

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)	
Investigation into XOOM Energy Ohio,)	
LLC's Compliance with the Ohio)	Case No. 22-267-GE-COI
Administrative Code and Potential)	
Remedial Actions for Non-Compliance)	

**INTERLOCUTORY APPEAL,
REQUEST FOR CERTIFICATION
AND
APPLICATION FOR REVIEW**

Pursuant to Ohio Admin. Code 4901-1-15(B), XOOM Energy Ohio, LLC (“XOOM Energy”) requests that this Interlocutory Appeal be certified by the Public Utilities Commission of Ohio (the “Commission”), the Legal Director, Deputy Legal Director, Attorney Examiner, or Presiding Hearing Officer. This appeal concerns the attached May 20, 2022 Entry issued by the Attorney Examiner, granting the April 29, 2022 motion to intervene of the Office of the Ohio Consumers’ Counsel (“OCC”) without acknowledgement nor any consideration of XOOM Energy’s previously filed arguments opposing OCC’s intervention and without determining that OCC has the statutory authority to intervene and met the standard for intervention.

This interlocutory appeal satisfies the requirements of Ohio Admin. Code 4901-1-15(B) for certification and review. First, this appeal presents a new or novel question of interpretation, law, or policy: does OCC’s limited authority allow it to seek intervention in this type of Commission-initiated investigation? Second, this appeal is taken from a ruling that represents a departure from past precedent because all pleadings addressing OCC’s intervention request were not evaluated and the intervention standards set forth in R.C. Section 4903.221 and Ohio Adm. Code 4901-1-11(A) were not addressed. Third, an immediate determination by the Commission is needed to prevent the likelihood of undue prejudice or expense to XOOM Energy, should the Commission ultimately reverse the intervention ruling in question. Fourth, XOOM Energy timely

files this interlocutory appeal – within five days of the May 20, 2022 Entry granting OCC’s intervene motion without any acknowledgement or consideration of the arguments opposing OCC’s intervention. This interlocutory appeal is warranted, certification should be granted and Commission review should reverse the Attorney Examiner’s ruling. A copy of the May 20, 2022 Entry is attached.

Further reasons for certifying, granting this Interlocutory Appeal and reversing the ruling are set forth in the attached memorandum in support.

Respectfully Submitted,

/s/ Michael J. Settineri

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**MEMORANDUM IN SUPPORT OF INTERLOCUTORY APPEAL,
REQUEST FOR CERTIFICATION AND
APPLICATION FOR REVIEW**

I. Introduction

On April 20, 2022, the Commission initiated this investigation proceeding. On April 29, 2022, OCC moved to intervene. XOOM Energy timely filed a Memorandum Contra on May 16, 2022, opposing OCC's motion on the grounds that OCC does not have the requisite statutory authority to intervene in a Commission-initiated investigation of a competitive supplier and also does not otherwise satisfy the standards for intervention under the Commission's rules.

The May 20, 2022 Entry states the following with regard to OCC's intervention motion:

{¶ 9} On April 29, 2022, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene. OCC cites its advocacy for consumers, who could be negatively affected by XOOM Energy's alleged misconduct, and that intervention would not unduly prolong or delay the proceedings. Further, OCC states its intervention will significantly contribute to the full development and equitable resolution of factual issues.

{¶ 10} Under Ohio Adm.Code 4901-1-11, any person shall be permitted to intervene upon timely motion that shows both that the person has a conferred right to intervene by statute, and that the person has a real or substantial interest in the proceeding that is not adequately represented by the existing parties. The attorney examiner notes that the Supreme Court of Ohio has held that statutes and rules governing intervention should be "generally liberally construed in favor of intervention." *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 384 (quoting *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections* (1995), 74 Ohio St.3d. 143, 144).

{¶ 11} Upon review, the attorney examiner finds OCC's motion to intervene should be granted.

The May 20, 2022 Entry did not acknowledge XOOM Energy's Memorandum Contra, did not analyze OCC's statutory authority to seek intervention in this Commission-initiated proceeding, and did not analyze whether OCC met the intervention standards set forth in R.C. Section 4903.221 and Ohio Adm. Code 4901-1-11(A). This interlocutory appeal should be certified for Commission

review and the May 20, 2022 intervention ruling reversed because OCC does not have the statutory authority to intervene and does not otherwise meet the standard for intervention.

II. Standard of Review

Pursuant to Ohio Adm. Code 4901-1-15, an interlocutory appeal must first be certified, except immediate appeals are permitted when they involve certain procedural rulings, such as a ruling that grants a motion to compel, denies a motion for protective order, or denies a motion to intervene. The May 20, 2022 Entry in this proceeding does not involve a procedural ruling within any of the recognized exceptions. As a result, the following in Ohio Adm.Code 4901-1-15(B) applies:

The legal director, deputy legal director, attorney examiner, or presiding hearing officer shall not certify such an appeal unless he or she finds that the appeal presents a new or novel question of interpretation, law, or policy, or is taken from a ruling which represents a departure from past precedent and an immediate determination by the commission is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, should the commission ultimately reverse the ruling in question.

III. Argument

A. The requirements for certification of this interlocutory appeal have been met.

1. This appeal presents a new or novel question of interpretation, law, or policy of whether OCC's limited authority allows it to intervene in this type of Commission-initiated investigation.

This is a Commission-initiated enforcement investigation involving a competitive retail supplier. It is not the first such proceeding – there have been a few others. OCC participated in other similar enforcement investigations,¹ but the Commission did not grant those motions. In two

¹ See e.g. *In the Matter of the Commission's Investigation into Verde Energy USA Ohio, LLC's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Noncompliance*, Case No. 19-958-GE-COI; *In the Matter of the Commission's Investigation into PALMco Power OH, dba Indra Energy and PALMco Energy Ohio, LLC dba Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Noncompliance*, Case No. 19-957-GE-COI; *In the Matter of the Commission's Investigation into PALMco Power OH, dba Indra Energy and PALMco Energy Ohio, LLC dba Indra Energy's Compliance with the Ohio Administrative*

of the cases, there was no challenge to OCC's intervention requests and no analysis of OCC's statutory authority.² As a result, the Commission is faced with a new and novel question of whether OCC's limited statutory authority allows it to intervene in this type of Commission-initiated investigation.

2. The May 20, 2022 Entry is a departure from past precedent because it does not consider XOOM Energy's arguments and did not properly analyze the question of OCC's intervention.

R.C. Section 4901.18 states in part that the Commission shall appoint one or more Attorney Examiners for purpose of making any investigation or holding any inquiry or hearing. An Attorney Examiner is also authorized by Ohio Adm. Code 4901-1-14 to decide procedural motions, such as the OCC motion to intervene. The Commission rules allow any party to file a memorandum contra to a motion. Ohio Adm. Code 4901-1-12(B)(1). XOOM Energy complied with that rule and timely filed a Memorandum Contra to OCC's intervention – detailing why OCC does not have statutory authority to intervene in this proceeding and detailing why OCC has not otherwise met the standards for intervention in this proceeding.

The long-standing practice in evaluating motions is to acknowledge and evaluate all arguments in response to a motion, as well as the request itself. The Entry, however, did not acknowledge or evaluate XOOM Energy's arguments. In addition, the Entry did not follow the practice of evaluating an intervention request against the intervention standard. For example, the Entry contained no evaluation of OCC's motion under the intervention criteria, and it failed to identify all criteria that "shall" be considered pursuant R.C. 4903.221(B) and Ohio Adm. Code

Code and Potential Remedial Actions for Noncompliance, Case No. 19-2153-GE-COI; and *In the Matter of the Commission's Investigation into SFE Energy Ohio, Inc. and Statewise Energy Ohio, LLC's Compliance with the Ohio Revised Code and Ohio Administrative Code and Potential Remedial Actions*, Case No. 20-1216-GE-COI.

² *PALMco*, *supra*, Case No. 19-957-GE-COI, Entry at ¶ 14 (September 3, 2019) and *Verde*, *supra*, Case No. 19-958-GE-COI, Entry at ¶ 9 (May 16, 2019).

4901-1-11(B). The statute and rule, collectively, require that the commission, the legal director, the deputy legal director, or an attorney examiner to consider the following in deciding whether to permit intervention³:

- (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.
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.
- (5) The extent to which the person's interest is represented by existing parties.

That analysis did not occur here and should be undertaken by the Commission.

It is noteworthy as well that the Supreme Court of Ohio's decision in *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 384, does not supersede OCC's limited statutory authority on what types of proceedings in which it can intervene. Contrary to what is implied at ¶ 10 of the Entry, the Court's decision in *Ohio Consumers' Counsel* does not stand for the general proposition that all "statutes and rules governing intervention should be 'generally liberally construed in favor of intervention.'" Rather, the Court:

- Confirmed at ¶¶ 15-16 that intervention in Commission proceedings is governed by R.C. 4903.221, which provides that parties may seek to intervene and that the Commission is required to consider the items listed in R.C. 4903.221(B);
- Stated at ¶ 16 that Ohio Adm.Code 4901-1-11, which provides additional guidance, is "very similar to Civ.R. 24 – the rule governing intervention in civil cases in Ohio – which "is generally liberally construed in favor of intervention[]";
- Stated at ¶ 20 that "[i]n our view, whether or not a hearing is held, intervention ought to be liberally allowed so that the positions of all persons

³ OCC does not satisfy all of these factors, as reflected in XOOM Energy's Memorandum Contra.

with a real and substantial interest in the proceedings can be considered by the PUCO”; and

- Concluded the Commission erred in denying the appellant’s intervention motions in the two underlying cases (which were public utility accounting-related cases, vastly different cases from this XOOM Energy proceeding).

The Court’s holding in *Ohio Consumers’ Counsel* was limited to the Commission’s statute on intervention in conjunction with the Commission’s rules. It did not find that all “statutes” or “rules” (including OCC’s enabling statutes) should be liberally construed when determining if OCC should be granted intervention. To the extent OCC argues otherwise, XOOM Energy disagrees that OCC’s statutory powers can be liberally construed. OCC is a creature of statute – it only possesses the jurisdiction and power conferred by its enabling statutes. *Tongren v. D&L Gas Mktg.* (2002), 149 Ohio App. 3d 508 (citing *Green v. Western Reserve Psych. Hab. Center* (1981), 3 Ohio App.3d 218); and *In the Matter of the Investigation of The East Ohio Gas Company d/b/a Dominion East Ohio Relative to Its Compliance with the Natural Gas Pipeline Safety Standards and Related Matters*, Case No. 12-380-GA-GPS, Entry at ¶ 10 (April 20, 2012). See also R.C. 4911.02, 4911.14, 4911.15, 4928.16(C) and 4929.24(C).

For the above reasons, the Entry is not consistent with the manner in which the Commission has evaluated intervention requests, including contested intervention requests. The Entry is a departure from past precedent.

3. An immediate Commission determination is needed to prevent the likelihood of undue prejudice or expense to XOOM Energy.

The May 20, 2022 Entry granted OCC’s intervention motion, granting OCC party status in this proceeding. XOOM Energy will be unduly prejudiced if the Commission does not immediately determine this interlocutory appeal because it affects which entities are parties in this proceeding. XOOM Energy will also incur additional expense because OCC is pursuing discovery and will likely engage in other activities in reliance on the intervention ruling. Delay will also

result through the addition of an unnecessary party, and allow OCC to illegally assert authority in a proceeding when it does not have jurisdiction and powers.

4. XOOM Energy timely files this interlocutory appeal within five days of the May 20, 2022 procedural ruling at issue.

Ohio Admin. Code 4901-1-15(B) requires an interlocutory appeal to be filed within five days after the ruling is issued. By filing this interlocutory appeal today, XOOM Energy has met this requirement of Ohio Admin. Code 4901-1-15(B).

B. The Commission should review and reverse the Entry's ruling granting OCC intervention in this proceeding.

1. OCC does not have the statutory authority necessary to intervene and, therefore, lacks a substantial interest in this proceeding.

OCC is authorized by statute to appear at the Commission as a representative of residential consumers under limited and specific circumstances, but none of those enumerated circumstances exist in this proceeding. Specifically, the OCC may appear at the Commission when:

- An application by a public utility is made to establish, modify, amend, change, increase, or reduce any rate, joint rate, toll, fare, classification, charge, or rental;⁴
- A complaint is filed that a rate, joint rate, fare, toll, charge, classification, or rental for commodities or services rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted by the utility is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of the law;⁵
- OCC files a complaint or appears pursuant to any complaint filed under R.C. Section 4928.16 (A)(1) or (2) or R.C. Section 4929.24(A)(1) or (2);⁶

⁴ R.C. Section 4911.15.

⁵ *Id.*

⁶ R.C. Sections 4928.16(C)(1) and 4929.24(C)(1).

- OCC files under section 4905.26 of the Revised Code a complaint for discovery;⁷ and
- OCC files an application for an order compelling compliance if a person fails without lawful excuse to obey a subpoena or to produce relevant matters.⁸

This proceeding does not involve an application by a public utility. This proceeding does not involve a complaint about a utility's rate or service. This proceeding also does not involve a complaint filed by OCC or any other entity. In addition, this proceeding does not involve an OCC application for a subpoena. Thus, while there are provisions within Title 49 of the Revised Code that establish OCC's authority to participate in certain Commission proceedings, there is no specific statutory provision authorizing OCC's participation in a Commission-initiated enforcement investigation of competitive supplier's compliance with provisions in Chapters 4928 or 4929 of the Revised Code.

The narrow statutory authority in R.C. Sections 4928.16(C) and 4929.24(C) allowing OCC to file a complaint does not enumerate any authority to intervene. Without the requisite statutory authority to participate in a Commission proceeding, OCC cannot intervene, nor be found to have a real and substantial interest in this proceeding.

2. Even if OCC has an interest (which it does not), OCC's interest is already represented by Staff.

The Commission has found that its Staff represents the interests of utility customers, including residential customers⁹ and OCC has acknowledged that Staff has a duty to balance the

⁷ R.C. Sections 4928.16(C)(2) and 4929.24(C)(2).

⁸ R.C. Section 4929.15(D).

⁹See e.g., *In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan, etc.*, Case Nos. 16-395-EL-SSO et al, Opinion and Order at ¶ 22 (October 20, 2017) (rejecting claim that no residential customers supported the Amended Stipulation when Staff and others signed the Amended Stipulation); and *In the Matter of the Regulation of the Purchased Gas Adjustment Clause contained within the Rate Schedules of Duke Energy Ohio, Inc. and Related Matters, etc.*, Case Nos. 15-218-GA-GCR

interests of all customer classes, including residential customers.¹⁰ There is no reason to believe that the Commission Staff cannot adequately represent the interests of the residential customers in this investigation proceeding either. OCC's contention at page 4 of its Memorandum in Support of its intervention that no party will represent the interests of the Ohio residential utility customers is incorrect. Staff can adequately represent the interests of residential customers and notably, it was Staff that initiated this proceeding after issuing a notice of non-compliance.¹¹

3. OCC's intervention will unduly delay this proceeding.

OCC's intervention in this proceeding will not result in an *expeditious* resolution of the issues, about which Staff and XOOM Energy have been discussing for months. Instead, OCC's participation will unduly delay a resolution, as has occurred in other Commission proceedings. For example, OCC's participation in another investigation matter for which a stipulation was presented and accepted by the Commission has delayed a final resolution – it has been nearly three years since the stipulation was signed and docketed in September 2019.¹² Notably, OCC's intervention was not contested in that proceeding.

Another example of how OCC's participation will unduly delay this proceeding is that OCC has served discovery on XOOM Energy, through which it seeks to expand – and thus unduly delay – this proceeding. For example, OCC has asked in discovery for the numbers of customers on each fixed rate and the numbers of customers on each variable rate, and those numbers further broken down by public utility service territories. It is Staff's role to investigate and prove the

et al., Opinion and Order at (September 7, 2016) (“Staff impartially represents the interests of all stakeholders, including residential customers”).

¹⁰ *In the Matter of the Application of Ohio Power Company for Approval of an Advanced Meter Opt-Out Service Tariff*, Case No. 14-1158-EL-ATA, Opinion and Order at 7 (April 27, 2016).

¹¹ See the April 18, 2022 application filed by Staff in this proceeding.

¹² *In the Matter of the Commission's Investigation into Verde Energy USA Ohio, LLC's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Noncompliance*, Case No. 19-958-GE-COI.

occurrence of any noncompliance. Since OCC has no role to play in this proceeding, its intervention would result in two entities investigating the alleged non-compliance issues and one entity (OCC) seeking to expand the scope. Moreover, further disputes regarding OCC's role and scope of discovery will result and that additional briefing will unduly delay this proceeding.

IV. Conclusion

This interlocutory appeal satisfies the requirements of Ohio Admin. Code 4901-1-15(B) for certification and review. This appeal is timely, presents a new or novel question of interpretation for the Commission, and generates from a ruling that is a clear departure from past precedent because it granted OCC's motion to intervene without any consideration of XOOM Energy's arguments. An immediate determination and reversal by the Commission is needed to prevent harm to XOOM Energy because OCC does not have the statutory authority to intervene in this type of Commission-initiated enforcement proceeding, and OCC does not meet the standard for intervention set forth in R.C. Section 4903.221 and Ohio Adm. Code 4901-1-11(A).

Respectfully Submitted,

/s/ Michael J. Settineri

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to these cases. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served upon the persons below via electronic mail this 25th day of May, 2022.

Staff of the Public Utilities Commission of
Ohio

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/s/ Michael J. Settineri
Michael J. Settineri

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
INVESTIGATION INTO XOOM ENERGY
OHIO, LLC'S COMPLIANCE WITH THE
OHIO ADMINISTRATIVE CODE AND
POTENTIAL REMEDIAL ACTIONS FOR
NON-COMPLIANCE.

CASE No. 22-267-GE-COI

ENTRY

Entered in the Journal on May 20, 2022

{¶ 1} XOOM Energy Ohio, LLC (XOOM Energy or XOOM) is an electric services company as defined in R.C. 4928.01 and a retail natural gas supplier as defined in R.C. 4929.01; is certified to provide competitive retail electric service (CRES) under R.C. 4928.08 and to supply competitive retail natural gas service (CRNGS) under R.C. 4929.20; and is subject to the jurisdiction of this Commission pursuant to R.C. 4928.16 and R.C. 4929.24. Accordingly, XOOM is required to comply with the Commission's minimum CRES standards set forth in Ohio Adm.Code Chapter 4901:1-21, as well as the minimum CRNGS standards set forth in Ohio Adm.Code Chapter 4901:1-29.

{¶ 2} R.C. 4928.08 states that no electric services company shall provide a CRES to a consumer in this state without first being certified by the Commission regarding its managerial, technical, and financial capability to provide such service and providing a financial guarantee sufficient to protect customers and electric distribution utilities from default. Similarly, R.C. 4929.20 states that no retail natural gas supplier shall provide a CRNGS to a consumer without first being certified by the Commission regarding its managerial, technical, and financial capability to provide that service and providing reasonable financial assurances sufficient to protect customers and natural gas companies from default.

{¶ 3} On July 22, 2013, the Commission granted XOOM Energy's application for certification as a CRES provider in this state. *In the Matter of the Application of XOOM Energy Ohio, LLC for Certification as a Competitive Retail Electric Service Provider*, Case No. 13-1453-EL-CRS. XOOM Energy timely filed renewal applications for certification as a CRES

provider every two years pursuant to Ohio Adm.Code 4901:1-24-09, and each renewal application was automatically approved by the Commission pursuant to R.C. 4928.08. XOOM Energy's most recent renewal application was filed on May 20, 2021; automatic approval of this renewal application was suspended by the attorney examiner on June 17, 2021.

{¶ 4} Additionally, on January 4, 2012, the Commission granted XOOM Energy's application for certification as a CRNGS supplier in this state. *In the Matter of the Application of XOOM Energy Ohio, LLC for Certification as a Competitive Retail Natural Gas Marketer*, Case No. 11-4795-GA-CRS. XOOM Energy timely filed renewal applications for certification as a CRNGS provider every two years pursuant to Ohio Adm.Code 4901:1-27-09, and each renewal application was automatically approved by the Commission pursuant to R.C. 4929.20. XOOM Energy's most recent renewal application was filed on November 29, 2021; automatic approval of this renewal application was suspended by the attorney examiner on December 22, 2021.

{¶ 5} Both R.C. 4928.08 and 4929.20 allow the Commission to suspend, rescind, or conditionally rescind the certification of any electric services company or retail natural gas supplier issued under these sections if the Commission determines, after reasonable notice and opportunity for hearing, that the electric services company or retail natural gas supplier has failed to comply with any applicable certification standards or has engaged in anticompetitive or unfair, deceptive, or unconscionable acts or practices in this state. Additionally, R.C. 4928.16 and 4929.24 grant the Commission the authority to order any remedy or forfeiture provided under R.C. 4905.54 to 4905.60 and 4905.64, and to order restitution to customers and rescission of customer contracts.

{¶ 6} On April 18, 2022, Staff of the Commission's Service Monitoring and Enforcement Department (Staff) filed a letter in the above-captioned docket, stating that, after reviewing customer contacts from both January 1, 2021, to June 21, 2021, and January 1, 2022, to March 1, 2022, during which time the Commission's call center received 19

complaints and 21 contacts, respectively, Staff believes that XOOM Energy has failed to comply with several sections of the Ohio Administrative Code with respect to its consumer enrollment practices. Staff states that the majority of the aforementioned contacts are related to enrollment disputes. Additionally, Staff states that one of XOOM's independent channel partners was engaged in soliciting consumers via telephone and then enrolling them online via XOOM's website while on the phone, which was completed by XOOM's agent, not the consumer.

{¶ 7} Staff states that, on June 21, 2021, a notice of probable non-compliance (notice) was sent to XOOM Energy; however, after many discussions, XOOM Energy and Staff were unable to resolve the issues raised in the notice. Staff has concluded that: XOOM Energy sales representatives provided misleading information during telemarketing efforts; and, XOOM Energy enrolled customers without proof of their consent as required by Ohio Adm.Code 4901:1-21-06(C). XOOM Energy did not properly enroll consumers telephonically; XOOM Energy did not properly enroll consumers via the internet; and that, for both internet and telephonic enrollments, XOOM Energy did not obtain proper verification and/or documentation as required by the Ohio Administrative Code which requires that consent shall be obtained by encrypted customer input on a provider's website or a date and time-stamped audio recorded verification before the completion of a call. As a result of its conclusions indicating probable non-compliance with statutory and rule requirements, Staff recommends that the Commission open a formal proceeding to review XOOM Energy's compliance with Ohio law.

{¶ 8} On April 20, 2022, the attorney examiner issued an Entry establishing a procedural schedule. Motions to intervene were to be filed by May 10, 2022, a Staff Report was to be filed by May 25, 2022, and an evidentiary hearing was scheduled for June 8, 2022.

{¶ 9} On April 29, 2022, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene. OCC cites its advocacy for consumers, who could be negatively affected by XOOM Energy's alleged misconduct, and that intervention would not unduly

prolong or delay the proceedings. Further, OCC states its intervention will significantly contribute to the full development and equitable resolution of factual issues.

{¶ 10} Under Ohio Adm.Code 4901-1-11, any person shall be permitted to intervene upon timely motion that shows both that the person has a conferred right to intervene by statute, and that the person has a real or substantial interest in the proceeding that is not adequately represented by the existing parties. The attorney examiner notes that the Supreme Court of Ohio has held that statutes and rules governing intervention should be “generally liberally construed in favor of intervention.” *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 384 (quoting *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections* (1995), 74 Ohio St.3d. 143, 144).

{¶ 11} Upon review, the attorney examiner finds OCC’s motion to intervene should be granted.

{¶ 12} On May 9, 2022, Staff and XOOM filed a joint motion for continuance, explaining that Staff and the parties required additional time to explore the opportunity to resolve issues and discuss settlement. Staff and XOOM state that they have spoken with OCC, which does not oppose the motion for continuance.

{¶ 13} Under Ohio Adm.Code 4901-1-13(A), continuances of public hearings and extensions of time to file pleadings or other motions may be granted upon motion of any party for good cause shown. Upon review, the attorney examiner finds good cause exists to grant the motion for continuance of the deadlines established in the Entry of April 20, 2022.

{¶ 14} Accordingly, the procedural schedule should be modified as follows:

- (a) The Staff Report shall be due by June 6, 2022.
- (b) Testimony shall be due by July 21, 2022.

{¶ 15} A hearing should be rescheduled in this matter for 10:00 a.m., on July 28, 2022, at the offices of the Commission, 11th Floor, Hearing Room 11-C, 180 East Broad Street, Columbus, Ohio 43215. All parties or interested persons should register at the lobby desk and then proceed to the 11th floor in order to participate in the hearing.

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That the procedural schedule as set forth in Paragraph 14 be adopted. It is, further,

{¶ 18} ORDERED, That a hearing be scheduled as set forth in Paragraph 15. It is, further,

{¶ 19} ORDERED, That OCC's motion to intervene be granted. It is, further,

{¶ 20} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Jesse M. Davis

By: Jesse M. Davis
Attorney Examiner

JRJ/mef

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Commission of Ohio Docketing Information System on**

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in

Case No(s). 22-0267-GE-COI

Summary: Attorney Examiner Entry granting the motion to intervene and modifying the procedural schedule: Staff report due June 6, 2022; Testimony due July 21, 2022; and the hearing rescheduled to commence on July 28, 2022 at 10:00 a.m. at the Commission offices electronically filed by Ms. Mary E. Fischer on behalf of Jesse M. Davis, Attorney Examiner, Public Utilities Commission of Ohio

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Commission of Ohio Docketing Information System on**

5/25/2022 4:27:48 PM

in

Case No(s). 22-0267-GE-COI

Summary: Application Interlocutory Appeal, Request for Certification and
Application for Review electronically filed by Mr. Michael J. Settineri on behalf of
XOOM Energy Ohio, LLC