

FILE

BEFORE THE  
PUBLIC UTILITY COMMISSION OF OHIO

In The Matter Of Commission's  
Investigation Into The Value of Continued  
Participation in Regional Transmission  
Organizations.

Case No. 09-90-EL-COI

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MOTION TO INTERVENE  
AND  
MOTION FOR EXTENSION  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of all Ohio residential electric consumers moves the Public Utilities Commission of Ohio ("Commission" or "PUCO") to 1) grant OCC's intervention in this proceeding that relates to the value to Ohio electric customers of regional transmission organizations' administration of the wholesale markets and the transmission delivery system, and 2) grant a twenty-one day extension of the Comment date to May 25, 2009 (currently set for May 4, 2009), in the above-captioned case commenced March 4, 2009, with a corresponding extension of the Reply date.

OCC's Motion should be granted because OCC meets the legal standards for intervention, as explained in detail in the attached Memorandum in Support. The requested extension will afford OCC a fair opportunity to advocate on behalf of residential electric consumers on the matters set forth in the Commission's Entry ordering this case be initiated. There is good cause for granting OCC's motion for extension under

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Ohio Adm. Code 4901-1-13(A), which is further set-forth in the attached Memorandum  
in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

**A. Motion to Intervene**

The Public Utilities Commission of Ohio ("Commission" or "PUCO") commenced this investigation by Entry on March 4, 2009. The Entry established a procedural schedule requiring interested parties to file Comments on the questions attached to the Entry as Appendix A. The Entry set Initial Comments to be filed May 4, 2009, and reply Comments on June 2, 2009, on the subject of the value of continued participation of Ohio utilities in regional transmission organizations (RTO").

The Commission should grant the Office of the Ohio Consumers' Counsel ("OCC") Motion to Intervene in these proceedings so that OCC can fully participate in the proceedings and protect the interests of all the residential electric consumers in the State of Ohio.

**B. Motion for Extension**

Regarding the Motion for Extension, R.C. 4928.24, requires the Federal Energy Advocate at the PUCO to examine the value of the participation of the State of Ohio's electric utilities in regional transmission organizations ("RTOs") and submit a report to

the Commission on whether continued participation of those electric utilities is in the interest of retail electric service consumers.

OCC expeditiously prepared and issued a Request for Proposal to engage a consultant to assist it in this case. Proposals were received, and on March 30, 2009, OCC selected a consultant. However, before the consultant can begin work with OCC, it is necessary to obtain the approval of the Controlling Board. The decision of the Controlling Board approval is expected on April 20, 2009. These circumstances show good cause for granting an extension to file Comments.

## **II. ARGUMENT**

### **A. Intervention**

Pursuant to R.C. Chapter 4911, the OCC moves to intervene under its legislative authority to represent Ohio residential utility consumers. OCC meets the standards for intervention found in Ohio's statutes and the PUCO's rules.

The interests of residential electric consumers in the State of Ohio could be "adversely affected" by this investigation, pursuant to the intervention standard in R.C. 4903.221. 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 these proceedings, especially if the consumers are unrepresented in proceedings where the value of participating in RTO is evaluated, considered, and determined. RTOs administer the operation of the wholesale markets and the transmission of electricity into and out of Ohio, both of which significantly affect the rates paid by Ohio retail customers. Thus, OCC satisfies the intervention standard in R.C. 4903.221.

OCC also meets the criteria for intervention in R.C. 4903.221(B), which requires the PUCO, in ruling on motions to intervene, to consider the following:

- (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 the OCC's interest is to represent all the residential customers in the State of Ohio regarding rates paid by residential customers, including charges for participating in RTOs, and terms for service and the service quality that can be affected by RTOs, among other issues. 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 stockholders.

Second, OCC's legal positions include, without limitation, that the rates paid by residential customers, including charges resulting from Ohio utilities' participation in RTOs, and the service provided for those rates, should be reasonable and lawful. This legal position directly relates to this investigation.

Third, OCC's intervention will not unduly prolong or delay the proceedings, but should provide insights that will expedite the PUCO's effective consideration of the subject matter of this investigation. In fact, as stated earlier, OCC will bring expertise to this investigation through the engagement of consultants with knowledge and experience concerning RTOs. OCC, with its longstanding expertise and experience in PUCO

proceedings, will duly allow for the efficient processing of the proceedings 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 considering and deciding this investigation 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 for the State of Ohio, OCC has a real and substantial interest in these proceedings where the outcome could have an effect on the service and rates paid by residential customers.

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 customers. 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>1</sup> Accordingly, OCC meets the standards for intervention in this proceeding.

**B. The Commission Should Extend the Comment Date until May 25, 2009, with a Corresponding Extension in the Reply Date..**

OCC has initiated the process that it, as a state agency, is required to follow to engage an expert consultant to assist OCC in providing the information requested by the PUCO. OCC has followed this process diligently and expeditiously. Even so, OCC cannot receive approval from the Controlling Board for a consultant to commence work before April 20, 2009. This time-frame (fourteen days between April 20 and May 4) will not be sufficient time to prepare Comments for filing by May 4, 2009. The PUCO has propounded many very complex questions regarding RTOs, as shown below:

**RTO Value**

1. Are FERC's Order 2000 goals and objectives being realized to promote efficiency in wholesale electric markets and to ensure that electric consumers pay the lowest price possible for reliable service?
2. Are RTOs providing value to Ohio's customers through more effective management and use of the grid by:
  - (a) Addressing discrimination in access to transmission service?
  - (b) Eliminating of pancaked transmission rates?
  - (c) Regional transmission scheduling, tariff administration, and settlements?
  - (d) Enhancing reliability?

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<sup>1</sup> *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶13-20 (2006).

- (e) Improved utilization of transmission assets and management of transmission congestion?
  - (f) Regional unit commitment and security constrained economic dispatch?
  - (g) Regional procurement of Ancillary Services and consolidation of Balancing Authorities?
  - (h) Regional transmission planning?
3. Is the RTOs' locational marginal pricing (LMP) policies providing value to Ohio's consumers?
  4. Are the RTOs' ancillary services markets and the integration or co-optimization of those markets with the RTOs' energy markets efficient and providing benefits to Ohio's consumers?
  5. Are the RTOs' market monitoring and mitigation policies effective in ensuring competitive prices and providing value to Ohio's consumers?
  6. Are the RTOs' resource adequacy requirements and the resulting capacity markets (or, in the case of PJM, its Reliability Pricing Model and Fixed Resource Requirement) reasonable and providing benefits to Ohio's consumers? Are these policies effective in promoting needed resource investment and long-term contracts which could help finance such investment? Do these policies promote an appropriate level of investment that is consistent with the needs and preferences of Ohio consumers?
  7. Are RTOs effective in facilitating transmission planning and needed transmission investments that benefit Ohio's consumers? Are they effective in facilitating transmission planning and investment that may be needed for the development of renewable energy resources?
  8. Are the RTOs policies and practices be effective in facilitating long-term contracts between load serving entities and generation developers or suppliers that may be needed to support the construction of additional base load generation facilities?
  9. Are the RTOs' transmission cost allocation methodologies and policies resulting in value for Ohio's consumers?



10. Are the RTOs' Financial Transmission Rights and other transmission congestion hedging policies and practices effective and providing value to Ohio's consumers?
11. Are the RTOs demand response programs, policies toward behind-the-meter generation, and other Load Modifying Resources effective and providing value to Ohio's consumers over and above state sponsored programs?
12. Are the RTOs policies and practices relating to the treatment of Price Responsive Demand (PRD) consistent with facilitating the development of PRD through dynamic and time-differentiated retail pricing? (PRD is consumer demand that predictably responds to changes in wholesale prices as a result of d) dynamic or time-differentiated retail rates).
13. Are the RTOs' queue and interconnection policies providing value to Ohio's consumers?
14. Is the resolution of seams issues being thoroughly addressed and resolved by the RTOs operating in Ohio?
15. Does the RTOs' treatment of financial-only market participants (or virtual traders) provide value to Ohio's consumers?
16. Are the RTOs' administrative expenses and corresponding assessments to member companies reasonable and resulting in value to Ohio's consumers?

### **RTO Alternatives**

1. Are there viable, cost-effective alternatives to the existing RTO memberships of Ohio utilities or to Ohio utility participation in RTO managed functions (e.g. renewable tracking, reserve sharing groups, etc.)?
2. Would it be reasonable, cost effective, and viable for the Ohio Commission to pursue the construct of an Ohio-only RTO?
3. What recommendations could be made to FERC or required of Ohio's RTO member companies that would result in increased value to Ohio's consumers?<sup>2</sup>

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<sup>2</sup> *Entry*, Appendix A (March 4, 2009).

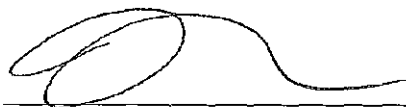
Given the extreme complexity of the issues and the significance to residential customers of the issue of RTO participation, OCC has shown good cause for requesting an extension. Accordingly, the PUCO should extend the date for Comments for twenty-one (21) days, until May 25, 2009.

### **III. CONCLUSION**

OCC's Motion for Intervention should be granted because OCC meets the legal standards for intervention. As demonstrated above, and for good cause shown, the Commission should grant an extension of the May 4, 2009 date to file Comments in this case until May 25, 2009, with a corresponding extension of the Reply date. Granting a reasonable extension will increase the potential for this case to proceed in a manner that is open and transparent to the public and on a realistic timeline with meaningful opportunities for expert preparation, all of which are objectives commensurate with the profound RTO issues to be resolved.

Respectfully submitted,

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CONSUMERS' COUNSEL



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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the OCC's Motion for Intervention and Motion for Extension has been served upon the following parties via regular U.S. Mail, postage prepaid, this 7th day of April, 2009.



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Jacqueline Lake Roberts  
Assistant Consumers' Counsel

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