

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Applications of)	
Various Mercantile Companies and)	
Electric Utilities for Approval of Special)	Case No. 10-833-EL-EEC
Arrangements and Exemptions from)	
Payment of Energy Efficiency and Peak)	
Demand Reduction Riders.)	

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case in which the consideration and approval of mercantile customer energy efficiency and peak demand reduction programs may affect the development and types of programs offered to other customer classes.¹ OCC is filing on behalf of all Ohio residential utility consumers of Ohio's investor-owned utility companies ("Utilities"). The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

¹ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

Respectfully submitted,

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CONSUMERS' COUNSEL

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MEMORANDUM IN SUPPORT

This case involves the review of the reasonableness and lawfulness of applications of various mercantile customers for a special arrangement or exemption from the payment of energy efficiency and peak demand reduction program (“EE/PDR Programs”) riders. OCC has maintained an interest in various mercantile cases in the interest of ensuring that actual energy savings are demonstrated in the application process and that the development of new utility-sponsored EE/PDR Programs is not slowed due to over-reliance by Ohio utilities on individual, existing customer efforts to meet energy efficiency benchmarks. OCC has authority under law to represent the interests of all Ohio residential utility customers, 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, especially if the consumers were unrepresented in a proceeding where the cost-effectiveness, reasonableness, and review of EE/PDR Programs may affect the development of other programs that would benefit residential customers. Thus, this 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.

First, the nature and extent of OCC's interest is representing all Ohio residential utility consumers in order to ensure that utility energy efficiency programs benefit all customers and comply with the benchmarks presented in Senate Bill 221 ("SB 221").² 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 consumers will include advancing the position that EE/PDR Programs should be cost-effective and reasonable in order to accomplish the goals of SB 221, among which is to "ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonable priced retail electric service."³ 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.

² R.C. 4928.66(A).

³ R.C. 4928.02(A).

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 residential utility consumer advocate, OCC has a very real and substantial interest in this case where present and future compliance with the energy efficiency and peak demand reduction goals of SB 221 are at stake.

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 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 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, 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 Commission should grant OCC's Motion to Intervene.

Respectfully submitted,

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⁴ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

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 22nd day of June 2010.

/s/ Christopher J. Allwein

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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel
electronically filed by Ms. Deb J. Bingham on behalf of ALLWEIN, CHRISTOPHER J