

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of for the)	
Ohio Department of Development for an)	Case No. 08-658-EL-UNC
Order Approving Adjustments to the)	
Universal Service Fund Riders of)	
Jurisdictional Ohio Electric Distribution)	
Utilities.)	

**MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of all residential customers of electric distribution utilities in the State of Ohio, moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in the above-captioned proceeding concerning the Ohio Department of Development's ("ODOD") Notice of Intent to File an Application ("Notice") to adjust the Universal Service Fund Riders ("USF").¹ OCC's Motion to Intervene ("Motion") should be granted because OCC meets the legal standards for intervention, as explained in detail in the attached Memorandum in Support.

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¹ See R.C. Chapter 4911.02(B)(2); R.C. 4903.221; and Ohio Adm. Code 4901-1-11.

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Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On June 2, 2008, ODOD filed its Notice with the PUCO that ODOD intends to apply for approval to adjust the Universal Service Fund Riders (“USF”) applicable to Ohio electric distribution utilities. The USF collects costs of the low income energy efficiency program and the Percentage of Income Payment Plan as well as various costs associated with these programs.

The Notice was the subject of a Stipulation and Recommendation (“2006 Stipulation”) filed with, and approved by, the Commission in Case No. 06-751-EL-UNC.² The Notice process was first initiated in Case No. 04-1616-EL-UNC in order to provide interested parties an opportunity to contest applications for adjustment in the context of a hearing.³

² *In the Matter of the Application of the Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 07-661-EL-UNC, Opinion and Order (December 20, 2006).

³ *In the Matter of the Application of the Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 04-1616-EL-UNC, Opinion and Order (December 8, 2004).

II. INTERVENTION

OCC moves to intervene under its legislative authority to represent residential utility consumers in Ohio, under R.C. Chapter 4911.02(B)(2). R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding may seek intervention in that proceeding. OCC meets this standard because the interests of Ohio’s residential consumers may be “adversely affected,” especially if residential consumers are unrepresented in a proceeding regarding an adjustment to the USF that requires payments by residential customers. An increase in the USF, which ODOD requests in its Application, would be paid by Ohio’s approximately 4.5 million residential electric customers. Thus, the “adversely affected” element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission 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.

OCC meets these criteria.

First, the nature and extent of OCC’s interest is representing Ohio’s residential electric distribution customers. This interest is different than that of any other party because OCC represents *all* residential ratepayers of Ohio’s regulated electric distribution utilities.

Second, OCC's legal position is that the USF rates should be no more than what is reasonable and permissible under Ohio law, for service that is adequate under Ohio law. This position includes concern that rates for the USF should be no more than what is reasonable and lawful. 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 proceeding. OCC has longstanding expertise and experience in PUCO proceedings, and will contribute to the process of the case.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will present arguments 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 in a proceeding, 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 in this case because the rates residential electric distribution customers must pay will be adjusted.

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 Commission 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 because it has been uniquely 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 has confirmed OCC's right to intervene in PUCO proceedings in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC's intervention and that OCC should have been granted intervention.⁴

OCC meets the criteria set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11. Additionally, granting OCC intervention is consistent with the intervention standards explained by the Supreme Court of Ohio. On behalf of Ohio's residential utility customers, the Commission should grant OCC's Motion to Intervene.

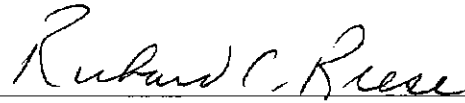
III. CONCLUSION

For the reasons stated above, the Commission should grant OCC's Motion to Intervene on behalf of the millions of Ohioans who have an interest in the outcome of this case.

⁴ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

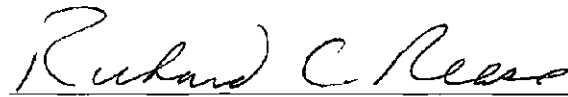
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's *Motion to Intervene* was served upon the persons listed below via first class U.S. Mail, postage prepaid, this 8th day of July, 2008.



Richard C. Reese
Assistant Consumers' Counsel

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