

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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2009 JUL 15 PM 4:11

In the Matter of Protocols for the )  
Measurement and Verification of Energy )  
Efficiency and Peak Demand Reduction )  
Measures. )

Case No. 09-512-GE-UNC

PUCO

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**MOTION TO INTERVENE  
AND COMMENTS REGARDING APPENDIX B TO  
ENTRY DATED JUNE 24, 2009  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene<sup>1</sup> in this case in which compliance with provisions in Sub. S.B. 221 ("S.B. 221") and collection of costs from customers for demand-side management ("DSM") programs are ultimately at issue.<sup>2</sup> OCC files on behalf of all residential utility consumers served by the electric and natural gas utilities in Ohio that are regulated by the Public Utilities Commission of Ohio ("Commission" or "PUCO"). The instant case will potentially have a significant impact on both the services provided to residential customers and the rates that residential customers will pay for their utility services.

The reasons the PUCO should grant OCC's Motion to Intervene ("Motion") are further set forth in the attached Memorandum in Support. OCC also includes comments regarding Appendix B to the Entry dated June 24, 2009, as requested by the Commission.

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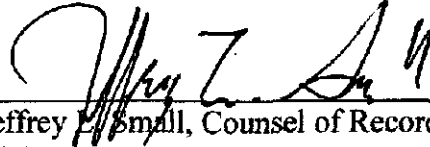
<sup>1</sup> See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

<sup>2</sup> Entry at 1-2 (June 24, 2009) ("June Entry").

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Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Jeffrey P. Small", is written over a horizontal line.

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Protocols for the	)	
Measurement and Verification of Energy	)	Case No. 09-512-GE-UNC
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**MEMORANDUM IN SUPPORT  
AND COMMENTS REGARDING APPENDIX B TO  
ENTRY DATED JUNE 24, 2009**

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**I. INTRODUCTION**

This case involves certain implementation matters regarding S.B. 221 as well as implementation of demand-side management efforts in areas served by natural gas utilities that are regulated by the Commission.<sup>3</sup> OCC has authority under Ohio law to represent the interests of all the residential utility customers of Ohio's investor-owned electric and natural gas utilities regulated by the Commission, pursuant to R.C. Chapter 4911.

**II. INTERVENTION**

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, especially if the consumers were unrepresented in a proceeding that involves plans to implement energy efficiency programs and charge for such programs in electric and natural gas rates paid by

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<sup>3</sup> Id.

residential customers. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission 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 proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is representing the residential consumers of Ohio's electric and natural gas utilities in order to help assure that effective energy efficiency programs are implemented in Ohio, and that services are provided at reasonable prices as well as upon reasonable terms and conditions. This interest is different than that of any other party, and especially different than that of the utilities whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for consumers will include advancing both legal and policy positions aimed at both compliance with Ohio law and the design and implementation of cost-effective energy efficiency programs. This position is further elaborated upon in this pleading in comments regarding Appendix B to the June Entry. Additional comments, including comments upon Appendix A to the June Entry, will follow according to the procedural schedule set out by the Commission.<sup>4</sup> The June Entry

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<sup>4</sup> June 24 Entry at 8, ¶(22) (e.g. comments on Appendix A are due on July 24, 2009).

also contemplates the involvement of parties such as OCC at other times during the course of this case.<sup>5</sup> OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of the terms under which public utilities provide their services.

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 was significantly involved in the discussions surrounding enactment of S.B. 221 as well as the cases cited by the Commission regarding DSM programs.<sup>6</sup> From this experience, OCC has information and will develop additional 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 residential utility consumer advocate, OCC has a very real and substantial interest in this case where potential service to residential customers is at issue.

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<sup>5</sup> June Entry at 6, ¶(12) ("include other interested parties").

<sup>6</sup> Id. at 2, ¶(4).

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) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission 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 confirmed OCC’s right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC’s intervention and that OCC should have been granted intervention.<sup>7</sup>

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 consumers, the Commission should grant OCC’s Motion to Intervene.

### **III. COMMENTS REGARDING APPENDIX B TO ENTRY DATED JUNE 24, 2009**

OCC commends the Commission and its Staff for setting forth a detailed process, including a timeline in this case for the development of an Ohio-specific technical reference manual (“TRM”). A TRM will greatly assist to determine energy and demand

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<sup>7</sup> See *Ohio Consumers’ Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

savings estimates for well-defined, “standard” measures that have a uniform definition. For example, a 15 watt compact fluorescent light replacement for a 60 watt incandescent bulb provides an example of a measure that would be included within a TRM. A properly constructed TRM should also reduce potential disputes between stakeholders concerning “the right value to use.” Other measures that are not as uniformly defined and/or are temperature sensitive will need site specific information to arrive at a credible estimate of the savings that could be useful within a regulatory framework. As pointed out at the technical workshop by PUCO consultant Steve Schiller, energy efficiency measures that involve more complex or customized services generally require a project-specific estimation of energy and demand savings and are not well suited to a “deemed savings” approach.

The data elements in Tables 1 and 2 of Appendix B contain critical data points in determining a Deemed or Deemed Calculated Measure. Additional data elements should be added to the energy and demand savings estimates per measure. These elements can be found in technical reference manuals developed in other states after considerable effort and comment by interested parties.<sup>8</sup>

1. A persistence factor (decay rate) should be included;
2. Load shapes per time of day and seasonal (winter on peak, winter off peak, summer on peak, summer off peak, winter kW, summer kW, fall-spring kW);
3. Annual operating hours by building type, structure, or process;

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<sup>8</sup> See *Technical Reference User Manual*, Efficiency Vermont, contact [chakstian@veic.org](mailto:chakstian@veic.org); *Conservation Resource Comments Database*, Northwest Power and Conservation Council, available at <http://www.nwcouncil.org/comments/default.asp>; *Deemed Savings Database*, New York State Energy Research and Development Authority; *Database for Energy Efficiency Resources (DEER)*, California Energy Commission, contact via <http://eega.cpuc.ca.gov/deer/>; and *Deemed Savings, Installation & Efficiency Standards: Residential and Small Commercial Standard Offer Program, and Hard-to-Reach Standard Offer Program*, Public Utility Commission of Texas, contact [theresa.gross@puc.state.tx.us](mailto:theresa.gross@puc.state.tx.us).

4. Seasonal heating degree-days/cooling degree-days for evaluation year;
5. Free-rider and spillover estimates;
6. Minimum efficiency, baseline efficiency and high efficiency equipment values;
7. Demographic information to include:
  - a. Single-family or multi-family,
  - b. Number of occupants,
  - c. Income bracketing that would indicate low-income, middle-income, or high-income,
  - d. Zip code;
8. Existing structure:
  - a. Square footage,
  - b. Foundation type (basement, crawl space, other, etc.),
  - c. Exterior building material (wood, stucco, brick, etc);
9. Salvage value, if any.

The TRM should also include additional protocols regarding how to calculate gross-to-net savings (including the provision of line loss factors), the interactive effects of a measure, and accountability for impacts of free-ridership.<sup>9</sup>

The Commission also stated its interest in alternative approaches to characterizing the electric demand savings from energy efficiency measures.<sup>10</sup> The Commission should consider a study performed in 2007 by ACEEE, entitled: "Examining the Peak Demand

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<sup>9</sup> See, e.g., Steven R. Schiller, Schiller Consulting, Inc., *Model Energy Efficiency Program Impact Evaluation Guide*. National Action Plan for Energy Efficiency, 2007, available at: [www.epa.gov/eeactionplan](http://www.epa.gov/eeactionplan).

<sup>10</sup> June Entry, Appendix B at 3.



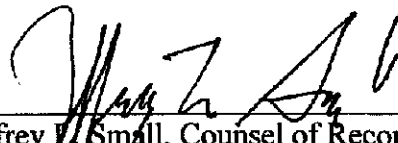
Impacts of Energy Efficiency: A Review of Program Experience and Industry Practices.”<sup>11</sup>

#### IV. CONCLUSION

For the above-stated reasons, OCC’s Motion to Intervene should be granted. The Commission should also adopt the recommendations submitted by OCC regarding Appendix B to the June 24 Entry.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS’ COUNSEL



Jeffrey L. Small, Counsel of Record  
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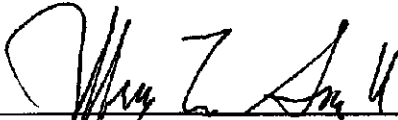
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<sup>11</sup> Dan York, Martin Kushler, and Patti Witte, *Examining the Peak Demand Impact of Energy Efficiency: a Review of Program Experience and Industry Practices*, ACEEE, 2007. The TRM could also be extended to include measures for saving water. *M&V Guidelines: Measurement and Verification for Federal Energy Projects Version 3.0.*, U.S. Department of Energy Federal Energy Management Program, 2008 available at: [http://ateam.lbl.gov/mv/docs/mv\\_guidelines-3\\_0\\_wAppend.pdf](http://ateam.lbl.gov/mv/docs/mv_guidelines-3_0_wAppend.pdf). The guidelines provide methods for measuring and verifying energy, water, and cost savings associated with federal energy savings performance contracts.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this *Motion to Intervene and Comments* was served on the persons stated below by regular U.S. Mail, postage prepaid, on this 15<sup>th</sup> day of July 2009.

  
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