

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission-Ordered     )  
Investigation of Marketing Practices in the     ) Case No. 14-568-EL-COI  
Competitive Retail Electric Service             )  
Market.   )

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

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The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where the Public Utilities Commission of Ohio ("PUCO") opened "an investigation to determine whether it is unfair, misleading, deceptive or unconscionable to market contracts as fixed-rate contracts or as variable contracts with a guaranteed percent off the SSO [standard service offer] rate when the contracts include pass-through clauses"<sup>1</sup> that could increase the price that consumers pay for their electric service. OCC is filing on behalf of all residential electric utility customers in the state of Ohio. The reasons the PUCO should grant OCC's Motion are further set forth in the attached Memorandum in Support.

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<sup>1</sup> Entry, at p. 1 (April 9, 2014).

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

*/s/ Michael J. Schuler*

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**MEMORANDUM IN SUPPORT**

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The outcome of this investigation could have a significant impact on the prices that consumers pay for electric generation and consumers’ rights associated with competitive retail electric service (“CRES”) contracts. In this regard, the PUCO is requesting interested parties to file comments on a number of questions related to fixed-price CRES contracts that are marketed to consumers. Specifically, the PUCO inquires whether fixed-rate CRES contracts with “pass through” clauses are unfair, deceptive, misleading and/or unconscionable and whether those contracts have an adverse effect on the retail market.<sup>2</sup> The PUCO further questions whether such “pass through” clauses should be permitted in CRES contracts and whether unanticipated regional transmission organization (“RTO”) charges billed to CRES providers qualify as “pass through charges” that CRES providers can seek to charge customers.<sup>3</sup> These are all valid concerns that need to be addressed.

As stated above, the outcome of this investigation could have a significant impact on the prices that consumers pay for electric generation and consumers’ rights associated with CRES contracts. Furthermore, the outcome of this investigation could affect alleged

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<sup>2</sup> Entry at pp. 1-2.

<sup>3</sup> Id. at pp. 2-3.

violations of Ohio Adm. Code 4901:1-21. OCC has authority under law to represent the interests of all residential utility customers of Ohio, pursuant to R.C. Chapter 4911.<sup>4</sup>

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 customers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding where the PUCO is investigating whether it is unfair, misleading, deceptive, or unconscionable for a company to market a contract to residential consumers as a “fixed-rate” contract when it contains a clause that says that other costs may be collected from the customer under certain circumstances. 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 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 electric customers of Ohio in this case involving the review of “pass through” clauses in fixed-rate CRES contracts that are marketed to consumers. This interest is different than

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<sup>4</sup> See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

that of any other party and especially different than that of the CRES providers and utilities whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential customers will include advancing the position that CRES providers, that enter into fixed-rate contracts, should not be permitted to collect from customers any more than the price-per-kilowatt hour for generation service agreed upon in the contract. OCC's position is therefore directly related to the merits of this PUCO-ordered investigation.

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 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 advocate for residential utility customers, OCC has a very real and substantial interest in this case where the PUCO is reviewing the legality of "pass through" clauses in fixed-rate CRES contracts and their effect on the electric market and 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 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 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 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>5</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 customers, the PUCO should grant OCC’s Motion to Intervene.

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<sup>5</sup> See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

Respectfully submitted,

BRUCE J. WESTON  
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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 22<sup>nd</sup> day of April, 2014.

/s/ Michael J. Schuler

Michael J. Schuler

Assistant Consumers' Counsel

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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Schuler, Michael J.