**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Ohio Gas Company for a Waiver of Orders Related to the Tax Cuts and Jobs Act of 2017. | )))) | Case No. 18-1903-GA-WVR |

**MOTION TO INTERVENE**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene because the Ohio Gas Company (“Ohio Gas” or the “Utility”) has filed an application to waive the requirement in the Order issued by the Public Utilities Commission of Ohio (“PUCO”) in Case No. 18-0047. That Order requires the Utility file an application not for an increase in rates intended to pass back to consumers tax savings resulting from the federal Tax Cuts and Jobs Act of 2017 (TCJA).[[1]](#footnote-2) Ohio Gas seeks this waiver because of its belief that implementing the TCJA in rates would result in a revenue increase, and requests that the PUCO recognize that it has fully complied with its directive to return the tax savings to customers.

OCC represents the interests of Ohio Gas’ 44,000 residential gas utility customers.[[2]](#footnote-3) The PUCO should grant OCC’s motion to intervene for the reasons set forth in the attached memorandum in support.

Respectfully submitted,

 Bruce Weston (0016973)

 Ohio Consumers’ Counsel

 */s/ Christopher Healey*

 Christopher Healey (0086027)

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## MEMORANDUM IN SUPPORT

Ohio Gas is proposing to exempt itself from the requirement in the PUCO’s order in the Tax COI that the Utility file an application not for an increase in rates because it has fully complied with the PUCO’s directive to return the tax savings to customers. The purpose of this requirement in the PUCO’s order was “to pass along to consumers the tax savings resulting from the TCJA.”[[3]](#footnote-4) Ohio Gas has alleged it has met the purpose of the PUCO’s requirement and that amortization of the utility’s deferred income taxes would result in revenue increases that exceed the 2018 savings, and that any further changes to implement the TCJA in rates would result in a revenue increase. As a result, Ohio Gas seeks a waiver of the PUCO’s order to file an application not for an increase. OCC has statutory authority to represent the interests of Ohio Gas’ 44,000 residential gas utility customers under R.C. Chapter 4911.

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 Ohio Gas is seeking a determination that it has fully complied with the Commission’s directive to return the tax savings to customers. 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 proceedings;

(4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

First, the nature and extent of OCC’s interest is representing the residential customers of Ohio Gas in this case investigating the reasonableness and accuracy of the utility’s proposal to exempt itself from the filing requirements of the PUCO’s Tax COI Order. This interest is different from that of any other party and especially different from that of the utility whose advocacy includes the financial interest of shareholders.

Second, OCC’s advocacy for residential customers will include advancing the position that Ohio Gas should be crediting amounts to customers that are just and reasonable under law. OCC’s position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of public utilities’ rates and service quality in Ohio.

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 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 will determine whether the utility is providing adequate service for the amount it charges customers under Ohio law.

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 (“Court”) 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.[[4]](#footnote-5)

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Court for intervention. On behalf of Ohio residential customers, the PUCO should grant OCC’s Motion to Intervene.

Respectfully submitted,

 Bruce Weston (0016973)

 Ohio Consumers’ Counsel

 */s/ Christopher Healey*

 Christopher Healey (0086027)

 Counsel of Record

 Amy Botschner O’Brien (0074423)

Assistant Consumers’ Counsel

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 (will accept service via email)

**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 9th day of January 2019.

 */s/ Christopher Healey*

 Christopher Healey

 Counsel of Record

**SERVICE LIST**

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1. *In the Matter of the Commission’s Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Case No. 18-0047-AU-COI (Oct. 24, 2018) (“Tax COI”). [↑](#footnote-ref-2)
2. *See*, R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11. [↑](#footnote-ref-3)
3. Tax COI, Case No. 18-0047-AU-COI, Finding and Order ¶ 29 (Oct. 24, 2018). [↑](#footnote-ref-4)
4. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20. [↑](#footnote-ref-5)