BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Investigation of)	
Submetering in the State of Ohio)	
		Case No. 15-1594-AU-COI

MOTION TO INTERVENE OF THE BUILDING OWNERS AND MANAGERS ASSOCIATION OF GREATER CLEVELAND AND THE BUILDING OWNERS AND MANAGERS ASSOCTION OF OHIO

Pursuant to Ohio Revised Code Section ("R.C.") 4903.221 and Ohio Administrative Code ("OAC") Rule 4901-1-11, the Building Owners and Managers Association of Greater Cleveland ("BOMA Cleveland") and the Building Owners and Managers Association of Ohio ("BOMA Ohio", collectively "BOMA") respectfully request that the Public Utilities Commission of Ohio ("Commission") grant their motion to intervene in this proceeding. The reasons supporting BOMA's intervention are contained in the accompanying Memorandum in Support.

Respectfully submitted,

Glenn S. Krassen

BRICKER & ECKLER LLP

1001 Lakeside Avenue East, Suite 1350

Cleveland, Ohio 44114

Telephone: (216) 523-5469 Facsimile: (216) 523-7071

E-mail: gkrassen@bricker.com

Dane Stinson

Dylan Borchers

BRICKER & ECKLER LLP

100 South Third Street

Columbus, Ohio 43215

Telephone: (614) 227-2300 Facsimile: (614227-2390

E-mail: dstinson@bricker.com

dborchers@bricker.com

Attorneys for Building Owners and Managers Association of Greater Cleveland and Building Owners and Managers Association of Ohio

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MEMORANDUM IN SUPPORT

By entry of issued December 16, 2015 ("Entry"), the Public Utilities Commission of Ohio ("Commission") initiated an investigation "to determine the scope of the Commission's jurisdiction over submetering by condominium associations and similar entities in the state of Ohio." Entry at 3. Comments were filed on January 21, 2016 and reply comments were filed on February 5, 2016.

By Opinion and Order issued December 7. 2016, the Commission effectively expanded the scope of its investigation and found that it would regulate "any business," including a landlord, as a public utility, upon a finding that it "resells or redistributes utility services and charges an end use customer a threshold percentage above the total bill charges for a similarly situated customer served by the utility's tariffed rates." Order at 8.

The Building Owners and Managers Association of Ohio ("BOMA Ohio") is a professional trade organization representing the six local BOMA associations located in Akron, Cincinnati, Cleveland, Columbus, Dayton, and Toledo. Together they represent commercial property owners that lease over 182,000,000 square feet of office space throughout the State of Ohio. BOMA Ohio estimates its collective electricity usage to be over 2.8 trillion kWh. BOMA Ohio contributes \$5.67 billion to the state economy and supports over 46,500 jobs.

The Building Owners and Managers Association of Cleveland ("BOMA Cleveland) represents nearly 40 million square feet of office space in the greater Cleveland area that houses more than 2,000 companies with exiting lease arrangements.

BOMA Ohio and BOMA Cleveland (collectively, "BOMA") represent a significant number of Ohio's commercial landlords who have a substantial interest in this proceeding – specifically, that the leasing arrangements they enter into with sophisticated commercial customers not be subject to the burdens and expense of regulation by the Commission.

R.C. 4903.221(B) and OAC Rule 4901-1-11(A)(2) govern intervention in Commission proceedings. Substantially similar in substance, these provisions explain that the Commission may consider the following in determining whether to grant intervention:

- (1) The nature and extent of the person's interest;¹
- (2) The legal position of the person seeking intervention and its relation to the merits of the case;²
- (3) Whether intervention would unduly delay the proceeding or unjustly prejudice any existing party;³
- (4) The person's potential contribution to full development and equitable resolution of the issues involved in the proceeding;⁴ and
- (5) The extent to which the person's interest is represented by existing parties.⁵

BOMA recognizes that this proceeding is uncontested and that it is statutorily permitted to seek rehearing pursuant to R.C. 4903.10. BOMA seeks formal party status to further protect its interest in this matter on rehearing and potential appeal.

¹ RC 4903.221(B)(1) and OAC Rule 4901-1-11(B)(1).

 $^{^{2}}$ RC 4903.221(B)(2) and OAC Rule 4901-1-11(B)(2).

³ RC 4903.221(B)(3) and OAC Rule 4901-1-11(B)(3).

⁴ RC 4903.221(B)(4) and OAC Rule 4901-1-11(B)(4).

⁵ OAC Rule 4901-1-11(B)(5).

BOMA's motion to intervene is timely because no hearing has been held in this case and the Commission's Order is not yet final. Moreover, it has a real and substantial interest in this proceeding, the legal issues it intends to raise directly relate to the merits of this case, and it will contribute to the full development and equitable resolution of issues in this proceeding – all as reflected in BOMA's application for rehearing contemporaneously filed this date, which it expressly incorporates by reference herein.

BOMA's intervention will not delay this proceeding because its participation is limited to seeking rehearing of the Commission's expansive ruling. Further, BOMA's unique and pecuniary interests are not represented by any other party. Disposition of this proceeding without BOMA's participation will impair or impede its ability to protect these interests.

WHEREFORE, and for the reasons set forth above, BOMA respectfully requests that the Commission grant its motion to intervene.

Respectfully submitted,

Glenn S. Krassen

BRICKER & ECKLER LLP

1001 Lakeside Avenue East, Suite 1350

Cleveland, Ohio 44114 Telephone: (216) 523-5469 Facsimile: (216) 523-7071

E-mail: gkrassen@bricker.com

Dane Stinson
Dylan Borchers

BRICKER & ECKLER LLP

100 South Third Street Columbus, Ohio 43215

Telephone: (614) 227-2300 Facsimile: (614227-2390

E-mail: dstinson@bricker.com

dborchers@bricker.com

Attorneys for Building Owners and Managers Association of Greater Cleveland and Building Owners and Managers Association of Ohio

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion to Intervene was served upon the parties of record listed below this $\underline{6}^{th}$ day of January 2017 *via* electronic mail.

Glenn S. Krassen

whitt@whitt-sturtevant.com mhpetricoff@vorys.com Jodi.bair@occ.ohio.gov Bojko@carpenterlipps.com cmooney@ohiopartners.org stnourse@aep.com mjsatterwhite@aep.com msmckenzie@aep.com slesser@calfee.com mcorbett@calfee.com Randall.Griffin@aes.com William.wright@puc.state.oh.us joliker@igsenergy.com mswhite@igsenergy.com campbell@whitt-sturtevant.com Bryce.mckenney@puc.state.oh.us fdarr@mwncmh.com mpritchard@mwncmh.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/6/2017 4:56:09 PM

in

Case No(s). 15-1594-AU-COI

Summary: Motion to Intervene of the Building Owners and Managers Association of Greater Cleveland and the Building Owners and Managers Association of Ohio electronically filed by Teresa Orahood on behalf of Glenn S. Krassen