

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Ohio Power Siting       )  
Board's Review of Ohio Adm. Code       )   Case No. 21-902-GE-BRO  
Chapters 4906-1, 4906-2, 4906-3, 4906-    )  
4, 4906-5, 4906-6, and 4906-7.        )

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**PETITION FOR LEAVE TO INTERVENE  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC") petitions to intervene<sup>1</sup> where the Ohio Power Siting Board ("OPSB") is conducting its five-year review of its rules under O.A.C. Chapter 4906.<sup>2</sup> On June 16, 2022, the OPSB issued an Entry inviting all interested persons to file initial and reply comments regarding the proposed revision of O.A.C. Chapter 4906 by July 22, 2022, and August 12, 2022, respectively.

OCC is filing on behalf of residential utility consumers in Ohio. The reasons OCC's Petition should be granted are set forth in the attached Memorandum in Support.

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<sup>1</sup> See R.C. Chapter 4906, R.C. 4906.12 and O.A.C. 4906-2-12.

<sup>2</sup> R.C. 111.15(B) and R.C. 106.03(A).

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

*/s/ William J. Michael*  
William J. Michael (0070921)  
Counsel of Record  
Ambrosia E. Wilson (0096598)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone [Michael]: (614) 466-1291

Telephone [Wilson]: (614) 466-1292

[william.michael@occ.ohio.gov](mailto:william.michael@occ.ohio.gov)

[ambrosia.wilson@occ.ohio.gov](mailto:ambrosia.wilson@occ.ohio.gov)

(willing to accept service by email)

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**MEMORANDUM IN SUPPORT**

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The Ohio Power Siting Board ("OPSB") is conducting its five-year rule review of O.A.C. Chapter 4906 as required by R.C. 111.15(B) and R.C. 106.03(A). Under the statutes, state agencies must review their rules every five years and determine whether to continue their rules without change, amend their rules, or rescind their rules. OCC has authority under law to represent the interests of Ohio residential utility consumers, under R.C. Chapter 4911.

R.C. 4903.221, through R.C. 4906.12,<sup>3</sup> provides, in part, that any person "who may be adversely affected" by an OPSB proceeding is entitled to seek intervention in that proceeding. The interests of Ohio's residential consumers may be "adversely affected" by this case. That is especially so if they are unrepresented in an OPSB proceeding where rule changes are being considered. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the OPSB to consider the following criteria in ruling on petitions to intervene:

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<sup>3</sup> Ohio law requires the application of R.C. 4903.221(B) to any proceeding or order of the Ohio Power Siting Board. *See* R.C. 4906.12.

- (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.

In addition, O.A.C. 4906-2-12(B) provides detail on statutory intervention criteria and allows the OPSB or administrative law judge to consider the following when deciding on petitions to intervene:

- (1) The nature and extent of the person's interest;
- (2) The extent to which the person's interest is represented by existing parties;
- (3) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding; and
- (4) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party.

First, the nature and extent of OCC's interest is representing Ohio's residential utility consumers in this case involving Ohio Power Siting Board rule changes. This residential consumer protection interest is different than that of any other party and especially different than that of any utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential consumers will include recommendations to improve consumer protections in the Ohio Power Siting Board's administrative rules.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC 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 case. 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 "good cause" according to O.A.C. 4906-2-12(B). As the advocate for residential utility consumers, good cause exists for OCC's intervention in this case where the OPSB is amending its rules that can affect residential consumers.

In addition, OCC meets the criteria of O.A.C. 4906-2-12(B)(1)(a)-(d). These criteria effectively mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

O.A.C. 4906-2-12(B)(1)(b) states that the OPSB shall consider "[t]he 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 consumers. 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, the procedures of which the OPSB is required to follow under R.C. 4906.12, 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>4</sup>

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<sup>4</sup> See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20.

OCC meets the criteria set forth in R.C. 4903.221, R.C. 4906.12, O.A.C. 4906-2-12, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential consumers, the OPSB should grant OCC's Petition to Intervene.

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

*/s/ William J. Michael*  
William J. Michael (0070921)  
Counsel of Record  
Ambrosia E. Wilson (0096598)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

65 East State Street, Suite 700  
Columbus, Ohio 43215  
Telephone [Michael]: (614) 466-1291  
Telephone [Wilson]: (614) 466-1292  
[william.michael@occ.ohio.gov](mailto:william.michael@occ.ohio.gov)  
[ambrosia.wilson@occ.ohio.gov](mailto:ambrosia.wilson@occ.ohio.gov)  
(willing to accept service by email)

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Petition for Leave to Intervene was served on the persons stated below via electronic transmission, this 6<sup>th</sup> day of July 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**

[john.jones@ohioAGO.gov](mailto:john.jones@ohioAGO.gov)

Attorney Examiner:

[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)

[kboehm@BKLawfirm.com](mailto:kboehm@BKLawfirm.com)

[jkylerncohn@BKLawfirm.com](mailto:jkylerncohn@BKLawfirm.com)

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**7/6/2022 5:03:08 PM**

**in**

**Case No(s). 21-0902-GE-BRO**

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