**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| --- | --- | --- |
| In the Matter of the Audit of the Energy Efficiency and Peak Demand Reductions Achieved by the Electric Distribution Utilities Pursuant to R.C. 4928.66 | )  )  )  ) | Case No. 19-0002-EL-UNC |

**MOTION TO INTERVENE**

**BY**

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

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene[[1]](#footnote-2) in this proceeding where the PUCO is auditing whether each of the electric utilities[[2]](#footnote-3) have delivered to Ohioans the energy efficiency and peak demand reductions that they have claimed in their annual report under R.C. 4928.66(B). Ohioans are charged hundreds of millions of dollars for these programs.

OCC represents the interests of 4.2 million residential electric utility customers in Ohio. The PUCO should grant OCC’s motion to intervene for the reasons set forth in the attached memorandum in support.

Respectfully submitted,

Bruce Weston (0016973)

Ohio Consumers’ Counsel

*/s/ Angela O’Brien\_\_\_\_*

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## MEMORANDUM IN SUPPORT

The electric utilities are required to comply with the energy efficiency and peak demand reduction (collectively, “energy efficiency”) requirements set forth in R.C. 4928.66 through 4928.662, regarding their programs that are funded by millions of Ohioans. R.C. 4928.66(B) requires the PUCO to “produce and docket an annual report containing the results of its verification of the levels of energy efficiency and of peak demand reductions achieved by each electric distribution utility pursuant to division (A) of this section.” The statute further requires that the report be provided to OCC. *Id.* The PUCO initiated the instant proceeding for this purpose. OCC has statutory authority to represent the interests of 4.2 million residential electric utility customers under R.C. Chapter 4911. Considering the complexity of the issues involved, and the effect they have on the electric utilities’ customers, it is important that the PUCO thoroughly review the electric utilities’ compliance with energy efficiency requirements.

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 the electric utilities’ residential customers may be “adversely affected” by this case, especially if they were unrepresented in a proceeding to determine the electric utilities’ compliance with energy efficiency requirements. 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 the electric utilities’ residential customers regarding reviews of the electric utilities’ compliance with energy efficiency requirements under Ohio law. 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 shareholders. As a representative of the electric utilities’ residential customers who will be affected by the outcome of this case, OCC is an “interested stakeholder.”

Second, OCC’s advocacy for residential customers will include advancing the position that the electric utilities should comply with the energy efficiency requirements under Ohio law. 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 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 where the PUCO will determine the electric utilities’ compliance with energy efficiency requirements.

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 customers. That interest is different from, and not represented by, any other entity in Ohio.

Further, the Supreme Court of Ohio (“Court”) affirmed 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.[[3]](#footnote-4)

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Court 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/ Angela O’Brien\_\_\_\_*

Christopher Healey (0086027)

Counsel of Record

Angela O’Brien (0097579)

Assistant Consumers’ Counsel

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**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 6th day of February 2019.

*/s/ Angela O’Brien*

Angela O’Brien

Assistant Consumers’ Counsel

**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. Ohio Power Company, d/b/a AEP Ohio, Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, The Dayton Power and Light Company, and Duke Energy of Ohio, Inc. (collectively the “electric utilities”). [↑](#footnote-ref-3)
3. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20. [↑](#footnote-ref-4)