

In the Matter of the Implementation of )  
Sections 4928.54 and 4928.544 of the ) Case No. 16-247-EL-UNC  
Revised Code. )

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene<sup>1</sup> in this case where the Public Utilities Commission of Ohio ("PUCO") is seeking comments for the aggregation and auctioning of the load related to low-income customer assistance programs, because all Ohioans pay the Universal Service Fund ("USF") Rider that collects the costs of the low-income program. OCC is filing on behalf of all the approximately 4.2 million residential utility customers of Ohio's electric utilities ("EDUs"). The reasons the PUCO should grant OCC's Motion are further set forth in the attached Memorandum in Support.

BRUCE J. WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

<sup>1</sup> See R.C. Chapter 4911, R.C. 4903.221, R.C. Chapter 4928.53 and Ohio Adm. Code 4901-1-11.

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: Etter Direct – 614-466-7964

Telephone: Kumar Direct – 614-466-1292

Telephone: Healey Direct – 614-466-9571

[terry.etter@occ.ohio.gov](mailto:terry.etter@occ.ohio.gov)

(will accept service via email)

[Ajay.Kumar@occ.ohio.gov](mailto:Ajay.Kumar@occ.ohio.gov)

(will accept service via email)

[Christopher.Healey@occ.ohio.gov](mailto:Christopher.Healey@occ.ohio.gov)

(will accept service via email)

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Implementation of                     )  
Sections 4928.54 and 4928.544 of the                     ) Case No. 16-247-EL-UNC  
Revised Code.   )

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**MEMORANDUM IN SUPPORT**

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In this proceeding, the PUCO is requesting comments on the proposed plan regarding the competitive auction process that could be used to procure electricity to supply Percentage of Income Payment Plan (“PIPP”). The PIPP provides assistance to low income residential customers so that electric service for disadvantaged Ohioans is more affordable. This proceeding will affect PIPP customers because it will establish the auction process for determining the rates PIPP customers will pay. PIPP is funded through the Universal Service Fund (“USF”) Riders that all customers are required to pay. This proceeding will thus influence residential customers not on PIPP because it will affect the rate that they pay for the low-income program through the USF. OCC has authority under law to represent the interests of all the approximately 4.2 million residential utility customers of Ohio’s 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 where rates will be set for USF Riders. All residential customers who are not PIPP customers are required to pay these rates and to fund programs which low income residential customers may be eligible to receive. 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 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 EDUs in this case involving the costs of the USF Riders. This interest is different than that of any other party and especially different than that of EDUs whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential customers will include advancing the position that the USF Riders they pay should be set at a level that is no more than what is reasonable and lawful under Ohio law, for service that is adequate 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 the full development and equitable resolution of the factual issues. OCC's comments will help 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 potential adjustments to the Standard Service Offer auctions and auctions that determine the cost of serving the PIPP load will be determined.

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.

Moreover, the Supreme Court of Ohio confirmed 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.<sup>2</sup>

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 PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

BRUCE J. WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

/s/ Ajay Kumar

Terry Etter (0067445), Counsel of Record  
Assistant Consumers' Counsel  
Ajay Kumar (0092208)  
Christopher Healey (0086027)  
Staff Attorneys

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
Telephone: Etter Direct – 614-466-7964  
Telephone: Kumar Direct – 614-466-1292  
Telephone: Healey Direct – 614-466-9571  
[Terry.Etter@occ.ohio.gov](mailto:Terry.Etter@occ.ohio.gov)  
(will accept service via email)  
[Ajay.Kumar@occ.ohio.gov](mailto:Ajay.Kumar@occ.ohio.gov)  
(will accept service via email)  
[Christopher.Healey@occ.ohio.gov](mailto:Christopher.Healey@occ.ohio.gov)  
(will accept service via email)

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<sup>2</sup> See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

### **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 8<sup>th</sup> day of February, 2016.

/s/ Ajay Kumar  
Ajay Kumar  
Staff Attorney

### **SERVICE LIST**

[William.wright@puc.state.oh.us](mailto:William.wright@puc.state.oh.us)  
[Thomas.mcnamee@puc.state.oh.us](mailto:Thomas.mcnamee@puc.state.oh.us)  
[Bryce.mckenney@puc.state.oh.us](mailto:Bryce.mckenney@puc.state.oh.us)

[dstinson@bricker.com](mailto:dstinson@bricker.com)  
[stnourse@aep.com](mailto:stnourse@aep.com)  
[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)  
[ibatikov@vorys.com](mailto:ibatikov@vorys.com)  
[mjsettineri@vorys.com](mailto:mjsettineri@vorys.com)

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Summary: Motion Motion to Intervene by The Office of the Ohio Consumers' Counsel  
electronically filed by Ms. Jamie Williams on behalf of Mr. Terry Etter