

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Procurement of Standard)
Service Offer Generation as Part of the Fourth) Case No. 16-776-EL-UNC
Electric Security Plan for Customers of Ohio)
Edison Company, the Cleveland Electric)
Illuminating Company, and The Toledo Edison)
Company.)

In the Matter of the Procurement of Standard)
Service Offer Generation for Customers of the) Case No. 17-957-EL-UNC
Dayton Power and Light Company.)

In the Matter of the Procurement of Standard)
Service Offer Generation for Customers of Ohio) Case No. 17-2391-EL-UNC
Power Company.)

In the Matter of the Procurement of Standard)
Service Offer Generation for Customers of) Case No. 18-6000-EL-UNC
Duke Energy Ohio, Inc.)

**MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The PUCO has asked stakeholders to provide comments on the procedure for pricing capacity through SSO auctions as a result of uncertain future wholesale capacity prices. Typically, the price of capacity is known at the time of the SSO auction because the corresponding capacity auction at PJM Interconnection LLC (“PJM”) has already occurred. But PJM’s capacity auctions have been delayed, resulting in a situation where potential bidders in the SSO auction will need to bid to provide capacity without knowing the capacity price. The PUCO is soliciting comments on how such auctions should address this uncertainty. OCC has authority under law to represent the interests of more than four million residential utility customers in Ohio under R.C. Chapter 4911.

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene where the Public Utilities Commission of Ohio ("PUCO") is evaluating potential changes to the procedures for Ohio's electric distribution utilities' standard service offer ("SSO") auctions.¹ These changes could affect—and potentially increase—the price that customers pay to receive electric generation service from the competitively-priced SSO. OCC is filing on behalf of more than four million Ohio residential utility customers. The reasons the PUCO should grant OCC's motion are further set forth in the attached memorandum in support.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Christopher Healey

Christopher Healey (0086027)
Counsel of Record
William Michael (0070921)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

65 East State Street, 7th Floor
Columbus, Ohio 43215
Telephone [Healey]: (614) 466-9571
Telephone [Michael]: (614) 466-1291
Christopher.healey@occ.ohio.gov
William.michael@occ.ohio.gov
(Willing to accept service by e-mail)

¹ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

| | | | |
|--|---|---|-------------------------|
| In the Matter of the Procurement of Standard Service Offer Generation as Part of the Fourth Electric Security Plan for Customers of Ohio Edison Company, the Cleveland Electric Illuminating Company, and The Toledo Edison Company. |) |) | Case No. 16-776-EL-UNC |
| In the Matter of the Procurement of Standard Service Offer Generation for Customers of the Dayton Power and Light Company. |) |) | Case No. 17-957-EL-UNC |
| In the Matter of the Procurement of Standard Service Offer Generation for Customers of Ohio Power Company. |) |) | Case No. 17-2391-EL-UNC |
| In the Matter of the Procurement of Standard Service Offer Generation for Customers of Duke Energy Ohio, Inc. |) |) | Case No. 18-6000-EL-UNC |

MEMORANDUM IN SUPPORT

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 could affect the price that they pay for generation service through their utility’s standard service offer. 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 proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest in representing Ohio's residential customers involves the price that residential customers pay for generation service under their utility's standard service offer. This interest is different than that of any other party and especially different than that of utilities and energy suppliers whose advocacy includes the financial interest of their shareholders.

Second, OCC's advocacy for residential customers will include, among other things, advancing the position that customers should benefit from lower prices resulting from competitively-procured generation service through SSO auctions. OCC's position is therefore directly related to the merits of this case, which 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 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 the PUCO is considering procedures for future SSO auctions that will ultimately dictate what customers pay for generation service.

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), which OCC already has addressed and which 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 (“Court”) 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.²

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.

² See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Christopher Healey

Christopher Healey (0086027)
Counsel of Record
William Michael (0070921)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

65 East State Street, 7th Floor

Columbus, Ohio 43215

Telephone [Healey]: (614) 466-9571

Telephone [Michael]: (614) 466-1291

Christopher.healey@occ.ohio.gov

William.michael@occ.ohio.gov

(Willing to accept service by e-mail)

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 29th day of May 2020.

/s/ Christopher Healey _____
Christopher Healey
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

SERVICE LIST

| | |
|--|--|
| Thomas.mcnamee@ohioattoreygeneral.gov | Rocco.dascenzo@duke-energy.com |
| | Jeanne.kingery@duke-energy.com |
| | Larisa.vaysman@duke-energy.com |
| | Joe.oliker@igs.com |
| <u>Attorney Examiners:</u> | Michael.nugent@igs.com |
| Megan.addison@puco.ohio.gov | Bethany.allen@igs.com |
| Nicholas.walstra@puco.ohio.gov | talexander@calfee.co |
| Lauren.augostini@puco.ohio.gov | khehmeyer@calfee.com |
| Patricia.schabo@puco.ohio.gov | rendris@firstenergycorp.com |
| Gregory.price@ohio.gov | mkurtz@BKLawfirm.com |
| Sarah.parrot@puco.ohio.gov | kboehm@BKLawfirm.com |
| Greta.see@puco.ohio.gov | jkylern@BKLawfirm.com |
| | Michael.schuler@aes.com |
| | stnourse@aep.com |

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/29/2020 3:49:12 PM

in

Case No(s). 16-0776-EL-UNC, 17-0957-EL-UNC, 17-2391-EL-UNC, 18-6000-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 Healey, Christopher Mr.