**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of Establishing the Solar Generation Fund Rider Pursuant to R.C. 3706.46. | ))) | Case No. 21-447-EL-UNC |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene[[1]](#footnote-2) where the Public Utilities Commission of Ohio (“PUCO”) is establishing a subsidy charge for consumers to pay. The solar subsidy--called Solar Generation Fund Rider --was authorized under House Bill and preserved from repeal by H.B. 128. The subsidy charge is scheduled to take effect June 30, 2021. The proposed charge to consumers totals $20 million per year.

The charges to consumers authorized by the PUCO must be just and reasonable. OCC is filing on behalf of Ohio’s approximately 4.5 million residential utility customers who will be asked to pay this subsidy charge. 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/ William J. Michael*

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**MEMORANDUM IN SUPPORT**

The PUCO is establishing a charge to consumers for the Solar Generation Fund Rider authorized by H.B. 128. As Ohioans face unprecedented challenges in recovering from the coronavirus emergency – lost jobs, lower wages, health crises – OCC will be advocating for just and reasonable charges to consumers. OCC has authority under law to represent the interests of all of the approximately 4.5 million residential utility customers in Ohio.[[2]](#footnote-3)

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 customers were unrepresented in a proceeding where the PUCO will be establishing a subsidy charge on consumers for the Solar Generation Fund. 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 the residential customers in Ohio to ensure the Solar Generation Fund Charge authorized by the PUCO is just and reasonable. This interest is different from that of any other party and especially different from that of the electric utilities whose advocacy includes the financial interest of stockholders.

Second, OCC’s advocacy for consumers will include, among other things, advancing the position that consumers should receive reliable service at a reasonable rate under Ohio law.[[3]](#footnote-4) 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.

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. 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 Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a very real and substantial interest where the PUCO is establishing a charge that will be paid by consumers.

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), which OCC already has addressed, and which OCC satisfies.

Ohio Adm. Code 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, Ohio Adm. Code 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/ William J. Michael*

William J. Michael (0070921)

Counsel of Record

Ambrosia E. Wilson (0096598)

Assistant Consumers' Counsel

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(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 viaelectric transmission this 18th day of May 2021.

*/s/ William J. Michael*

William J. Michael
Counsel of Record

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

**SERVICE LIST**

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|  |  |

1. *See* R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm.Code 4901-1-11. [↑](#footnote-ref-2)
2. R.C. Chapter 4911. [↑](#footnote-ref-3)
3. *See* R.C. 4905.22 (“All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission . . .”). [↑](#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)