

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

The Office of the Ohio Consumers’ Counsel,)	
)	Case No. 16-0782-EL-CSS
)	
Complainant,)	
)	
v.)	
)	
Ohio Power Company,)	
)	
Respondent.)	
)	

**MOTION TO INTERVENE
OF THE OHIO APARTMENT ASSOCIATION AND THE INTERNATIONAL
COUNCIL OF SHOPPING CENTERS**

Pursuant to Ohio Revised Code § 4903.221 and O.A.C. 4901-1-11, the Ohio Apartment Association (“OAA”) and the International Council of Shopping Centers (“ICSC”) (collectively, “OAA/ICSC”) hereby move to intervene in this proceeding. OAA/ICSC have a number of real and substantial interests in this proceeding and their interests, which may be prejudiced by the results of this proceeding, are not adequately represented by existing parties. Thus, as set forth more fully in the attached memorandum in support, OAA/ICSC respectfully request that the Commission grant this timely request to intervene.

Respectfully submitted,

/s/ Mark T. Keaney

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**MEMORANDUM IN SUPPORT OF THE MOTION TO INTERVENE
OF THE OHIO APARTMENT ASSOCIATION AND THE INTERNATIONAL
COUNCIL OF SHOPPING CENTERS**

I. Introduction

In this proceeding, the Office of the Ohio Consumers' Counsel ("OCC") seeks an order from the Commission directing the Ohio Power Company ("AEP Ohio") to amend and/or enforce its existing tariffs to expressly prohibit the resale and redistribution of electric services to residential customers by submetering entities or third-party agents that are neither landlords nor consumers of utility service (the "Complaint"). On April 12, 2016, OCC filed this Complaint, as well as a Motion for Moratorium to Stop AEP Ohio From Providing New Service to Those Who Resell Service on Submetered Residential Consumers ("Motion for Moratorium").

Four months prior to the filing of OCC's Complaint, the Commission opened an investigation on December 16, 2015, to determine the Commission's jurisdiction over submetering by condominium associations and similar entities in the State of Ohio. *See In the Matter of the Commission's Investigation of Submetering in the state of Ohio*, Case No. 15-1594-AU-COI ("Submetering Investigation"). OAA/ICSC represent the interests of many of Ohio's

residential and commercial landlords, many of whom routinely utilize submetering or employ third-party submetering entities to bill tenants for utility services; accordingly, as an interested stakeholder in the outcome of the Submetering Investigation, OAA/ICSC provided the Commission with its Initial and Reply Comments. The parties in the instant case, *i.e.*, OCC and AEP Ohio, also filed Initial and Reply Comments as interested stakeholders in the Commission's Submetering Investigation. To date, the Commission has yet to issue a decision in the Submetering Investigation.

The issues in the Submetering Investigation substantially duplicate those raised in the instant case. The Commission should therefore grant OAA/ICSC's Motion to Intervene to conserve its resources, avoid potentially conflicting decisions, relieve the parties and other interested stakeholders of the costs and vexation of parallel, duplicative proceedings, and promote an efficient administrative system. As representatives of various commercial and residential landlords throughout the State of Ohio, OAA/ICSC have a real and substantial interest in this proceeding, as well as in the Submetering Investigation. The Commission's disposition of this proceeding may impair or impede OAA/ICSC's ability to protect that interest. Thus, OAA/ICSC respectfully request that the Commission grant their Motion to Intervene in this proceeding.

II. Legal Standard

R.C. § 4903.221 provides that any "person who may be adversely affected by a public utilities commission proceeding" may intervene in the proceeding. The Commission's own rules reinforce the right to intervene:

Upon timely motion, any person *shall be* permitted to intervene in a proceeding upon a showing that . . . [t]he person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter,

impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

O.A.C. 4901-1-11(A) (emphasis added). “The regulation’s text is very similar to Civ. R. 24 – the rule governing intervention in civil cases in Ohio – which is generally liberally construed in favor of intervention.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 387 (2006) (internal quotations omitted). In considering a motion to intervene, the Commission’s rule directs that the Commission should consider: the nature and extent of the intervenor’s interest; the legal position advanced by the intervenor and its probable relation to the merits of the case; whether intervention will unduly prolong or delay the proceedings; whether the intervenor will significantly contribute to full development and equitable resolution of the factual issues; and the extent to which the intervenor’s interest is represented by existing parties. *See* O.A.C. 4901-1-11(B)(1)-(5); *see also* R.C. § 4903.221(B)(1)-(4). OAA/ICSC’s Motion to Intervene satisfies each of these factors.

III. Argument

A. The Nature And Extent Of OAA/ICSC’s Interest

As representatives of many of Ohio’s residential and commercial landlords who use submetering entities to bill tenants for utility services, OAA/ICSC is directly affected by the issues raised in OCC’s Complaint. While OCC and AEP Ohio slightly diverge on the specifics of proposed tariff changes related to submetering, both parties in this case agree that the Commission should expedite its review of OCC’s Complaint, that submetering is harmful, that the Commission should exercise jurisdiction over certain submetering issues, and that the Commission should make certain tariff amendments related to submetering. OCC and AEP Ohio’s proposed tariff amendments related to submetering could directly and adversely impact various residential and commercial landlords in Ohio who utilize or otherwise employ entities

providing submetering services. Consequently, OAA/ICSC have a substantial interest in the outcome of this proceeding because any significant changes to the submetering regulations will have a direct impact on both commercial and residential landlords. If the Commission grants AEP Ohio's Motion for Tariff Amendment,¹ it could force those landlords to expend significant funds to comply with such an order. That interest cannot be represented by any other party to this proceeding, as no other party represents residential and commercial landlords in Ohio who employ submetering services in their facilities.

Additionally, the parties in this case, as well as OAA/ICSC, have already provided extensive, substantive comments in the Commission's ongoing Submetering Investigation, an investigation which concerns the same submetering issues raised in OCC's Complaint. Because the Commission has already obtained comments regarding the same submetering issues in a parallel proceeding for the last five months, the Commission should grant OAA/ICSC's Motion to Intervene. In doing so, the Commission will conserve its administrative resources, prevent potentially inconsistent decisions, relieve the parties and other interested stakeholders of the costs and vexation of parallel, duplicative proceedings, and promote an efficient administrative system.

B. The Legal Position Asserted by OAA/ICSC

OAA/ICSC seek to intervene to ensure that the Commission thoroughly considers and evaluates the legal issues and the potentially harmful financial consequences to many Ohio landlords that would result if the parties in this case, who do not represent the interests residential or commercial landlords in Ohio, obtain the relief they are seeking.

¹ AEP Ohio's Motion for Tariff Amendment, which was filed contemporaneously with AEP Ohio's Answer to OCC's Complaint, proposes that the Commission adopt specific tariff language that would allow AEP Ohio to discontinue electric service to any premises where any entity profits from the assessment of charges to tenants for electric service.

C. OAA/ICSC's Intervention Will Not Unduly Prolong Or Delay The Proceedings.

OCC filed its Complaint and Motion for Moratorium on April 12, 2016 and no case schedule has been set at this point. As a result, OAA/ICSC's Motion to Intervene is timely and will not prejudice any existing parties or unduly prolong or delay the proceedings.²

D. OAA/ICSC Will Contribute To The Full Development Of Factual Issues, And OAA/ICSC's Interests Are Not Already Represented By Existing Parties.

OAA/ICSC are two large organizations that serve as representatives for residential and commercial landlords throughout the State of Ohio, many of whom employ submetering services in their facilities to bill tenants for utility expenses. As a result, OAA/ICSC is uniquely situated to contribute to the full development of factual issues in this case, which concern efforts by OCC and AEP Ohio to amend tariffs that will directly and adversely impact many OCC/ICSC members. OAA/ICSC have substantial experience in Commission proceedings, including the Commission's ongoing Submetering Investigation, which experience may benefit the Commission's review of OCC's Complaint.³ OAA/ICSC participation will significantly contribute to the full development and resolution of the issues raised by OCC's Complaint. OAA/ICSC interests are not already represented by existing parties, as no other party currently involved in this proceeding currently represents the interests of commercial or residential landlords in Ohio that use submetering services in their facilities.

²See O.A.C. 4901:1-11(E) (providing that a motion to intervene "will not be considered timely if it is filed later than five days prior to the scheduled date of hearing or any specific deadline established by order of the commission for purposes of a particular proceeding").

³ See, e.g., Case No. 12-426-EL-SSO; Case No. 08-1094-EL-SSO.

IV. Conclusion

WHEREFORE, OAA/ICSC respectfully request that the Commission grant this Motion to Intervene and allow OAA/ICSC to be made a party of record to this proceeding.

Respectfully submitted,

/s/ Mark T. Keaney

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CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 12th day of May, 2016. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Mark T. Keaney
One of the Attorneys for OAA/ICSC

This foregoing document was electronically filed with the Public Utilities

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Case No(s). 16-0782-EL-CSS

Summary: Motion to Intervene and Memorandum In Support of the Ohio Apartment Association and the International Council of Shopping Centers electronically filed by Mr. Mark T Keaney on behalf of Ohio Apartment Association and International Council of Shopping Centers