**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Commission’s Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for the 2022-2023 Winter Heating Season. | )  )  )  )  ) | Case No. 22-668-GE-UNC |

**JOINT MOTION TO INTERVENE**

**BY**

**ADVOCATES FOR BASIC LEGAL EQUALITY, INC.,**

**THE LEGAL AID SOCIETY OF COLUMBUS,**

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

**OHIO POVERTY LAW CENTER,**

**PRO SENIORS, INC.,**

**SOUTHEASTERN OHIO LEGAL SERVICES**

**AND LEGAL AID SOCIETY OF SOUTHWEST OHIO, LLC**

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| Bruce Weston (0016973)  Ohio Consumers’ Counsel  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) 466-9575  [ambrosia.wilson@occ.ohio.gov](mailto:ambrosia.wilson@occ.ohio.gov)  [amy.botschner.obrien@occ.ohio.gov](mailto:amy.botschner.obrien@occ.ohio.gov)  September 8, 2020 (willing to accept service by e-mail)  (will accept service by e-mail)  Stephanie Moes (0077136)  **Legal Aid Society of Southwest Ohio, LLC**  215 East Ninth Street, Suite 500  Cincinnati, Ohio 45202  (513) 362-2807 (direct dial)  (513) 259-7309 (cell)  [smoes@lascinti.org](mailto:smoes@lascinti.org)  (willing to accept service via e-mail)  James Mackey (0096715)  Staff Attorney  **Legal Aid Society of Columbus**  1108 City Park Ave.  Columbus, Ohio 43206  Telephone: (614) 737-0136  [jmackey@columbuslegalaid.org](mailto:jmackey@columbuslegalaid.org)  (willing to accept service by e-mail) | Susan Jagers (0061678)  **Ohio Poverty Law Center**  1108 City Park Ave. Suite 200  Columbus, Ohio 43206  (614) 824-2501  [sjagers@ohiopovertylaw.org](mailto:sjagers@ohiopovertylaw.org)  (willing to accept service by e-mail) |
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September 2, 2022

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The Consumer Parties[[1]](#footnote-2) move to intervene where the PUCO[[2]](#footnote-3) will be implementing the 2022-2023 “Winter Reconnect Order.” This order is intended to protect consumers by requiring the utilities to reconnect the services of those consumers who have had their service disconnected for nonpayment, or to prevent disconnection. Expanded dates for relief are needed for Ohioans suffering through the coronavirus pandemic, rising energy prices, and inflation.

The protection provided by the Winter Reconnect Order may be more important for consumers this year than in past years. The reason is the *nonsensical and unconscionable* situation that is harming at-risk Ohio families in the electric Percentage of Income Payment Plan (“PIPP”) program. PIPP is a program that is administered by the Ohio Department of Development and the PUCO. This year low-income Ohioans (electric PIPP consumers) are being billed more on a kWh basis for the generation charges on their bill than the utilities’ non-low-income standard service offer consumers.

For example, estimates at 13,200 kWh of annual usage (1,100 kWh per month) show the following dismal figures for electric PIPP consumers compared to non-low-income standard-offer consumers. AEP low-income PIPP consumers are being billed an estimated *$1,154* more per year. Duke low-income PIPP consumers are being billed an estimated *$1289* more per year. AES low-income PIPP consumers are being billed an estimated *$584* more per year. And FirstEnergy low-income PIPP consumers are being billed an estimated $339 (Ohio Edison), $334 (CEI), and $330 (Toledo Edison) more per year.

Under R.C. 4928.54, the PIPP consumers’ usage is being aggregated and those customers are being served under a separate competitive auction. However, the law prescribes specific requirements for the selection of a winning bid or bids selected through the competitive procurement process. Those requirements are in R.C. 4928.542. The requirements are not optional. First, a winning bid must be designed to provide a reliable electricity supplier to PIPP customers.[[3]](#footnote-4) Second, a winning bid shall reduce the cost of the PIPP program relative to the otherwise applicable standard service offer rate established under R.C. 4928.141, 4928.142 and 4928.143.[[4]](#footnote-5) Third, a winning bid shall result in the best value for persons paying the universal service rider under R.C. 4928.52. Unfortunately for PIPP consumers, these requirements are not being adhered to by ODOD or the PUCO.

The Consumer Parties are filing on behalf approximately 4.3 million Ohio residential electric and 3.5 million natural gas utility consumers who are eligible for protection from utility disconnection under the Winter Reconnect Order.[[5]](#footnote-6) The reasons the PUCO should grant the Consumer Parties’ Motion are further set forth in the attached Memorandum in Support.[[6]](#footnote-7)

Respectfully submitted,

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| 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) 466-9575  [ambrosia.wilson@occ.ohio.gov](mailto:ambrosia.wilson@occ.ohio.gov)  [amy.botschner.obrien@occ.ohio.gov](mailto:amy.botschner.obrien@occ.ohio.gov)  September 8, 2020 (willing to accept service by e-mail)  (will accept service by e-mail)  */s/ Stephanie Moes*  Stephanie Moes (0077136)  **Legal Aid Society of Southwest Ohio, LLC**  215 East Ninth Street, Suite 500  Cincinnati, Ohio 45202  (513) 362-2807 (direct dial)  (513) 259-7309 (cell)  [smoes@lascinti.org](mailto:smoes@lascinti.org)  (willing to accept service via e-mail)  */s/ James Mackey*  James Mackey (0096715)  Staff Attorney  **Legal Aid Society of Columbus**  1108 City Park Ave.  Columbus, Ohio 43206  Telephone: (614) 737-0136  [jmackey@columbuslegalaid.org](mailto:jmackey@columbuslegalaid.org)  (willing to accept service by e-mail) | */s/ Susan Jagers*  Susan Jagers (0061678)  **Ohio Poverty Law Center**  1108 City Park Ave. Suite 200  Columbus, Ohio 43206  (614) 824-2501  [sjagers@ohiopovertylaw.org](mailto:sjagers@ohiopovertylaw.org)  (willing to accept service by e-mail) |
| */s/ Michael Walters*  Michael Walters (0068921)  Legal Helpline Managing Attorney  **Pro Seniors, Inc.**  7162 Reading Road, Suite 1150  Cincinnati, Ohio 45237  Telephone: (513) 458-5532  mwalters@proseniors.org  (willing to accept service by e-mail)  */s/ Peggy P. Lee*  Peggy P. Lee (0067912)  Senior Staff Attorney II  **Southeastern Ohio Legal Services**  964 E. State St  Athens, Ohio 45701  Telephone: (740) 594-3558  Direct: (614) 827-0515  [plee@seols.org](mailto:plee@seols.org)  (willing to accept service by e-mail) |
| */s/ Ellis Jacobs*  Ellis Jacobs (0017435)  **Advocates for Basic Legal Equality, Inc.**  130 West Second St., Ste. 700 East  Dayton, Ohio 45402  Direct: (937) 535-4419  [ejacobs@ablelaw.org](mailto:ejacobs@ablelaw.org)  (willing to accept service by e-mail) |

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## MEMORANDUM IN SUPPORT

In this proceeding, the Public Utilities Commission of Ohio (“PUCO”) will implement its disconnection restrictions for the 2022-2023 winter heating season that is intended to protect consumers. Expanded dates for relief are needed for Ohioans suffering through the coronavirus pandemic, rising energy prices, and inflation.

Consumer Parties that seek to Intervene are as follows: Office of the Ohio Consumers’ Counsel (“OCC”), Advocates for Basic Legal Equality, Inc. (“ABLE”), The Legal Aid Society of Columbus (“LASC”), Ohio Poverty Law Center (“OPLC”), Pro Seniors, Southeastern Ohio Legal Services (“SEOLS”) and Legal Aid Society of Southwest Ohio, LLC (“LASSO”).[[7]](#footnote-8)

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 consumers were unrepresented in a proceeding where the PUCO is establishing protections for consumers facing disconnection of vital electric and natural gas service. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Public Utilities Commission of Ohio (“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 Consumer Parties’ interest is representing Ohio’s residential utility consumers in this case where the PUCO will decide upon the service disconnection protections afforded Ohioans for the upcoming winter heating season. This interest is different from that of any other party and especially different from that of the utility whose advocacy includes the financial interest of stockholders.

Second, Consumer Parties’ advocacy for residential consumers will include advancing the position that consumers are already facing health and financial losses due to rising energy prices, inflation and the pandemic. Additionally, PIPP consumers need protection from disconnection because they are being charged higher generation charges than the utilities’ standard offer consumers. Consumers need help reconnecting to vital utility services now. The Consumer Parties’ position is therefore directly related to the merits of this case that is before the PUCO.

Third, Consumer Parties’ intervention will not unduly prolong or delay the proceedings. The Consumer Parties, with their longstanding expertise and experience in PUCO proceedings and consumer protection advocacy will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, the Consumer Parties’ intervention will significantly contribute to full development and equitable resolution of the factual issues. The Consumer Parties will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest

The Consumer Parties also satisfy the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that Consumer Parties satisfy 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 advocates for residential utility consumers, the Consumer Parties have a very real and substantial interest in this case to determine when consumers can utilize the essential consumer protections provided by the Winter Reconnect Order.

In addition, the Consumer Parties meet 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 the Consumer Parties already have addressed and that the Consumer Parties satisfy.

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 the Consumer Parties do not concede the lawfulness of this criterion, the Consumer Parties satisfy this criterion in that OCC has been uniquely designated as the state representative of the interests of Ohio’s residential utility consumers. And the other Consumer Parties, though not specifically designated, also represent the interest of Ohio’s residential utility consumers. Together, Consumer Parties’ 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.[[8]](#footnote-9) The other Consumer Parties have likewise been granted intervention with OCC in PUCO proceedings.

The Consumer Parties meet 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 the Consumer Parties’ Motion to Intervene.

Respectfully submitted,

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| Bruce Weston (0016973)  Ohio Consumers’ Counsel  */s/ Ambrosia E. Wilson*  Ambrosia E. Wilson (0096598)  Counsel of Record  Amy Botschner O’Brien (0096598)  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) 466-9575  [ambrosia.wilson@occ.ohio.gov](mailto:ambrosia.wilson@occ.ohio.gov)  [amy.botschner.obrien@occ.ohio.gov](mailto:amy.botschner.obrien@occ.ohio.gov)  September 8, 2020 (willing to accept service by e-mail)  */s/ Stephanie Moes*  Stephanie Moes (0077136)  **Legal Aid Society of Southwest Ohio, LLC**  215 East Ninth Street, Suite 500  Cincinnati, Ohio 45202  (513) 362-2807 (direct dial)  (513) 259-7309 (cell)  (513) 241-1187 (fax)  [smoes@lascinti.org](mailto:smoes@lascinti.org)  (willing to accept service by e-mail)  ill accept service by e-mail)  */s/ Ellis Jacobs*  Ellis Jacobs (0017435)  **Advocates for Basic Legal Equality, Inc.**  130 West Second St., Ste. 700 East  Dayton, Ohio 45402  Direct: (937) 535-4419  Fax: (937) 535-4600  [ejacobs@ablelaw.org](mailto:ejacobs@ablelaw.org)  (willing to accept service by e-mail) |  |
| */s/ Michael Walters*  Michael Walters (0068921)  Legal Helpline Managing Attorney  **Pro Seniors, Inc.**  7162 Reading Road, Suite 1150  Cincinnati, Ohio 45237  Telephone: (513) 458-5532  Facsimile: (513) 345-4162  mwalters@proseniors.org  (willing to accept service by e-mail)  */s/ Peggy P. Lee*  Peggy P. Lee (0067912)  Senior Staff Attorney II  **Southeastern Ohio Legal Services**  964 E. State St  Athens, Ohio 45701  Telephone: (740) 594-3558  Direct: (614) 827-0515  Fax: (740) 594-3791  plee@seols.org  (willing to accept service by e-mail) |
| */s/ James Mackey*  James Mackey (0096715)  Staff Attorney  **Legal Aid Society of Columbus**  1108 City Park Ave.  Columbus, Ohio 43206  (614) 737-0136  Fax: (614) 224-4514  [jmackey@columbuslegalaid.org](mailto:jmackey@columbuslegalaid.org)  (willing to accept service by e-mail)  */s/ Susan Jagers*  Susan Jagers (0061678)  **Ohio Poverty Law Center**  1108 City Park Ave. Suite 200  Columbus, Ohio 43206  (614) 824-2501  [sjagers@ohiopovertylaw.org](mailto:sjagers@ohiopovertylaw.org)  (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 2nd day of September 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](mailto:john.jones@ohioAGO.gov)  Attorney Examiner:  [james.lynn@puco.ohio.gov](mailto:james.lynn@puco.ohio.gov) |  |

1. Advocates for Basic Legal Equality, Inc., Legal Aid Society of Columbus, Office of The Ohio Consumers’ Counsel, Ohio Poverty Law Center, Pro Seniors, Inc., Southeastern Ohio Legal Services, and Legal Aid Society of Southwest Ohio, LLC. [↑](#footnote-ref-2)
2. The Public Utilities Commission of Ohio. [↑](#footnote-ref-3)
3. R.C. 4928.542(A). [↑](#footnote-ref-4)
4. R.C. 4928.542(B). [↑](#footnote-ref-5)
5. *See* R.C. Chapter 4911, R.C. 4903.221, and Ohio Adm. Code 4901-1-11. [↑](#footnote-ref-6)
6. Despite intervening jointly, each party is free to advocate for issues individually. [↑](#footnote-ref-7)
7. OCC is the statutory representative of Ohio’s approximately 4.5 million residential utility customers; ABLE is a non-profit regional law firm that provides high-quality legal assistance to help low-income individuals and groups in Ohio achieve self-reliance, and equal justice and economic opportunity; LASC works to assist low-income and elderly individuals living in Columbus and Central Ohio combat unfairness and injustice, and to help people rise out of poverty; OPLC works to reduce poverty and increase justice by protecting the legal rights of Ohioans living in poverty; Pro Seniors, Inc. provides education, advice, advocacy, representation and justice for seniors in Ohio through our three programs, all provided at no cost to clients; SEOLS is an LSC-funded legal services program whose mission is to act as general counsel to a client community residing throughout thirty rural counties in southeast Ohio and, as such, provide the highest quality of legal services to its clients toward the objective of enabling poor people to assert their rights and interests. [↑](#footnote-ref-8)
8. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20. [↑](#footnote-ref-9)