

FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

In the Matter of the Commission's Response)
To Provisions of the Federal Energy Policy)
Act of 2005 Regarding Net Metering, Smart)
Metering and Demand Response,)
Cogeneration and Power Production)
Purchase and Sale Requirements, and)
Interconnection.)

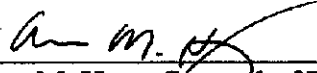
Case No. 07-647-EL-UNC

MOTION TO INTERVENE

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of all residential consumers of the electric distribution utilities ("EDUs") moves to intervene, pursuant to R.C. 4903.221, and Ohio Adm. Code 4901-1-11 in the above captioned proceeding. OCC is the representative of Ohio's residential utility consumers, pursuant to R.C. Chapter 4911. The reasons in support of OCC's motion are more fully stated in the attached memorandum.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On March 28, 2007, the Public Utilities Commission of Ohio ("Commission" or "PUCO") issued a Finding and Order in response to the Energy Policy Act of 2005 that adopted recommendations of Commission Staff with regard to Cogeneration and Power Production Purchase and Sale Requirements. The Commission's May 24, 2007 Entry on Rehearing denied all applications for rehearing and clarified the Finding and Order. On May 30, 2007 the Commission opened this docket to facilitate the Staff's initiation of a Commission-Ordered Workshop Regarding Cogeneration and Power Production Purchase and Sale Requirement.

Cogeneration is the practice by large electric power users to produce power as a side product of their major function. The terms Power Production Purchase and Sale relates to the terms under which the electric providers are required to sell back-up power to cogenerating customers and the terms and conditions under which the cogenerators are required to buy back-up power from the electric providers.

This workshop could affect all of the approximately 4.5 million electric residential customers in the State of Ohio because Commission determinations regarding Cogeneration and Power Production Purchase and Sale Requirements could affect the rates, the reliability of service and energy efficiency of service being used to serve residential customers. The Commission should grant OCC's Motion to Intervene in this proceeding so that the OCC can fully protect the interests of the Ohio's residential electric customers.

II. INTERVENTION

OCC moves to intervene under its legislative authority to represent all residential utility consumers in Ohio, pursuant to 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, especially if the consumers are unrepresented in a proceeding regarding the Cogeneration and Power Production Purchase and Sale Requirements. Ineffective requirements for cogeneration could result in high rates, less reliable service and less energy efficient service for 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 in representing the residential consumers lies in developing effective requirements to encourage the development of distributive generation technologies such as cogeneration so that the service provided to residential customers will be less costly, more reliable and more energy efficient. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of shareholders.

Second, OCC's advocacy for consumers will include advancing the position that the requirements for the production, sale and purchase of cogeneration power should encourage cogeneration so as to lead to less expensive service in that a portion of increasing electricity demand will be provided by distributed generation, more reliable service and more energy efficient service (as Central Heat and Power technologies tend to be more energy efficient than central station generation). This interest includes that the requirements for cogeneration should be no more than what is reasonable and lawful. 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 public utilities' rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceeding. 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 an active participant in PUCO Case No. 05-1500-EL-COI, and is knowledgeable in the areas of cogeneration and small

power. 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 residential utility consumer advocate, OCC has a very real and substantial interest in this case. Specifically, cogeneration requirements should encourage cogeneration and thereby increase the quality and reliability of power and reduce the price of power available to residential consumers.

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 recently 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.¹

¹ *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20 (2006).

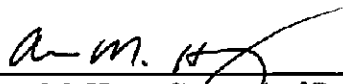
OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio's residential consumers, the Commission should grant OCC's Motion to Intervene.

III. CONCLUSION

This case, including the Cogeneration and Power Production Purchase and Sale Requirements workshop, could impact the approximately 4.5 million electric residential consumers in Ohio by increasing the energy efficiency and reliability of generation and by reducing the cost of generation available to the consumers. For the reasons stated above, the PUCO should grant OCC's Motion to Intervene on behalf of the residential electric consumers of Ohio that have an interest in the outcome of this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Intervene of the Office of the Ohio Consumers' Counsel* was served by first class United States Mail, postage prepaid, to the persons listed below, on this 27th day of June 2007.



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