

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Approval to Modify) Case No. 10-241-GA-RDR
Rider FBS and Rider EFBS.)

**MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case in which Duke Energy Ohio ("Duke" or "Company") has applied for approval to modify the rates it charges consumers under Rider FBS, Firm Balancing Service, and Rider EFBS, Enhanced Firm Balancing Service, claiming that the proposed rider charges are just and reasonable.¹ OCC is filing on behalf of all the approximately 380,000 of Duke's residential natural gas consumers. The Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant the OCC's intervention in the above-captioned proceeding, pursuant to R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11. The reasons for granting the OCC's Motion are further set forth in the attached Memorandum in Support.

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¹ Application at 1 (February 26, 2010).

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Joe Serio", is written over a horizontal line.

Joseph P. Serio, Counsel of Record
Larry S. Sauer
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (Telephone)
serio@occ.state.oh.us
sauer@occ.state.oh.us

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In the Matter of the Application of Duke)
Energy Ohio, Inc. for Approval to Modify)
Rider FBS and Rider EFBS.)

Case No. 10-241-GA-RDR

MEMORANDUM IN SUPPORT

The OCC moves to intervene under its legislative authority, per R.C. Chapter 4911, to represent the interests of all the approximately 380,000 residential natural gas utility customers of Duke. In this proceeding, Duke is applying to modify its Rider FBS and Rider EFBS which are designed to collect from customers the costs associated with performing balancing services for end users that secure their own upstream pipeline capacity. Balancing services are provided by the Company as a means to reconcile actual deliveries with forecasted deliveries and thus recover costs approximating the costs associated with such under/over deliveries.

The interests of residential natural gas customers in areas served by the Company may be "adversely affected" by the Application filed in this case, pursuant to the intervention standard in R.C. 4903.221. This element of the intervention standard in R.C. 4903.221 is satisfied because, among other things, the cost to competitive retail natural gas suppliers and aggregators who are providing service to Duke's residential customers could increase significantly. The suppliers and aggregators likely will seek to pass on these costs to Duke's customers.²

² Application at 2. (The rate is based on the estimated cost of providing daily balancing using a calculation attached as Exhibit 1. No changes are being proposed to the calculation method, but as of April, 2010, the demand charge that Duke Energy Ohio pays to Columbia Gas Transmission (TCO) for transportation into and out of storage is increasing from \$3.963 per dth to \$4.2372 per dth. In addition, the amount of total throughput, used as the denominator in the calculation of the rate, has decreased nearly 10%. All of the

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

First, the nature and extent of OCC's interest lies in preventing excessive or unjustified charges that may ultimately be passed on to residential consumers through the provision of natural gas commodity service. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for consumers will include advancing the position that Duke's rates should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio 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 this case with consideration of the public interest.

remaining inputs to the calculation were also updated to reflect current charges from TCO for storage service.)

Fourth, OCC's intervention will significantly contribute to the 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 this 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 residential utility consumer advocate, OCC has a very real and substantial interest in this case. Revenues derived from the Rider FBS and Rider EFBS are credited to GCR customers; therefore, that interest obtains with regard to the law's requirements for the PUCO to determine the reasonableness and prudence of Duke's gas procurement policies and practices during the audit period, as well as any determination related to whether or not the costs passed through the GCR clause of Duke during the audit period were reasonable and prudent to Duke's residential consumers who have to pay the costs.³ The nature and extent of OCC's interest lies in preventing excessive or unjustified charges for residential natural gas commodity service and assuring that the provision of natural gas services will effectively and efficiently serve the energy needs of Duke's residential customers.

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.

³ Application at 1, 3; see also R.C. 4905.302 and Ohio Adm. Code 4901:1-14.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission 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 consumers. That interest is different from, and not represented by, any other entity in Ohio.

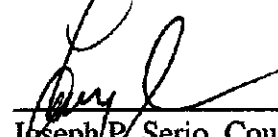
Moreover, the Supreme Court of Ohio has confirmed OCC’s right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC’s intervention and that OCC should have been granted intervention.⁴

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

⁴ *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶13-20 (2006).

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

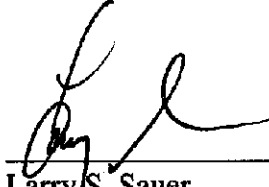


Joseph P. Serio, Counsel of Record
Larry S. Sauer
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (Telephone)
serio@occ.state.oh.us
sauer@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below via first class U.S. Mail, postage prepaid, this 14th day of May 2010.



Larry S. Sauer
Assistant Consumers' Counsel

SERVICE LIST

Amy Spiller
Duke Energy Ohio
139 Fourth Street,
Room 25 ATII
Cincinnati, Ohio 45202

Stephen Reilly
Werner Margard
Attorney General's Office
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215

John W. Bentine
Mark S. Yurick
Matthew S. White
Chester, Willcox & Saxbe LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215-4213