludes that the EPP is "cost effective and continues to produce significant savings in thousands of PIPP households each year."⁷ OCC has not received a complete copy of the study. OCC, therefore, must have the opportunity to

⁵ ODOD Ex. A filed August 18, 2009.

⁶ Id. at 2.

⁷ Id.

review the study in order to test the conclusions upon which ODOD partially bases the recommended amount of EPP administrative costs. OCC should be provided with a copy of the study in order to conduct its own review of study. OCC does recommend, however, that ODOD needs to perform an analysis of the new PIPP payment level that will begin in November of 2010 and the impact the new payment level has on conservation. This analysis when completed should be made available for public comment.

C. The Audit Process

OCC agrees with ODOD's recommendation that the EDU audit process be continued and that "the agreed upon procedures should be refined to provide for a more in-depth analysis of particular areas of risk, and that, at least for this year, all the EDUs should be subject to audit under the new agreed-upon procedures."⁸ OSCAR data⁹ is invaluable in evaluating the EDU's responses to questions posed during the agreed-upon procedures audits.¹⁰ OCC has a high degree of comfort with ODOD's CIS data. OCC is concerned, however, about the lack of consistency in reporting between the OSCAR reports and the ODOD CIS data and how the USF could be impacted by the disparity in reporting. The Commission deferred implementing changes in the OSCAR reports in the recent Credit and Disconnection rulemaking.¹¹ Accurate and consistent OSCAR reports would provide important information that would permit greater participation and understanding of the audit process to the parties.¹² The Commission deferred implementing changes in the OSCAR reports in the recent Credit and Disconnection

⁸ ODOD Notice at 11.

⁹ Ohio Statistical Customer Accounts Receivables (OSCAR) Report

¹⁰ The OSCAR data is required by R.C. 4933.123.

¹² Case No. 08-723-AU-ORD, Finding and Order, December 17, 2008, at 27

rulemaking.¹³ OCC agrees with ODOD's recommendation in principle but recommends that the parties to this proceeding be included in any refinement of the agreed upon procedures through a notice and comment proceeding or through workshops. The Commission should schedule an OSCAR reporting workshop within the next six months to resume dialogue with interested stakeholders and set a date when the new OSCAR reporting standards will be effectuated.

IV. CONCLUSION

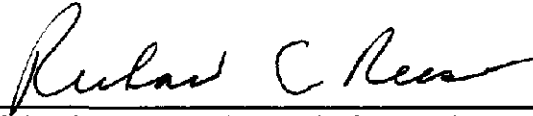
For the reasons stated above, the Commission should grant OCC's Motion to Intervene on behalf of the millions of Ohioans who have an interest in the outcome of this case that affects the rates they pay and the funding of low-income assistance to Ohioans in need. OCC Objects to the shifting of USF costs from the industrial class to the residential class resulting from the Application's two-block rate design. This cost shifting is impermissible under R.C. 4928.52(C).

The USF rider is an important source of funds for low-income consumers in Ohio that are paid by all customers. It is also important that the requested funds be based upon reasonable and identifiable costs, consistent with R.C. 4928.52(A)(2) that are sufficient to assist in administering the EPP.

¹³ Consumer Groups' Initial Comments at 37-38.

Respectfully submitted,

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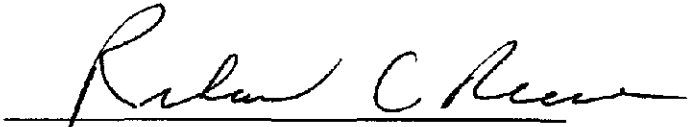
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's *Motion to Intervene and Comments* was served upon the persons listed below via first class U.S. Mail, postage prepaid, this 18th day of September, 2009.



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