**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Commission’s Investigation into Electric Vehicle Charging Service in this State. | ))) | Case No. 20-434-EL-COI |

**MOTION TO INTERVENE**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene on behalf of residential electric utility customers[[1]](#footnote-2) where the Public Utilities Commission of Ohio (“PUCO”) will consider “whether an entity that provides electric vehicle charging service is a public utility subject to the jurisdiction of the Commission.”[[2]](#footnote-3) 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/ Christopher Healey*

Christopher Healey (0086027)

Counsel of Record

Amy Botschner O’Brien (0074423)

Assistant Consumers’ Counsel

# Office of the Ohio Consumers’ Counsel

# 65 East State Street, 7th Floor

# Columbus, Ohio 43215

Telephone [Healey]: (614) 466-9571

Telephone [Botschner O’Brien]: (614) 466-9575

christopher.healey@occ.ohio.gov

amy.botschner.obrien@occ.ohio.gov

(willing to accept service by e-mail)

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Commission’s Investigation into Electric Vehicle Charging Service in this State. | ))) | Case No. 20-434-EL-COI |

## MEMORANDUM IN SUPPORT

The PUCO Staff “has consistently taken the position that entities which provide electric vehicle charging service are neither electric light companies nor public utilities” in the State of Ohio.[[3]](#footnote-4) In other words, consistent with the PUCO Staff’s view, the market can provide electric vehicle charging service in Ohio. The PUCO itself concluded that electric vehicle charging should be provided by the competitive market:

Because the location of EV charging infrastructure is generally located on the customer’s side of the meter, the Commission believes that the EV charging stations should operate within the sphere of a competitive marketplace, especially for home and private business charging.[[4]](#footnote-5)

The PUCO opened this investigation to allow other parties to provide their perspective on this issue. OCC has authority under law to represent the interests the interests of residential electric utility customers 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 is entitled to seek intervention in that proceeding. The interests of Ohio’s residential customers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding where the PUCO will address whether utilities have a monopoly

on electric vehicle charging stations (they don’t). 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;

(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 residential customers, where the PUCO will address legal and policy considerations of advancing competitive markets for customers of electric vehicle charging stations. This interest is different than that of any other party and especially different than that of utilities, whose advocacy includes the financial interest of shareholders.

Second, OCC’s pro-competition advocacy for residential customers will include, among other things, advancing the position that Ohioans should have the benefit of the competitive market for electric vehicle charging, rather than relying on monopolies. OCC’s position is therefore directly related to the merits of this case.

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 any 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 advocate for residential utility customers, OCC has a very real and substantial interest in this case involving the important issue of markets vs. monopolies for electric vehicle charging.

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 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.[[5]](#footnote-6)

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 customers, the PUCO should grant OCC’s Motion to Intervene.

Respectfully submitted,

Bruce Weston (0016973)

Ohio Consumers’ Counsel

*/s/ Christopher Healey*

Christopher Healey (0086027)

Counsel of Record

Amy Botschner O’Brien (0074423)

Assistant Consumers’ Counsel

# Office of the Ohio Consumers’ Counsel

# 65 East State Street, 7th Floor

# Columbus, Ohio 43215

Telephone [Healey]: (614) 466-9571

Telephone [Botschner O’Brien]: (614) 466-9575

christopher.healey@occ.ohio.gov

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 19th day of March 2020.

 */s/ Christopher Healey*

 Christopher Healey

 Assistant Consumers’ Counsel

**SERVICE LIST**

|  |  |
| --- | --- |
| John.jones@ohioattorneygeneral.govAttorney Examiners:David.hicks@puco.ohio.govMatsthew.sandor@puco.ohio.gov |  |

|  |  |
| --- | --- |
|  |  |
|  |  |

1. *See* R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11. [↑](#footnote-ref-2)
2. Entry ¶ 1 (Feb. 26, 2020) (the “Entry”). [↑](#footnote-ref-3)
3. Entry ¶ 4. [↑](#footnote-ref-4)
4. *PowerForward: A Roadmap to Ohio’s Electricity Future* at 20, *available at* <https://www.puco.ohio.gov/industry-information/industry-topics/powerforward/powerforward-a-roadmap-to-ohios-electricity-future/> [↑](#footnote-ref-5)
5. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20. [↑](#footnote-ref-6)