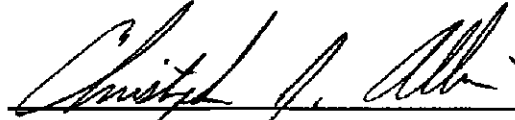


Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Christopher J. Allwein", written over a horizontal line.

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Aligning Electric)
Distribution Utility Rate Structure With) Case No. 10-3126-EL-UNC
Ohio's Public Policies to Promote)
Competition, Energy Efficiency, and)
Distributed Generation.)

MEMORANDUM IN SUPPORT

The Commission is soliciting comments on possible changes to the rate recovery mechanism currently employed by Ohio electric distribution utilities. Modifications may be considered and employed by the PUCO in order to “better align utility performance with Ohio’s desired public policy outcomes,”² and to “eliminate or mitigate the throughput incentive [the motivation to sell more electricity] for [...] electric [...] utilities.”³ This action is motivated in part by Ohio statutory policy mandating electric distribution utilities to implement energy efficiency programs.⁴ The PUCO has indicated that it may consider some form of decoupling (a type of rate design that breaks or weakens the link between usage volume and utility revenue by “decoupling” revenue from sales).⁵ OCC has authority under law to represent the interests of all Ohio residential electric 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

² Entry at 1 (Introduction) (December 29, 2010).

³ Id., Entry at 2 (part III.)

⁴ R.C. 4928.66

⁵ Entry at 1 (Introduction) (December 29, 2010).

Ohio's residential customers may be "adversely affected" by this case, especially if the customers were unrepresented in a proceeding where residential electric utility customers' bills may be impacted by a change in the current rate recovery design. 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 the residential customers of Ohio's electric utilities in this case involving modifications to the currently employed method by which the PUCO establishes electric utility customer rates. 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 customers will include advancing the position that any modifications to rate recovery considered to mitigate or eliminate electric utilities' throughput incentive (the incentive to increase profit by increasing sales) should truly align the interests of utility companies and customers and not adversely affect customers' bills and *customer interest* in energy efficiency. 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 customers, OCC has a very real and substantial interest in this case where modifications may be considered for employment that could substantially affect electric residential utility customers' bills.

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 customers. That interest is different from, and not represented by, any

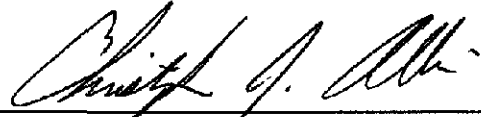
other entity in Ohio.

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.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 Commission should grant OCC's Motion to Intervene.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



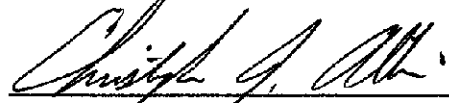
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⁶ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below *via* regular U.S. mail, postage prepaid, this 4th day of February, 2011.



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