**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. | )  )  )  ) | Case No. 22-755-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 regarding the implementation of the Federal Infrastructure Investment and Jobs Act (“IIJA” or “Infrastructure Act”), which in part makes available to utilities federal grants to improve electric grid resilience.[[1]](#footnote-2) The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene on behalf of Ohio’s residential utility consumers.[[2]](#footnote-3) The reasons the Public Utilities Commission of Ohio (“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 Infrastructure Investment and Jobs Act (“IIJA”) took effect on November 15, 2021.[[3]](#footnote-4) The bill allows utilities to apply for federal grants to improve grid resilience. The bill also requires the PUCO to determine whether to implement new standards under the Public Utility Regulatory Policy Act (PURPA) of 1978 related to demand response and electric vehicle charging. The PUCO opened an investigation on August 10, 2022, solicited comments from stakeholders, and scheduled a workshop related to implementing the Infrastructure Act.[[4]](#footnote-5) 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. That is especially so if the consumers were unrepresented in this proceeding about allocating significant federal funds that could improve Ohio’s energy infrastructure and potentially offset

consumer responsibility for charges for ongoing utility initiatives. 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 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 is representing residential consumers in this case regarding federal funding for the potential improvement of Ohio’s electric grid that provides service to millions of Ohioans. 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 residential consumers will include advancing the positions that public utilities should use Infrastructure Act grants to improve Ohio’s energy infrastructure for the benefit of consumers and to offset costs that might otherwise be charged to Ohio consumers. OCC will also encourage the PUCO to develop a transparent, public method of tracking grant spending. This can provide assurance that Ohio utilities are investing in infrastructure upgrades that provide quality, reliable electric service. And tracking can assist with identifying where such grant funds can offset charges for projects that utility consumers would otherwise be expected to pay. 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 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 advocate for residential utility consumers, OCC has a very real and substantial interest in this case concerning potential improvements to Ohio’s electric grid as well as distributing and monitoring the cost of doing so.

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 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 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/ William J. Michael*

William J. Michael (0070921)

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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 via electronic transmission, this 1st day of September 2022.

*/s/ William J. Michael*

William J. Michael

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**

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1. Entry (August 10, 2022). [↑](#footnote-ref-2)
2. *See* R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11. [↑](#footnote-ref-3)
3. Pub. L. No. 117-58. [↑](#footnote-ref-4)
4. Entry (August 10, 2022). [↑](#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)