

from past precedent because the statutory authority argument was raised but not evaluated and inapposite cases were relied upon. Third, an immediate determination by the Commission is needed to prevent the likelihood of undue prejudice or expense to Direct Energy Services, should the Commission ultimately reverse the intervention ruling in question. Fourth, Direct Energy Services timely files this interlocutory appeal – within five days of the September 16, 2022 Entry granting OCC’s intervention motion. This interlocutory appeal is warranted, certification should be granted, and Commission review should reverse the Attorney Examiner’s ruling.

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

Respectfully Submitted,

/s/ Gretchen L. Petrucci

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**MEMORANDUM IN SUPPORT
OF THE INTERLOCUTORY APPEAL, REQUEST FOR CERTIFICATION
AND APPLICATION FOR REVIEW
OF DIRECT ENERGY SERVICES, LLC**

I. INTRODUCTION

This proceeding began with the filing of a stipulation and recommendation on June 10, 2022. On July 1, 2022, OCC filed a motion to intervene. Direct Energy Services timely filed a Memorandum Contra on July 18, 2022, opposing OCC's motion on the grounds that OCC does not have the requisite statutory authority to intervene in this type of Commission proceeding and does not otherwise satisfy the standards for intervention under the Commission's rules.

The September 16, 2022 Entry states the following in ruling on OCC's intervention motion:

{¶ 8} The attorney examiner finds that OCC's motion to intervene is reasonable and should be granted. OCC satisfied the intervention standards set forth in R.C. 4903.221 and Ohio Adm.Code 4901-1-11. OCC's interest and position is in representing residential consumers and their best interests, and it is the marketing to and enrollment of those very consumers who are indeed the very subject of Staff's investigation into Direct Energy's practices. Next, OCC is not likely to unduly delay the proceedings where it appears before the Commission frequently and has done so in numerous, similar cases, as detailed below. Finally, OCC could significantly contribute to the full development and equitable resolution of the factual issues where it has expertise in these matters. Further, the Commission has previously permitted OCC to intervene in Commission-initiated enforcement proceedings on similar matters to those identified in the notice of probable noncompliance issued in this case, which the Stipulation addresses. *See, e.g., In re RPA Energy Inc.*, Case No. 22-441-GE-COI, Entry (July 6, 2022), *In re XOOM Energy Ohio, LLC*, Case No. 22-267-GE-COI, Entry (May 20, 2022), *In re SFE Energy Ohio, Inc.*, and *Statewise Energy Ohio, LLC*, Case No. 20-1216-GE-COI, Entry (Sept. 28, 2020); *In re PALMco Power OH, LLC dba Indra Energy & PALMco Energy OH, LLC dba Indra Energy*, Case No. 19-2153-GE-COI, Entry (Apr. 6, 2020); *In re PALMco Power OH, LLC dba Indra Energy & PALMco Energy OH, LLC dba Indra Energy*, 19-957-GE-COI, Entry (Sept. 3, 2019); *In re Verde Energy USA Ohio, LLC*, Case No. 19-958-GE-COI, Entry (May 16, 2019); *In re [Citizens] Utilities Company*, Case No. 92-550-WS-COI, Entry (June 2, 1992); *In re Suburban Fuel Gas, Inc.*, Case No. 90-1825-GA-COI, Order (Dec. 13, 1990).

The September 16, 2022 Entry did not analyze OCC's statutory authority to seek intervention in this type of Commission proceeding (although the new/novel question was raised),

and relied on cases that are not the same as this proceeding and involved public utilities. This interlocutory appeal should be certified for the Commission to review and reverse the September 16, 2022 intervention ruling because OCC does not have the statutory authority to intervene and does not therefore meet the standard for intervention.

II. STANDARD OF REVIEW

Ohio Admin. Code 4901-1-15(B) allows an adversely affected party to take an interlocutory appeal to the Commission of procedural rulings or of rulings issued during a hearing or prehearing conference. An interlocutory appeal in this instance must first be certified to the Commission by the Legal Director, Deputy Legal Director, Attorney Examiner, or Presiding Hearing Officer. Ohio Admin. Code 4901-1-15(B). The Legal Director, Deputy Legal Director, Attorney Examiner, or Presiding Hearing Officer shall not certify such an appeal unless he or she finds:

- (a) The appeal presents a new or novel question of interpretation, law, or policy; or
- (b) The appeal is taken from a ruling which represents a departure from past precedent and an immediate Commission determination 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 because 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 proceeding.**

OCC is a creature of statute and can only exercise the power that has been conferred upon it by statute.¹ It is fundamental, therefore, that OCC must first have the specific statutory

¹ *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), citing *Discount Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St.3d 360, 373 (2007); *D.A.B.E.*,

authorization in order to then seek to represent residential utility consumers at the Commission. As Direct Energy Services pointed out in its Memorandum Contra (at page 3-4), OCC has been statutorily authorized to seek to represent residential utility consumers 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;²
- A complaint is filed claiming 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;³
- Filing a complaint or appearing in any complaint proceeding filed under R.C. 4928.16(A)(1) or (2) or R.C. 4929.24(A)(1) or (2);⁴
- Filing a complaint under R.C. 4905.26 to force a utility to respond to an inquiry by OCC under R.C. 4911.19;⁵ or
- Filing an application for an order compelling compliance if a person fails without lawful excuse to obey a subpoena or to produce relevant matters.⁶

This proceeding, which is a proposed resolution of a notice of probable noncompliance against a competitive retail energy supplier entered into pursuant to Ohio Admin. Code 4901:1-23-04 and 4901:1-34-05, does not involve any of the above circumstances. Noticeably, OCC's motion to intervene did not even argue that any of the above types of proceedings are involved in this proceeding. As Direct Energy Services pointed out in its Memorandum Contra, there is no specific statutory provision in Chapters 4911, 4928, or 4929 authorizing OCC's participation in

Inc. v. Toledo Lucas Cty. Bd. of Health, 96 Ohio St.3d 250,259 (2002); *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229,234 (1996); *Tongren v. D&L Gas Marketing, Ltd.*, 149 Ohio App.3d 508, 510 (2002).

² R.C. Sections 4911.14 and 4911.15.

³ *Id.*

⁴ R.C. Sections 4928.16(C)(1) and 4929.24(C)(1).

⁵ R.C. Sections 4928.16(C)(2) and 4929.24(C)(2).

⁶ R.C. Section 4929.15(D).

the case of a proposed resolution of a notice of probable noncompliance against a competitive retail energy supplier entered into pursuant to Ohio Admin. Code 4901:1-23-04 and/or 4901:1-34-05.

In addition, OCC's representative authority cannot be extended to establish the authority. This is because OCC's representative power in Chapter 4911 is not plenary. OCC's representative power also does not confer it with specific authority to intervene in this type of proceeding. Without the requisite statutory authority to participate in a specific Commission proceeding, OCC cannot intervene, nor be found to have a real and substantial interest in this proceeding.

The Commission has not considered this specific question in the past regarding OCC's statutory authority to participate in this type of Commission proceeding, and thus it is a new, novel question of interpretation, law, or policy which warrants certification. To the extent that OCC relies on *In re Commerce Energy dba Just Energy*, Case No. 16-2006-GE-UNC, to claim that the Commission has addressed the issue of OCC's statutory authority in this type of proceeding, that is incorrect. In *Just Energy*, the Commission granted OCC intervention, stating only that OCC's motion is reasonable and should be granted.⁷ OCC's statutory authority to intervene was not questioned or evaluated in the Commission's original evaluation because OCC filed its motion to intervene the day before the Commission ruled and approved the stipulation, and Just Energy did not have an opportunity to respond to the motion. While Just Energy challenged the intervention ruling on rehearing, OCC's statutory authority was not part of the Commission's ruling on rehearing.⁸ That case is not precedent. As a result, the question regarding OCC's statutory

⁷ *Just Energy, supra*, Finding and Order at ¶ 7 (November 3, 2016).

⁸ *Just Energy, supra*, Second Entry on Rehearing (March 3, 2017).

authority in this type of Commission proceeding is a new, novel question of interpretation, law, or policy which warrants certification.

B. The requirements for certification of this interlocutory appeal have been met because the May 20, 2022 Entry is a departure from past precedent since it does not consider Direct Energy Services' arguments and did not properly analyze the question of OCC's intervention in this type of Commission proceeding.

R.C. Section 4901.18 states in part that the Commission shall appoint one or more Attorney Examiners for the 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. Direct Energy Services complied with Ohio Adm. Code 4901-1-12(B)(1) and timely filed a Memorandum Contra to OCC's motion to intervene – detailing why OCC does not have statutory authority to intervene in this type of proceeding and detailing why OCC has not otherwise met the standards for intervention in this proceeding.

The September 16, 2022 Entry, however, did not evaluate Direct Energy Services' statutory arguments or determine whether OCC's limited authority allows it to intervene in this type of Commission proceeding. The Entry did not identify any statute establishing such authority to allow OCC to seek to intervene in this type of Commission proceeding. As is plain from the above-quoted single paragraph of the Entry in which the motion was evaluated, Direct Energy Services' argument was ignored.

In addition, the Entry cites to eight Commission "COI" cases but they have no bearing on whether OCC's intervention request in this type of proceeding should be granted. This proceeding is not the same as those eight COI cases. Those cases are distinguishable because they are Commission-initiated investigations. This case is entirely different – it is a proposed resolution between Direct Energy Services and Staff of a notice of probable noncompliance against a competitive retail energy supplier entered into pursuant to Ohio Admin. Code 4901:1-23-04 and/or

4901:1-34-05. Even if Staff notices of probable noncompliance may have been issued against the different companies, the proper analysis must consider the type of Commission proceeding involved because OCC's statutory authority is based on the type of Commission proceeding involved. This "UNC" case is remarkably different from the cited Commission-initiated investigation proceedings. There is an additional reason why two of the cited cases (*Citizen Utilities* and *Suburban, supra*) should not be found to be precedent for OCC's authority to intervene in this proceeding. They involve public utilities and the regulatory framework applicable to public utilities and the specific authority of OCC to participate in public utility cases at the Commission are vastly different than the framework applicable to competitive retail energy suppliers.

It is important to note as well that the Ohio Edison case cited by OCC in its Reply (page 2, footnote 3) as precedent demonstrating that OCC has statutory authority to intervene in this proceeding is inapposite too.⁹ It was a complaint case filed by OCC against a public utility. Again, that case is distinguishable and should not be found to be precedent for OCC's authority to intervene.

C. The requirements for certification of this interlocutory appeal have been met because an immediate Commission determination is needed to prevent the likelihood of undue prejudice or expense to Direct Energy Services.

The Entry stated that OCC is not likely to unduly delay this proceeding. The reason given is that OCC frequently appears before the Commission and has done so in "similar cases." The number of times the OCC has participated in cases at the Commission is not the test for intervention. In addition, as explained above, the "similar cases" cited are actually not the same

⁹ *In the Matter of the Complaint of the Office of Consumers' Counsel on Behalf of the Residents of Copley Village Condominium Association I and Copley Village Condominium Association II v. Ohio Edison Company*, Case No. 89-1031-EL-CSS, 1989 Ohio PUC LEXIS 1100.

type of case. This analysis is in error and an immediate *Commission* determination is needed to prevent the undue prejudice that results from an erroneous analysis. In addition, an immediate determination is needed because Direct Energy will incur additional expense because OCC is pursuing discovery and will likely engage in other activities in reliance on the intervention ruling.

D. The requirements for certification of this interlocutory appeal have been met because Direct Energy Services timely files this interlocutory appeal within five days of the September 16, 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, Direct Energy Services has met this requirement of Ohio Admin. Code 4901-1-15(B).

IV. APPLICATION FOR REVIEW

OCC does not have the statutory authority necessary to seek 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;¹⁰
- 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;¹¹

¹⁰ R.C. Section 4911.15.

¹¹ *Id.*

- 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);¹²
- OCC files under section 4905.26 of the Revised Code a complaint for discovery;¹³ 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.¹⁴

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 proceeding opened to consider a proposed resolution of a notice of probable noncompliance against a competitive retail energy supplier entered into pursuant to Ohio Admin. Code 4901:1-23-04 and/or 4901:1-34-05. 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.

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 customers¹⁵ and OCC has acknowledged that Staff has a duty to balance the

¹² R.C. Sections 4928.16(C)(1) and 4929.24(C)(1).

¹³ R.C. Sections 4928.16(C)(2) and 4929.24(C)(2)

¹⁴ R.C. Section 4929.15(D).

¹⁵ See 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 et al., Opinion and Order at (September 7, 2016) (“Staff impartially represents the interests of all stakeholders, including residential customers”).

interests of all customer classes, including residential customers.¹⁶ There is no reason to believe that the Commission Staff did not or cannot adequately represent the interests of the residential customers in this investigation proceeding. Staff can adequately represent the interests of residential customers.

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 Direct Energy Services discussed. Instead, OCC's participation will unduly delay a resolution, which was presented to the Commission months ago.

V. 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 departure from past precedent. An immediate determination and reversal by the Commission is needed – there is no specific statutory provision authorizing OCC to seek participation in a proceeding opened to consider a proposed resolution of a notice of probable noncompliance against a competitive retail energy supplier entered into pursuant to Ohio Admin. Code 4901:1-23-04 and/or 4901:1-34-05. This proceeding is not a Commission-initiated investigation and the Entry erroneously relied on those cases, should be reversed and should not be found to be determinative of OCC's statutory

¹⁶ *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).

authority to participate in this proceeding. 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/ Gretchen L. Petrucci

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THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
CONSIDERATION OF A SETTLEMENT
AGREEMENT BETWEEN DIRECT ENERGY
SERVICES, LLC, AND THE COMMISSION'S
STAFF.

CASE NO. 22-583-GE-UNC

ENTRY

Entered in the Journal on September 16, 2022

{¶ 1} Direct Energy Services, LLC (Direct Energy or the Company) 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, Direct Energy 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} Ohio Adm.Code 4901:1-23-04(A) provides that, if Staff and a CRES provider reach agreement regarding the violation of a rule within Ohio Adm.Code Chapter 4901:1-21, the violation of a Commission order, a proposed corrective action or remedy, or the amount of a forfeiture or other payment, the agreement must be reduced to writing in a settlement agreement and filed with the Commission for approval. Similarly, Ohio Adm.Code 4901:1-34-05(A) provides that, if Staff and a retail natural gas supplier reach agreement regarding the violation of a rule within Ohio Adm.Code Chapters 4901:1-27 through 4901:1-29, the violation of any provision of R.C. Chapter 4929, the violation of a Commission order, a proposed corrective action or remedy, or the amount of a forfeiture or other payment, the agreement must be reduced to writing and filed with the Commission for approval.

{¶ 3} On June 10, 2022, Direct Energy and Staff (Signatory Parties) filed a joint stipulation and recommendation (Stipulation). Attached to the Stipulation was a notice

of probable noncompliance (Notice Letter) issued by Staff on June 9, 2021, to Direct Energy with respect to certain record keeping, marketing and enrollment practices, and billing issues. In its Notice Letter, Staff proposed corrective actions to address the issues of probable noncompliance. The Stipulation, as proposed, would resolve all of the issues identified by Staff in the Notice Letter. The Stipulation notes that the Signatory Parties engaged in numerous discussions to address the issues raised in the Notice Letter and reached a resolution after such discussions.

{¶ 4} On July 1, 2022, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene, citing generally to its role as a consumer advocate and arguing that its intervention satisfies the requirements of Ohio Adm.Code 4901-1-11(B)(1)-(4) and R.C. 4903.221. OCC stated that its intervention would enhance the development of a full record and would not unduly delay the proceedings.

{¶ 5} July 18, 2022, Direct Energy filed a memorandum contra the motion to intervene. Direct Energy argues that OCC's intervention should be denied where it does not have legal authority to intervene in the matter at hand. Direct Energy avers that, even if OCC were allowed to intervene, which it should not be, its interest is more than adequately represented by Staff. Direct Energy states that OCC's desire to conduct its own, separate investigation into Direct Energy will not contribute to a just and expeditious resolution of the issues involved, given Staff's already completed investigation.

{¶ 6} Initially, Direct Energy argues that OCC does not have authority to seek intervention where it has authority to intervene in Commission proceedings only under the circumstances specified in R.C. 4911.14 and 4911.15. Direct Energy avers that the case at hand, which it describes as a proposed resolution of a notice of probable noncompliance against a competitive retail energy supplier, does not involve any of the enumerated circumstances under which OCC is statutorily authorized to intervene before the Commission. Further, Direct Energy argues that OCC's status as a

representative of residential utility consumers does not establish for it a right to participate in all Commission proceedings, including this one. Direct Energy states that in a gas pipeline safety case in 2012, the Commission denied OCC's motion to intervene in that proceeding where R.C. 4911.02(B)(2) did not provide any authority for OCC to intervene in a gas pipeline safety investigation proceeding. *In re East Ohio Gas Co.*, Case No. 12-380-GA-GPS (*East Ohio*), Entry (Apr. 20, 2012). Direct Energy notes that "in apparent recognition of the limits of its statutory authority, OCC did not further challenge the ruling in [*East Ohio*]* * *." Direct Energy argues that the same analysis applies to OCC's motion to intervene in this proceeding where there is no statutory authority in Chapters 4911, 4928, or 4929 authorizing OCC's participation in a proceeding such as this one. Next, Direct Energy argues that OCC's interest is already adequately represented by Staff. Direct Energy avers that there is no reason to believe that Staff did not and cannot adequately represent the interest of the residential customers in this proceeding where Staff conducted its investigation, issued its notice of probable noncompliance, and interacted with Direct Energy on the matter to reach a resolution. Finally, Direct Energy argues that OCC's intervention would serve to unduly delay this proceeding as it pursues a different agenda, which results from ulterior motives, Direct Energy opines. Direct Energy states that OCC has already delayed the proceeding where it has served discovery on Direct Energy, and, the Company opines, will likely force a hearing to be held so that OCC can question Staff's agreed-upon resolution to the notice of probable noncompliance.

{¶ 7} On July 25, 2022, OCC filed its reply to Direct Energy's memorandum. OCC argues that Direct Energy errs when it states that OCC has no legal authority to intervene. Specifically, OCC cites to R.C. 4911.02(B)(2), which provides that "[w]ithout limitation because of enumeration, the counsel shall have all the rights and powers of any party of interest appearing before the Public Utilities Commission regarding examination and cross-examination of witnesses, presentation of evidence, and other matters* * *." OCC argues that this provision, in conjunction with the Commission's precedent and rules,

conveys the intent of the legislature that the provisions of R.C. 4911.02 be construed as broadly as is possible. OCC states that even what is enumerated, citing as an example R.C. 4911.02(B)(2)(b), allows it to intervene in this proceeding owing to the aforementioned broad construal of intervention of the Commission. OCC argues that Direct Energy has provided poor service to consumers in Ohio where the Commission has received consumer complaints concerning a pattern of unfair marketing practices. This, OCC opines, places this case within OCC's authority to intervene under R.C. 4911.02(B)(2)(b). OCC argues further that Direct Energy's claim ignores R.C. 4903.221, which provides "[a]ny other person who may be adversely affected by Public Utilities Commission proceeding may intervene in such proceeding." OCC argues that R.C. 4903.221 makes no distinction between a proceeding to consider proposed resolution of a notice of probable noncompliance or any other type of Commission proceeding. Next, OCC argues that it satisfies all requirements of R.C. 4903.221 and Ohio Adm.Code 4901-1-11, which set out the standards for intervention in a Commission proceeding. Next, OCC opines that Staff cannot adequately represent OCC's interest on behalf of residential consumers where the legislative intent of creating OCC was to create a dedicated consumer advocate for cases such as the matter at hand. OCC notes that the legislature's creation of OCC reflects that Staff is not a substitute for OCC's consumer advocacy. Finally, OCC argues that its participation will not unduly delay the proceedings where it is undergoing due process and has expertise in participating in numerous Commission proceedings and can process its case efficiently with consideration for the public interest.

{¶ 8} The attorney examiner finds that OCC's motion to intervene is reasonable and should be granted. OCC satisfied the intervention standards set forth in R.C. 4903.221 and Ohio Adm.Code 4901-1-11. OCC's interest and position is in representing residential consumers and their best interests, and it is the marketing to and enrollment of those very consumers who are indeed the very subject of Staff's investigation into Direct Energy's practices. Next, OCC is not likely to unduly delay the proceedings where it appears before the Commission frequently and has done so in numerous, similar cases,

as detailed below. Finally, OCC could significantly contribute to the full development and equitable resolution of the factual issues where it has expertise in these matters. Further, the Commission has previously permitted OCC to intervene in Commission-initiated enforcement proceedings on similar matters to those identified in the notice of probable noncompliance issued in this case, which the Stipulation addresses. *See, e.g., In re RPA Energy Inc.*, Case No. 22-441-GE-COI, Entry (July 6, 2022), *In re XOOM Energy Ohio, LLC*, Case No. 22-267-GE-COI, Entry (May 20, 2022), *In re SFE Energy Ohio, Inc.*, and *Statewise Energy Ohio, LLC*, Case No. 20-1216-GE-COI, Entry (Sept. 28, 2020); *In re PALMco Power OH, LLC dba Indra Energy & PALMco Energy OH, LLC dba Indra Energy*, Case No. 19-2153-GE-COI, Entry (Apr. 6, 2020); *In re PALMco Power OH, LLC dba Indra Energy & PALMco Energy OH, LLC dba Indra Energy*, 19-957-GE-COI, Entry (Sept. 3, 2019); *In re Verde Energy USA Ohio, LLC*, Case No. 19-958-GE-COI, Entry (May 16, 2019); *In re Ohio Utilities Company*, Case No. 92-550-WS-COI, Entry (June 2, 1992); *In re Suburban Fuel Gas, Inc.*, Case No. 90-1825-GA-COI, Order (Dec. 13, 1990).

{¶ 9} It is, therefore,

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

{¶ 11} 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

NJW/dmh

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in

Case No(s). 22-0583-GE-UNC

Summary: Attorney Examiner Entry ordering that OCC's motion to intervene be granted electronically filed by Ms. Donielle M. Hunter on behalf of Jesse M. Davis, Attorney Examiner, Public Utilities Commission of Ohio

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

9/21/2022 4:53:09 PM

in

Case No(s). 22-0583-GE-UNC

Summary: Request - Interlocutory Appeal, Request for Certification and Application
for Review electronically filed by Mrs. Gretchen L. Petrucci on behalf of Direct
Energy Services, LLC