**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Commission’s Investigation into the Implementation of the Federal Infrastructure Investment and Jobs Act’s Demand Response PURPA Standard. | )  )  )  )  ) | Case No. 22-1024-AU-COI |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Public Utilities Commission of Ohio (“PUCO”) is reviewing and seeking public comments[[1]](#footnote-2) regarding implementation of the Federal Infrastructure Investment and Jobs Act (“IIJA”). The IIJA, in part, amended the federal Public Utility Regulatory Policy Act (“PURPA”), adding demand-response (energy efficiency) practices, and electric vehicle charging programs standards that state regulatory authorities must determine for implementation.

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene on behalf of Ohio’s residential utility consumers.[[2]](#footnote-3) OCC’s Motion to Intervene should be granted, per R.C. 4903.221. The reasons the PUCO should grant OCC’s Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

Bruce Weston (0016973)

Ohio Consumers’ Counsel

*/s/ Ambrosia E. Wilson*

Ambrosia E. Wilson (0096598)

Counsel of Record

Amy Botschner O’Brien (0074423)

Assistant Consumers’ Counsel

# 

# Office of the Ohio Consumers’ Counsel

# 65 East State Street, Suite 700

# Columbus, Ohio 43215

Telephone [Wilson]: (614) 466-1292

Telephone [Botschner O’ Brien]: (614) 466-9567

[ambrosia.wilson@occ.ohio.gov](mailto:ambrosia.wilson@occ.ohio.gov) [amy.botschner.obrien@occ.ohio.gov](mailto:amy.botschner.obrien@occ.ohio.gov)

(willing to accept service by e-mail)

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## MEMORANDUM IN SUPPORT

The IIJA took effect on November 15, 2021.[[3]](#footnote-4) The bill, in part, requires the PUCO to determine whether to implement new PURPA standards related to demand side management programs and electric vehicle charging programs. OCC has authority under law to represent the interests of Ohio’s residential utility consumers in this case, pursuant to 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 they are unrepresented in a proceeding about implementing new PURPA standards for demand side management programs and electric vehicle charging programs. These standards could affect Ohio’s energy infrastructure and ongoing utility initiatives and what consumers are charged by their utilities. Consumers could be adversely affected by such charges, especially if the charges are subsidies to utilities. 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 representing Ohio residential consumers in this case regarding updates to the PURPA standards. These PURPA updates could lead potentially to utility expenditures for Ohio’s energy infrastructure. And utilities may seek related charges (including possible subsidies) from millions of Ohio consumers. This interest is different than that of any other party and especially different than that of the utilities whose advocacy includes the financial interest of stockholders.

Second, OCC’s advocacy for residential consumers will include but not be limited to advancing the position that any changes to demand side management programs and electric vehicle charging programs due to PURPA should be consistent with traditional ratemaking principles. Ratemaking principles can protect consumers from unreasonable charges for utility service while furthering adequate utility service. 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 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 very real and substantial interest in this case.

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.

In addition, 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 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.[[4]](#footnote-5)

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,

Bruce Weston (0016973)

Ohio Consumers’ Counsel

*/s/ Ambrosia E. Wilson*

Ambrosia E. Wilson (0096598)

Counsel of Record

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[ambrosia.wilson@occ.ohio.gov](mailto:ambrosia.wilson@occ.ohio.gov) [amy.botschner.obrien@occ.ohio.gov](mailto:amy.botschner.obrien@occ.ohio.gov)

(willing to accept service by e-mail)

**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 8th day of December 2022.

*/s/ Ambrosia E. Wilson*

Ambrosia E. Wilson

Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

**SERVICE LIST**

|  |  |
| --- | --- |
| john.jones@ohioAGO.gov  Attorney Examiners:  [jesse.davis@puco.ohio.gov](mailto:jesse.davis@puco.ohio.gov) | [mkurtz@BKLlawfirm.com](mailto:mkurtz@BKLlawfirm.com)  [kboehm@BKLlawfirm.com](mailto:kboehm@BKLlawfirm.com)  [jkylercohn@BKLlawfirm.com](mailto:jkylercohn@BKLlawfirm.com) |

1. Entry (November 2, 2022). [↑](#footnote-ref-2)
2. *See* R.C. Chapter 4911, R.C. 4903.221 and O.A.C. 4901-1-11. [↑](#footnote-ref-3)
3. Pub. L. No. 117-58, 135 Stat. 429, to the federal Public Utility Regulatory Policy Act (PURPA) of 1978, Pub. L. No. 95–617, 92 Stat. 3117, regarding demand-response practices, as codified in 16 United States Code (U.S.C.) 2621(d)(20). [↑](#footnote-ref-4)
4. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-5)