

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Motion of Northeast)	
Ohio Public Energy Council for a)	Case No. 22-806-EL-WVR
Limited Waiver of Rule 4901:1-10-)	
29(H), Ohio Administrative Code)	

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene on behalf of residential utility consumers. Initially, the Northeast Ohio Public Energy Council ("NOPEC") filed a request for a waiver (that the Public Utilities Commission of Ohio ("PUCO") has since granted). Dynegy contested the waiver. And Dynegy moved to consolidate this case with other cases. NOPEC's waiver is with respect to the two-day time limit, in O.A.C. 4901:1-10-29(H)(2), for an electric distribution utility to issue a confirmation letter to consumers that the utility received a drop notice from the consumers' competitive retail electric service provider.

The reasons the PUCO should grant OCC's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

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Ohio Consumers' Counsel

/s/ John Finnigan

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MEMORANDUM IN SUPPORT

NOPEC provides competitive retail electric services as a governmental aggregator under R.C. 4928.03 and R.C. 4928.08.¹ NOPEC sought a waiver of the two-day time limit for an electric distribution utility to issue a confirmation letter notifying consumers that the utility received a drop notice from consumers' competitive retail electric service provider.²

NOPEC requested a waiver of the two-day time limit to expedite the transfer of the majority of its consumers to the utility's standard service offer (that is priced much lower than NOPEC's current Standard Program price to consumers).³ The two-day notice would have delayed NOPEC's intention to transfer most of its consumers to the utility's lower-priced standard service offer so that consumers would receive lower-priced service. As a result, the PUCO granted NOPEC the waiver on September 7, 2022.⁴

¹ *In the Matter of the Application of Northeast Ohio Public Energy Council for Certification for Governmental Aggregators*, Case No. 00-2317-EL-GAG, Application (Nov. 28, 2000).

² The requirement to issue a confirmation letter arises under O.A.C. 4901:1-10-29(H)(2).

³ Application (Aug. 26, 2022).

⁴ Entry (Sept. 7, 2022). The Entry was also filed in Case No. 00-2317-EL-GAG.

The PUCO also directed all electric distribution utilities to work with the PUCO Staff to develop new minimum-stay tariff language. And the PUCO directed NOPEC to show cause why its governmental aggregation certificate should not be suspended.⁵

OCC has authority under law to represent the interests of Ohio's residential utility consumers under R.C. Chapter 4911. 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 consumers may be "adversely affected" by this case because it affects the process and conditions for governmental aggregators to return consumers to utilities' standard service offers (default service). And consumers may be adversely affected by these issues including whether a government aggregator will be allowed to re-enroll consumers in a new aggregation program after returning those consumers to the utility's standard service offer. Further, residential consumers may be adversely affected by issues raised and yet to be raised by other intervenors. 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; and
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

⁵ *Id.* at ¶¶ 12 and 14.

First, the nature and extent of OCC's interest is representing Ohio residential consumers on issues affecting the price of their electric service, among other things. This interest is different than that of any other party.

Second, OCC's legal positions will include, among other things, advocacy for Ohio residential consumers on issues involving competition for electric service under Ohio's 1999 electric deregulation law, including competitive service from a government aggregator. The issues already raised in the case include but are not limited to returning aggregation consumers to the utility's standard service offer and for how long the return should last. OCC's advocacy is therefore directly related to the merits of this case, which is pending before the PUCO, the authority with regulatory oversight with respect to electric service brokering and aggregation services offered to consumers 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 O.A.C. 4901-1-11(A)(2). As the advocate for residential utility consumers, OCC has a very real and substantial interest in this case.

OCC meets the criteria of O.A.C. 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.

In addition, O.A.C. 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 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.⁶

OCC meets the criteria set forth in R.C. 4903.221, O.A.C. 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential consumers, the PUCO should grant OCC’s Motion to Intervene.

⁶ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20.

Respectfully submitted,

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/s/ John Finnigan

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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 30th day of September 2022.

/s/ John Finnigan

John Finnigan

Assistant Consumers' Counsel

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

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**This foregoing document was electronically filed with the Public Utilities
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9/30/2022 4:27:34 PM

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Case No(s). 22-0806-EL-WVR

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