

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Annual Verification of the)
Energy Efficiency and Peak Demand) Case No. 12-665-EL-UNC
Reductions Achieved by the Electric)
Distribution Utilities Pursuant to Section)
4928.66, Revised Code.)

**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 annual verification of Ohio's electric distribution utilities' energy efficiency and peak demand reduction programs will be conducted.¹ The OCC files on behalf of all the approximately 4.1 million residential utility customers of the electric distribution utilities ("EDUs" or "Companies") regulated by the Public Utilities Commission of Ohio ("Commission" or "PUCO").² The Commission should grant the OCC's Motion for the reasons 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.

² The EDUs are the Dayton Power and Light Company, Duke Energy Ohio, Ohio Power Company, Cleveland Electric Illuminating, Ohio Edison Company, and Toledo Edison Company. The verification process will also include results for the Columbus Southern Power Company, recently merged with the Ohio Power Company.

Respectfully submitted,

BRUCE J. WESTON
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MEMORANDUM IN SUPPORT

This case involves the annual verification of the energy efficiency and peak demand reduction programs conducted by Ohio’s EDUs under the requirements of R.C. 4928.66, programs conducted for the benefit of customers and paid for, in significant part, by residential utility customers. The OCC has authority under law to represent the interests of all the approximately 4.1 million residential utility customers of the EDUs, 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 customers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding that is an important component to the regulatory process that oversees energy efficiency and peak demand reduction programs under Ohio law. 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 the OCC's interest is representing the residential customers of Ohio's EDUs in this case that involves the annual verification of each electric utility's reductions regarding energy efficiency and peak demand, as required by R.C. 4928.66. 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, the OCC's advocacy for residential customers will include advancing the position that the benefits from energy efficiency and peak demand reduction programs, for which residential customer pay, should be realized under the requirements in Ohio law. The 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, the OCC's intervention will not unduly prolong or delay the proceedings. The 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, the OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. The OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

The OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that the 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, the OCC has a very real and substantial interest in this case where the annual verification of Ohio’s EDUs’ energy efficiency and peak demand reduction programs will be conducted.

In addition, the 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 the OCC already has addressed and that the 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 the OCC does not concede the lawfulness of this criterion, the 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 the OCC’s right to intervene in PUCO proceedings, in deciding two appeals in which the OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying the OCC’s interventions and that the OCC should have been granted intervention in both proceedings.³

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

The 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 the OCC's Motion to Intervene.

Respectfully submitted,

BRUCE J. WESTON
INTERIM CONSUMERS' COUNSEL

/s/ Jeffrey L. Small

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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 regular U.S. mail service, postage prepaid, this 5th day of March 2012.

/s/ Jeffrey L. Small

Jeffrey L. Small

Assistant Consumers' Counsel

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/5/2012 9:54:51 AM

in

Case No(s). 12-0665-EL-UNC

Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Small, Jeffrey L. Mr.