

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission Review)
of Ohio Adm. Code Chapter 4901:1-25) Case No. 21-478-EL-ORD
Regarding Market Monitoring.)

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

OCC has long advocated for consumers to have access to *effectively* competitive markets. Effective competition should provide consumers with lower prices and greater innovation. But we have become increasingly concerned about outcomes for consumers from energy marketing and its prices.

The rules governing electric markets are of vital importance to Ohio consumers. The PUCO opened this docket to review the rules in O.A.C. 4901:1-25 that concern monitoring of the market.¹ Market monitoring rules, if adequate, can provide important information for assessing whether consumers are faring well, or not well, in the market. OCC was very concerned recently when the PUCO announced that its Staff was limited in the rules it might have proposed for electric and gas marketing, because of R.C. 121.95 that limits state regulations.²

The Office of the Ohio Consumers' Counsel files its motion to intervene on behalf of the millions of Ohio residential utility consumers that will be affected by this rules review. The PUCO should grant our motion for the reasons set forth in the attached memorandum in support.

¹ Entry (April 23, 2021).

² See *In the Matter of the Commission's Review Regarding Rules Governing Competitive Retail Electric Service and Competitive Retail Natural Gas Service*, Entry, (September 8, 2021), ¶7.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ William J. Michael

William J. Michael (0070921)
Counsel of Record
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**BEFORE
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MEMORANDUM IN SUPPORT

The PUCO opened this docket to review the rules in O.A.C. 4901:1-25, concerning electricity market monitoring.³ The OCC participated in the May 6, 2021 workshop in this case and provided comments. OCC would like to see the information provided through the rules to be publicly available to all consumers. These reports could provide consumers with important information about the energy market. Market monitoring rules provide essential information that is necessary to assess the strength and vitality of the Ohio retail electricity markets that consumers depend on for lower prices and greater innovation. A positive addition to this reporting would be a requirement for shadow billing to give consumers more information about the retail energy markets. In recent shadow-billing by AEP Ohio (see attached), it was concerning that marketing consumers paid \$139 million more in the aggregate than AEP’s standard service offer during the period January 2019 to November 2021. Such information should be timely, open, and transparent, so that all stakeholders can make informed decisions.

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 residential utility consumers may be “adversely affected” by this case, especially if

³ Entry (April 23, 2021).

consumers were unrepresented in a proceeding where rules assessing the strength and vitality of the Ohio retail energy markets that consumers depend on are being reviewed. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied for each of the Consumer Parties.

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 interests is representing residential consumers' interests regarding the rules for monitoring the Ohio retail energy markets. Such interests are different than that of any other party and especially different than that of investor-owned utilities and marketers, whose advocacy includes the financial interest of shareholders.

Second, OCC's advocacy for residential consumers will include, among other things, advancing the position that market monitoring information should be transparent to the public and of value to the state consumer advocate and the state regulator for their purposes and also to the state's consumers for their energy choices. 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 electric utilities and retail markets.

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 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 advocates for residential utility consumers, OCC has a very real and substantial interest in this case where consumers market monitor rules are being reviewed.

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 has already addressed, and which it 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." OCC does not concede the lawfulness of this criterion. But OCC satisfies this criterion in that it is uniquely positioned as the statutory representative of residential utility consumers. 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.⁴

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's residential utility consumers, the PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ William J. Michael
William J. Michael (0070921)
Counsel of Record
Assistant Consumers' Counsel

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⁴ 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 5th day of January 2022.

/s/ William J. Michael _____
William J. Michael
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

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Attorney Examiner:

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12/6	Residential Shopping Savings	Residential Shopping Non-Savings	Total Monthly Choice Savings	Cumulative Savings
January 2019	\$ 439,818.07	\$ (6,014,490.87)	\$ (5,574,672.80)	\$ (5,574,672.80)
February 2019	\$ 407,506.67	\$ (5,437,438.01)	\$ (5,029,931.34)	\$ (10,604,604.14)
March 2019	\$ 434,778.83	\$ (4,760,607.60)	\$ (4,325,828.77)	\$ (14,930,432.91)
April 2019	\$ 356,692.98	\$ (3,825,919.33)	\$ (3,469,226.35)	\$ (18,399,659.26)
May 2019	\$ 313,279.27	\$ (3,406,209.10)	\$ (3,092,929.83)	\$ (21,492,589.09)
June 2019	\$ 193,028.01	\$ (4,192,365.47)	\$ (3,999,337.46)	\$ (25,491,926.55)
July 2019	\$ 295,526.84	\$ (5,370,430.11)	\$ (5,074,903.27)	\$ (30,566,829.82)
August 2019	\$ 268,030.82	\$ (5,648,420.03)	\$ (5,380,389.21)	\$ (35,947,219.03)
September 2019	\$ 270,886.76	\$ (4,817,912.77)	\$ (4,547,026.01)	\$ (40,494,245.04)
October 2019	\$ 837,978.81	\$ (3,164,270.62)	\$ (2,326,291.81)	\$ (42,820,536.85)
November 2019	\$ 753,602.34	\$ (2,688,336.84)	\$ (1,934,734.50)	\$ (44,755,271.35)
December 2019	\$ 814,275.88	\$ (3,788,276.27)	\$ (2,974,000.39)	\$ (47,729,271.74)
January 2020	\$ 682,751.53	\$ (4,518,318.33)	\$ (3,835,566.80)	\$ (51,564,838.54)
February 2020	\$ 684,186.68	\$ (3,982,965.37)	\$ (3,298,778.69)	\$ (54,863,617.23)
March 2020	\$ 698,536.40	\$ (3,689,155.48)	\$ (2,990,619.08)	\$ (57,854,236.31)
April 2020	\$ 466,808.73	\$ (3,071,838.38)	\$ (2,605,029.65)	\$ (60,459,265.96)
May 2020	\$ 516,750.99	\$ (2,911,475.35)	\$ (2,394,724.36)	\$ (62,853,990.32)
June 2020	\$ 170,204.05	\$ (5,139,753.80)	\$ (4,969,549.75)	\$ (67,823,540.07)
July 2020	\$ 149,979.57	\$ (6,888,352.30)	\$ (6,738,372.73)	\$ (74,561,912.80)
August 2020	\$ 154,110.59	\$ (6,691,087.28)	\$ (6,536,976.69)	\$ (81,098,889.49)
September 2020	\$ 231,797.20	\$ (5,791,050.39)	\$ (5,559,253.19)	\$ (86,658,142.68)
October 2020	\$ 455,082.54	\$ (2,899,306.47)	\$ (2,444,223.93)	\$ (89,102,366.61)
November 2020	\$ 448,982.36	\$ (2,836,005.67)	\$ (2,387,023.31)	\$ (91,489,389.92)
December 2020	\$ 505,829.46	\$ (4,020,119.40)	\$ (3,514,289.94)	\$ (95,003,679.86)
January 2021	\$ 392,309.29	\$ (5,162,903.68)	\$ (4,770,594.39)	\$ (99,774,274.25)
February 2021	\$ 391,905.67	\$ (4,810,185.55)	\$ (4,418,279.88)	\$ (104,192,554.13)
March 2021	\$ 346,061.40	\$ (4,573,512.11)	\$ (4,227,450.71)	\$ (108,420,004.84)
April 2021	\$ 495,499.46	\$ (3,393,097.84)	\$ (2,897,598.38)	\$ (111,317,603.22)
May 2021	\$ 446,172.96	\$ (3,185,200.53)	\$ (2,739,027.57)	\$ (114,056,630.79)
June 2021	\$ 1,297,174.51	\$ (3,740,322.66)	\$ (2,443,148.15)	\$ (116,499,778.94)
July 2021	\$ 997,886.00	\$ (4,845,429.03)	\$ (3,847,543.03)	\$ (120,347,321.97)
August 2021	\$ 1,070,138.25	\$ (5,702,205.86)	\$ (4,632,067.61)	\$ (124,979,389.58)
September 2021	\$ 1,333,190.19	\$ (6,362,978.54)	\$ (5,029,788.35)	\$ (130,009,177.93)
October 2021	\$ 661,625.10	\$ (5,383,677.53)	\$ (4,722,052.43)	\$ (134,731,230.36)
November 2021	\$ 576,644.43	\$ (5,108,447.24)	\$ (4,531,802.81)	\$ (139,263,033.17)

**This foregoing document was electronically filed with the Public Utilities
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in

Case No(s). 21-0478-EL-ORD

Summary: Motion Motion to Intervene by Office of the Ohio Consumers' Counsel
electronically filed by Ms. Alana M. Noward on behalf of Michael, William J.