

Concerns with the Proposed Office of Consumer Advocacy

The undersigned industry groups, which represent an industry regulated by the Federal Energy Regulatory Commission (“FERC” or “The Commission”) as well as customers of that industry, have a number of concerns with the proposed new federal Office of Consumer Advocacy (“OCA” or “Office”) to serve as an advocate for the public interest before the Commission. The proposed OCA has an overly expansive investigative authority that would duplicate responsibilities of the Commission and its existing independent Trial Staff, present potential conflicts of interest with the Commission itself, and entail extensive and duplicative costs. Indeed, in testimony before the Senate Committee on Environment and Public Works on S. 1733, Commission Chairman Jon Wellinghoff questioned some of the specific aspects of the OCA proposed legislation. Protection of the public interest is the primary responsibility given to the Commission by Congress in the Natural Gas Act and Federal Power Act. FERC’s mission is to “[a]ssist consumers in obtaining reliable, efficient and sustainable energy services at a reasonable cost through appropriate regulatory and market means,”¹ which includes ensuring rates and services are just and reasonable, not unduly discriminatory, and in the public interest. The primary concern with the establishment of this new Office, imbued with vague but broad authorities, is how its extensive duties and powers might intersect with, and in fact disturb, those of the Commission. Additionally, the Office is to be set up to represent the interest of energy customers, which is defined as only residential or small commercial customers, a far narrower slice of the public interest than is currently served by the Commission and its existing advocates.

Concerns with the proposal for an Office of Consumer Advocacy:

- FERC’s stated mission is the protection of the public interest under the Natural Gas Act and the Federal Power Act. As Chairman Wellinghoff indicated in his October testimony, the OCA may create conflicts between its activities and the Commission’s responsibilities in terms of protection of the public interest. Moreover, FERC already has an internal office with independent trial staff that actively participates in administrative litigation as an impartial representative of the public interest. Duplicative investigations conducted by the OCA will require unnecessary additional levels of funding and will impose additional costs on participating parties and ultimately, on ratepayers.
- The OCA would unfairly represent a “super” party to FERC proceedings with abilities not available to any other stakeholder, disadvantaging other parties in FERC proceedings. This “super” party status includes the power to “monitor and review energy customer complaints and grievances” regarding utility services, “investigate independently” the services provided by utilities, and “collect data concerning rates or services” of entities subject to the Commission’s jurisdiction. Chairman Wellinghoff stated similar concerns when testifying that “it is unclear why OCA’s role should exceed the role of others advocating interests in Commission proceedings.”
- Consumers are currently represented in proceedings before FERC and on appeal, both directly and indirectly, through numerous entities (FERC Trial Staff, state consumer advocates, state regulatory commissions, state Attorneys General, ad hoc coalitions and legal entities, trade associations, shipper groups, load serving entities, and local distribution companies). There is no current statutory gap that leaves consumers without representation in Commission proceedings.

¹ Strategic Plan FY 2009-2014.

- The OCA's right to disseminate information publicly may breach confidentiality or sensitive commercial agreements that currently are entitled to limited distribution, subject to FERC public interest oversight.
- While unclear in the current language, if the OCA is funded from the Commission's authorized budget, the diversion of those funds will detract or delay other critical FERC activities, policies and certifications.
- There is no way to ascertain the level of costs that may be associated with OCA requirements due to the lack of limitations of the OCA's powers.

American Forest & Paper Association

Senior Director, Water Quality Programs
 1111 19th Street, NW
 Suite 800
 Washington DC 20036-3652
 (202) 463-2581

Interstate Natural Gas Association of America

General Counsel
 10 G Street, NE
 Suite 700
 Washington, DC 20002
 (202) 216-5928

American Gas Association

Senior Counsel & Director Regulatory Affairs
 400 N. Capitol St., NW
 Suite 450
 Washington, DC 20001
 (202) 824-7231

Natural Gas Supply Association

Vice President of Regulatory Affairs
 1620 Eye Street, NW, Suite 700
 Washington, DC 20006-4033
 (202) 326-9300

Independent Petroleum Association of America

Vice President
 Crude Oil & Natural Gas Regulatory Affairs
 1201 15th St., NW
 Suite 300
 Washington, DC 20005
 (202) 857-4728

Process Gas Consumers Group

General Counsel
 601 13th Street NW
 Suite 1000 South
 Washington DC 20005
 (202) 661-2225

January 25, 2010