

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Matter of the Application of)
Vectren Energy Delivery of Ohio, Inc.)
for Authority to Amend its Filed Tariffs)
to Increase the Rates and Charges)
for Gas Services and Related)
Matters.)

Case No. 07-1080-GA-AIR

In the Matter of the Application of)
Vectren Energy Delivery of Ohio, Inc.)
for Approval of an Alternative Rate)
Plan for a Distribution Replacement)
Rider to Recover the Costs of a)
Program for the Accelerated)
Replacement of Cast Iron Mains and)
Bare Steel Mains and Service Lines,)
a Sales Reconciliation Rider to)
Collect Differences between Actual)
and Approved Revenues, and)
Inclusion in Operating Expense of the)
Costs of Certain System Reliability)
Programs.)

Case No. 07-1081-GA-ALT

**VECTREN ENERGY DELIVERY OF OHIO'S MEMORANDUM CONTRA
THE OHIO ENVIRONMENTAL COUNCIL'S MOTION TO INTERVENE**

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July 29, 2008

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Delivery of Ohio, Inc.**

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**MEMORANDUM CONTRA OHIO ENVIRONMENTAL COUNCIL'S
MOTION TO INTERVENE**

I. INTRODUCTION

On November 20, 2007, Vectren Energy Delivery of Ohio, Inc. ("VEDO") filed an Application to increase distribution rates and for approval of an alternative rate plan in the above-captioned cases. On June 16, 2008, the Staff of the Public Utilities Commission of Ohio ("Commission") issued its Report and Investigation ("Staff Report"). The Commission issued an Entry on the next day establishing a procedural schedule in this case, including requiring the filing of objections to the Staff Report as well as

Motions to Intervene by July 16, 2008. On July 15, 2008, the Ohio Environmental Council ("OEC") filed a Motion to Intervene in this proceeding. Pursuant to Rule 4901-1-12(B)(1), Ohio Administrative Code, VEDO hereby respectfully requests that the Commission deny OEC's Motion to Intervene for the reasons set forth below.

II. ARGUMENT

A. OEC does not meet the statutory criteria or the Commission's criteria for intervention and does not have standing to participate in this proceeding.

Section 4903.221, Revised Code, sets forth the statutory criteria for intervention in a Commission proceeding. The Commission must weigh:

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

A party seeking to participate must also satisfy the Commission's own intervention standards, which require a party to have a real and substantial interest in the proceeding.¹ The person must also be so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.² The individual enumerated qualifications embedded in the Commission's rules largely mirror

¹ Rule 4901:1-11(A)(2), Ohio Administrative Code.

² *Id.*

the statutory criteria, but include an additional prong that requires the Commission to consider the extent to which the person's interest is represented by existing parties.³

In addition to meeting the intervention criteria, a party must demonstrate it has standing to bring or join an action. The question of standing is "whether a party has a sufficient stake in the outcome of a justiciable controversy to obtain a judicial resolution of that controversy."⁴ An association has standing on behalf of its members if: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit."⁵ However, to have standing, the association must also establish that its members have suffered actual injury.⁶ To be compensable, the injury must be concrete and not simply abstract or suspected.⁷ Therefore, an organization has a sufficient stake in the outcome of a controversy if it demonstrates a concrete injury in fact, showing that it suffered or will suffer a specific injury as a result of the challenged action and that the court can redress such injury.⁸

OEC does not meet any of the criteria for intervention in this proceeding. In its Motion to Intervene, OEC repeatedly establishes that its interest is in the environment and merely claims that the environment and the interests of its members in areas

³ Rule 4901:1-11(B)(5), Ohio Administrative Code.

⁴ *State ex rel. Consumers League of Ohio v. Ratchford*, 8 Ohio App.3d 420, 424 (10th Dist. Ct. App. 1982).

⁵ *Ohio Contractors Assn. v. Bicking*, 71 Ohio St.3d 318, 320 (1994), citing *Simon v. E. Kentucky Welfare Rights Org.*, 426 U.S. 26, 40 (1976).

⁶ *Id.*

⁷ *Id.*, citing *State ex rel. Consumers League of Ohio v. Ratchford*, 8 Ohio App.3d 420, 424 (10th Dist. Ct. App. 1982).

⁸ *Freedom Road Foundation v. Department of Liquor Control*, 1996 WL 112643 (10th Dist. Ct. App. 1996.)

served by VEDO will be adversely affected by these cases. However, it has not demonstrated that either it or any of its members is served by VEDO; that any of its members would have standing to participate in their own right; nor that it has any real and substantial interest that is at issue in this proceeding. By its own admission, OEC concedes its interest and "chief concern" in this proceeding is the environment of Ohio rather than financial savings.⁹ Parenthetically, OEC's organizational mission displayed on its website is to "secure healthy air, land, and water for all who call Ohio home."¹⁰ OEC describes itself as Ohio's "leading advocate for fresh air, clean water, and sustainable land use."¹¹ Healthy air, land, and water are not at issue in VEDO's rate case, and OEC fails to demonstrate how the rate case issues it merely mentions in its motion are in any way germane to OEC's purpose.

OEC fails to advance a legal position, but the policy position it asserts with respect to the two rate case matters it mentions, had it standing to do so, is already adequately addressed by the Ohio Consumers' Counsel ("OCC") and the Ohio Partners for Affordable Energy ("OPAE"). The similarities between the positions staked out by OEC and by the OCC as well as OPAE are not insignificant and are more thoroughly examined in Section B.

Lastly, OEC has failed to demonstrate that its intervention will contribute anything to the development and equitable resolution of the regulatory issues properly before the Commission in this proceeding.

⁹ Motion to Intervene by the Ohio Environmental Council at 4 (July 15, 2008).

¹⁰ <http://www.theoec.org/AboutUs.htm> (as viewed on July 21, 2008).

¹¹ *Id.*

OEC does not and cannot meet the standards for intervention in this proceeding. Nor does OEC have standing to participate in this case. For these reasons, the Commission should deny OEC's Motion to Intervene.

- B. If the Commission grants OEC's Motion to Intervene, it should require OEC to consolidate its examination of witnesses with OCC and OPAE and limit OEC's participation to briefing the issues. Additionally, if the Commission grants OEC's Motion to Intervene, the Commission should permit the parties in this proceeding to conduct discovery of OEC.**

In the event that the Commission grants OEC's Motion to Intervene, the Commission should, pursuant to Rule 4901-1-11(D), O.A.C., require OEC and other parties to consolidate their examination of witnesses and limit OEC's participation to briefing the issues raised in its objections. The Objections to the Staff Report filed by OEC is consistent with those filed by OCC and OPAE. OEC's one objection addresses only the rate design issue it mentions in its Motion to Intervene. OCC and OPAE have each filed multiple objections related to the same issue, espousing the same result proposed by OEC.¹²

The only issue raised by OEC in its Objections to the Staff Report is already being addressed by OCC and OPAE, two parties with extensive experience in Commission proceedings. Accordingly, the Commission should require OEC to consolidate its examination of witnesses with OCC and OPAE in order to prevent undue burden on the record by repetition of arguments and to streamline its consideration of

¹² Objections to the PUCO Staff's Report of Investigation and Summary of Major Issues by the Office of the Ohio Consumers' Counsel at 24-25 (Objection #51) (July 16, 2008). See also *Id.* at 26 (Objections #54, #49, and #53.); Objections to the Staff Report of Investigation of Ohio Partners for Affordable Energy and Summary of Major Issues at 5-6 (Objection #6) (July 14, 2008).

VEDO's rate case. Additionally, the Commission should limit OEC's participation in this proceeding to briefing only.

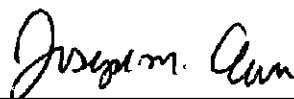
Finally, if the PUCO grants OEC's Motion to Intervene, the PUCO should permit parties to conduct discovery of OEC. Rule 4901-1-17(B), O.A.C. provides that initiation of discovery in a rate case is cut off fourteen days after the issuance of the Staff Report, or June 30, 2008. Pursuant to Rule 4901-1-17, O.A.C., motions to intervene were due in this case no later than July 16, 2008, and OEC moved to intervene on July 15, 2008.¹³ This time gap would operate to prevent VEDO from pursuing even basic discovery on OEC. Consequently, if the Commission decides to permit OEC's intervention, even if on the limited terms proposed by VEDO above, VEDO requests that the Commission permit a reasonable opportunity to conduct discovery on OEC.

III. CONCLUSION

Wherefore, for the reasons discussed herein, the Commission should deny OEC's Motion to Intervene. If the Commission permits OEC to intervene, it should require OEC to consolidate its examination of witnesses with OCC and OPAE and limit OEC's participation to briefing the issues. Finally, if the Commission grants OEC's Motion to Intervene, the Commission should permit the parties in this proceeding to conduct discovery of OEC.

¹³ Entry at 2 (June 17, 2008).

Respectfully submitted,



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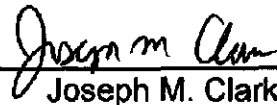
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Vectren Energy Delivery of Ohio's Memorandum Contra the Ohio Environmental Council's Motion to Intervene* was served upon the following parties of record this 29th day of July 2008, via electronic transmission, hand-delivery, or ordinary U.S. mail, postage prepaid



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