

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of)
Columbia Gas of Ohio, Inc. for Authority)
to Modify Its Accounting Procedures to)
Provide for the Deferral of Expenses)
Related to the Commission's Investigation)
of Gas Service Risers.)

Case No. 07-237-GA-AAM

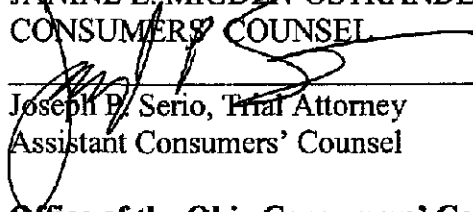
PUCO

MOTION TO INTERVENE AND COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

Pursuant to R.C. Chapter 4911, R.C. 4903.221, and Ohio Adm. Code 4901-1-11, the Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential utility consumers of Columbia Gas of Ohio, Inc. ("COH" or "the Company"), moves the Public Utilities Commission of Ohio ("Commission" or "PUCO") to grant OCC's intervention in the above-captioned proceeding. OCC also provides comments in opposition to the Company's Application filed on March 2, 2007 ("Application"). The reasons for granting OCC's intervention and for rejecting COH's request are further set forth in the attached Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT AND COMMENTS

I. INTRODUCTION

On March 2, 2007, COH filed an Application with the Commission in the above-captioned proceeding for approval of authority to modify its accounting procedures to allow for the deferral of expenses related to the Commission's investigation of gas service risers.¹ This action is of importance to residential customers because it could lead to future rate increases. OCC is the statutory representative of COH's residential gas customers and as such, has a real and substantial interest in this proceeding, as discussed below.

Among the expenses that COH seeks to defer include consultant and laboratory testing, contractor services for removing and replacing risers for testing, company labor, Commission assessment, project management costs, and incremental expenses.² COH alleges that it has incurred "expenses of \$251,197" to date and that it will take a minimum of six months to complete its riser survey at an estimated cost of up to

¹ COH Application at 1.

² Id. at 3-4.

\$8,000,000.³ COH also alleges that it “may also incur other types of expenses, depending on future orders issued in Case No. 05-463-GA-COI.”⁴ Despite these allegations, COH has provided absolutely no documentation or support for these claims of alleged expenses.

II. MOTION TO INTERVENE

Pursuant to R.C. Chapter 4911, the OCC moves to intervene under its legislative authority to represent the interests of the approximately 1.3 million residential natural gas distribution customers of COH.⁵ Pursuant to the intervention standard in R.C. 4903.221, the interests of residential gas customers in areas served by COH may be “adversely affected” by this proceeding. OCC also meets the Commission’s required showing for a party that has a “real and substantial interest” according to Ohio Adm. Code 4901-1-11(A)(2), and should therefore be permitted to intervene in this case.

R.C. 4903.221(B) requires the Commission 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 Id. at 3.

⁴ Id.

⁵ For example, R.C. 4911.15 provides:

The consumers’ counsel * * * may represent those [residential] customers or [municipal] corporations whenever an application is made to the public utilities commission by any public utility desiring to establish, modify, amend, charge, increase, or reduce any rate, joint rate, toll, fare, classification, charge, or rental.

- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

The nature and extent of the OCC's interest lies in preventing excessive, unjustified, unreasonable, unlawful or completely unsupported or unproven rates and charges for residential gas service and in the provision of services that will safely, reliably, effectively and efficiently serve the energy needs of residential customers. OCC's legal position will advance the interest of residential customers and, as such, is directly related to the merits of the case. As evidenced by OCC's past and present involvement in the subject matter of this case, OCC's intervention should provide insights that will expedite the Commission's treatment of the Application and will not unduly prolong or delay this proceeding. OCC will significantly contribute to the full development and equitable resolution of the issues in this proceeding. OCC brings its statewide, residential consumer perspective to this proceeding that is different than that of COH or any other intervenor in this proceeding. OCC's interest in the case is consistent with its statutory role as the representative of residential consumers of public utility service.

For the reasons expressed above regarding the criteria contained in R.C. 4903.221, OCC also meets the Commission's required showing for a party that has a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2), and should therefore be permitted to intervene in these proceedings. Ohio Adm. Code 4901-1-11(B) states that the Commission may consider: (1) the "nature of the person's interest," (2) the "extent to which the person's interest is represented," (3) the person's "potential

contribution to a just and expeditious resolution of the issues,” and (4) whether the intervention “would unduly delay the proceeding.”

In particular, the OCC brings its statewide, residential consumer perspective to this case that is different than and not represented by any other entity in Ohio. The OCC’s interest in this case is consistent with its statutory role as the representative of residential consumers of public utility service.

The OCC meets the criteria set forth in the R.C. 4903.221, the Commission’s rules and recent precedent of the Supreme Court of Ohio.⁶ On behalf of COH’s approximately 1.3 million Ohio residential customers of natural gas service, the Commission should grant OCC’s Motion to Intervene.

III. COMMENTS

A. Customers Have Already Paid In Base Rates For The Expenses That COH Seeks To Recover Through The Deferrals.

As the OCC previously stated in its Comments in Case 05-463-GA-COI, Local Distribution Companies (“LDCs”) should not recover any of the alleged costs associated with remedying the riser failure problem because LDCs have always had the responsibility to investigate failures, check for leaks and prevent failures under the natural gas pipeline safety regulations.⁷ Moreover, the alleged costs in question are outside the normal course of ratemaking that would otherwise require a review according to, but not limited to the just and reasonable standard and whether the expenditures are

⁶ *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 2006 – Ohio – 5853 at ¶ 18-23.

⁷ *In the Matter of the Investigation of the Installation, use, and Performance of natural Gas Service Risers throughout the State of Ohio and Related Matters*, Case No. 05-463-GA-COI, (“Riser Investigation”) OCC Comments at 20.

prudent. There would need to be a full evidentiary hearing, at which COH would bear the burden of proof.⁸

The Company's responsibilities regarding gas risers is extensive, including a requirement to provide lists of installers that the customers must use to install the service line and riser.⁹ LDCs also are required to inspect the installation of gas risers.¹⁰ In addition, LDCs are required to instruct qualified installers how to install the service lines or risers and choose which types of risers can be installed in the service line. Moreover LDCs are required to maintain manuals with instructions and identify the types of risers to install.¹¹

COH attempts to wash its hands of its existing responsibilities regarding gas riser-related facilities and maintenance. That is not so easily done.¹² As noted above LDCs have significant legal responsibilities regarding installation and inspection. Moreover, other Ohio LDCs have recognized the utility responsibility:

The Chairman's comments raises two separate issues: *ownership* of service lines, and *responsibility* for service lines when it comes to corrosion monitoring and leak testing activities. In Ohio, individual customers *own* the service line, but LDCs *are responsible* for those service lines when it comes to corrosion monitoring and leak testing activities. (Emphasis not added.)¹³

⁸ R.C. 4090.18 and 4909.19.

⁹ 49 C.F.R. § 192.805.

¹⁰ 49 C.F.R. § 192.287 and § 192.307.

¹¹ 49 C.F.R. § 192.605

¹² However, as noted in a letter to the Editor from Mr. Richard Walters, in the *Columbus Dispatch*, Wednesday, March 14, 2007 at page A-8, the public demands that Columbia be held accountable.

¹³ Riser Investigation, Initial Comments of the East Ohio Gas Company D/B/A Dominion East Ohio at 9.

Dominion East Ohio (“DEO”) recognizes that, “LDCs *are responsible*” for service lines and always have been.¹⁴ As a result, COH is already recovering at least some of the costs of these kinds of activities in its base rates and does not need a deferral to seek collection for any additional alleged and unproven costs associated with corrosion monitoring and leak testing activities. Accordingly, OCC opposes COH’s Application for authority to defer these costs.

B. COH Is Requesting Deferrals Based On Expenses Incurred In The Past And Such Deferrals Are Not Permissible Because They Constitute Retroactive Ratemaking.

COH alleges that it has already incurred at least \$251,197 in riser related expenses¹⁵ and includes those expenses in the amounts it has asked to defer, “retroactive to the date the expenses were incurred.”¹⁶ COH should not be permitted to defer those amounts because such deferrals would constitute retroactive ratemaking, which is unlawful as set forth in R.C. 4909.18 and 4909.19.

COH filed this Application on March 2, 2007 and is asking for authority to defer riser-related distribution costs that were allegedly incurred before that filing date. The Commission should not permit COH to defer amounts allegedly incurred before March 2, 2007 because to do so would violate the well-established prohibition against retroactive ratemaking.¹⁷

¹⁴ Id.

¹⁵ COH Application at 4.

¹⁶ Id.

¹⁷ *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254 (1957).

C. COH Is Requesting Blanket Deferrals Of All Future Expenses, Which Is Contrary To Commission Precedent.

In addition, in its Application, COH requests to defer an estimated cost of up to \$8 million to complete the riser survey.¹⁸ Moreover, COH admits that some of the expenses that it may incur are outside the categories it identified in its application.¹⁹ In other words, COH is requesting a blanket deferral of the total unknown future amount of expenses relating to unknown categories of costs over an unexpected period of time. COH further exacerbates this abuse of ratemaking principles by failing to provide any substantiation whatsoever that any of these alleged costs have been actually incurred. Moreover, there is absolutely no proof that any of these alleged costs are not already accounted for and built into the Company's current rates. Such blanket deferrals are not consistent with FASB No. 71 which allows an enterprise to capitalize costs that would be otherwise charged to expense only if both of the following criteria are met:

- a. It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
- b. Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs * * *.²⁰

Because COH has not clearly defined what costs it is referring to and because it does not know what future costs it intends to incur, COH cannot meet the criteria of either criteria a. or b. Moreover, without a clearly defined amount and clearly defined

¹⁸ COH Application at 4.

¹⁹ Id.

²⁰ *Accounting for the Effects of Certain Types of Regulation*, Statement of Financial Accounting Standards No. 71, Financial Accounting Standards Board, (December 1982).

cost items, it is unclear whether COH actually has the financial need for the deferral. The Commission has always considered “the financial need for a deferral”²¹ as a major consideration in the granting of accounting authority to defer. COH has adroitly managed to avoid regulatory ratemaking rate case review²² for over 15 years, and that makes it all the more difficult for the Company to prove (not that it even attempted to prove) any such need for deferral.

D. COH’s Request For Deferrals Of Expenses It Is Already Recovering Through Base Rates Constitutes Single-Issue Ratemaking And Is Prohibited.

COH is requesting deferral authority to recover alleged expenses that it may already be recovering through distribution base rates. To permit COH to recover the expenses it admits that it is already responsible to expend, would be to provide COH an opportunity to increase rates on a single expense, which is contrary to the ratemaking scheme established by the Ohio General Assembly under R.C. 4909.18 and 19. Moreover, to the extent that some of these costs are already built into COH’s rates, any deferral would contribute to double recovery of alleged and unproven costs.

COH may argue that the deferral process in and of itself is not the same as ratemaking. But the Commission has held that when a utility requests a deferral of costs that cannot be recovered in a rate case, it will not allow the deferral.²³ Because costs

²¹ Id.

²² For Example, see, *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to amend Filed Tariffs to Increase the Rates and Charges for Gas Service*, Case Nos. 94-987-GA-AIR, et. al., Entry on Rehearing (June 9, 2006), dissenting opinion of Commissioner Mason; *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Adjustment to its Uncollectible Expense Rider Rate*, Case No. 06-649-GA-UEX, Entry (May 31, 2006) dissenting opinion of Commissioner Jones.

²³ *Cincinnati Gas & Electric Company*, Case No. 03-93-EL-ATA, Opinion and Order (September 29, 2004) at 34.

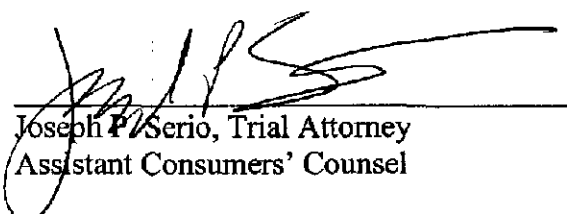
associated with gas pipeline safety and surveying etc., are already incorporated into base rates, COH only will be permitted to recover the test year level of these expenses in a rate case pursuant to R.C. 4909.18 and 4909.19. Therefore COH will not be permitted to recover these non-test year levels of gas pipeline safety and surveying costs and should not be permitted now to defer them.

IV. CONCLUSION

This Application would impact residential customers, *inter alia*, through future increases in gas charges, as the Commission tends to allow utilities to collect deferrals from customers once the deferrals are booked. As set forth herein, OCC satisfies the criteria set forth in R.C. 4903.221 and the Commission's rules, for intervention. Therefore, on behalf of COH's approximately 1.3 million residential gas customers, who clearly have an interest in the outcome of this case, OCC respectfully requests that the Commission grant OCC's Motion to Intervene. Furthermore, the PUCO should deny the deferral Application for the reasons explained above.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

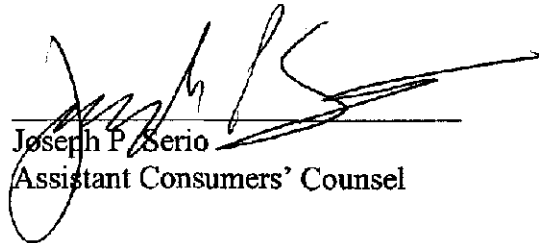


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's Motion to Intervene and Comments has been served upon the following parties via first class U.S. mail, postage prepaid, this 21st day of March 2007.



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