

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission’s Review)
of the Rules Concerning Long-Term)
Forecast Reports Contained in Chapters) Case No. 10-2912-GE-ORD
4901:5-1; 4901:5-3; 4901:5-5 and)
4901:5-7, Ohio Administrative Code.)

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

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene in this case where the administrative rules governing long-term forecasting reporting requirements for gas and electric utilities, electric transmission owners, and natural gas and electric distribution companies are under review.¹ Modifications proposed and adopted in this proceeding may affect the information available about long-term plans for Ohio natural gas and electric utility customers. OCC is filing on behalf of all Ohio residential natural gas and electric utility customers. The Public Utilities Commission of Ohio (“Commission” or “PUCO”) should grant OCC’s Motion for the reasons set forth in the attached Memorandum in Support.

¹ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Christopher J. Allwein

Joseph P. Serio, Counsel of Record

Richard C. Reese

Christopher J. Allwein

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (614) 466-8574

serio@occ.state.oh.us

reese@occ.state.oh.us

allwein@occ.state.oh.us

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the of the Commission's)
Review of the Rules Concerning Long-)
Term Forecast Reports Contained in) Case No. 10-2912-GE-ORD
Chapters 4901:5-1; 4901:5-3; 4901:5-5)
and 4901:5-7, Ohio Administrative Code.)

**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE
AND
COMMENTS**

I. INTRODUCTION

This case involves the review of the reasonableness and lawfulness of the Commission's long-term forecast rules. The PUCO staff proposed a single change. Interested parties may propose additional changes. OCC has authority under law to represent the interests of Ohio residential natural gas and electric utility customers, pursuant to R.C. Chapter 4911. The rules under review list requirements for the contents of annual, long-term forecasting reports and fee instructions for gas and electric utilities, electric transmission owners, and natural gas and electric distribution companies. The reports provide an analysis of load forecasts, the resource plans to meet the load, and a description of how the forecasts were calculated.²

In the comment section, OCC proposes an additional requirement of an analysis, to be completed by natural gas utilities, on the economic optimization of energy conservation resources and supply resources. This will ensure that gas utilities are utilizing least-cost options to meet customer demand.

² See, for example, Ohio Adm. Code Rule 4901:5-5-03(A).

II. INTERVENTION

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, because this rulemaking proceeding will establish rules by which natural gas and electric utilities will determine the resources to be used to meet forecasted loads. If utility planning for resource acquisition is not undertaken in a least cost manner, residential customers may be saddled with higher utility costs. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

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 is representing Ohio’s residential natural gas and electric utility customers so that adequate information is supplied by utility companies to the PUCO regarding the forecasted demand for energy and the conservation and supply options proposed by a utility. 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 customers will include advancing the position that gas utilities should provide information in their annual long-term forecast report demonstrating that the lowest cost conservation resources and supply resources are being procured to meet forecasted customer demands. Only by comparing the cost and amount of a utilities' supply resource with available conservation resources can a determination be made that residential customers are being served at least cost. OCC's position is therefore directly related to the rules being reviewed in this case and 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 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 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 residential utility customer advocate, OCC has a very real and substantial interest in this case where the rules governing the type of information annually submitted by utilities about load forecast and resource planning are under review.

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 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 customers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio 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.³

III. COMMENTS

OCC recommends the PUCO add a requirement to the gas distribution company forecast reports which are governed by the rules in Ohio Adm. Code 4901:5-7-02. The proposed section would be added to the gas and natural gas supply forecast requirements as Section 4901:5-7-02(I):

After 2011, and as part of its annual filing, the reporting utility shall provide an analysis describing how the procurement of energy conservation resources by the utility are economically optimized relative to the long-term strategic supply plan. The economic optimization shall compare the cost and amount of energy conservation resources with the cost and amount of supply resources, whether procured by the utility or through a wholesale

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

auction, in a manner that demonstrates the lowest cost resource is being procured.

This added language will require that utilities demonstrate that they are employing, and customers are absorbing only the least-cost conservation resources and supply resources. These conservation programs are important because they provide several benefits to Ohio gas utility customers.⁴

This additional requirement is justified by Ohio law in several places. First, the Ohio legislature has encouraged energy efficiency⁵ and, allowed a revenue decoupling mechanism in order to remove the utility energy efficiency throughput disincentive.⁶ This disincentive exists for a utility since promoting energy efficiency lowers the amount of natural gas sold and the subsequent distribution revenue collected. Further, Ohio statutes contain policies encouraging cost-effective, demand side energy efficiency and conservation, charge the PUCO with the promotion of programs that encourage conservation programs *and* economic efficiencies, and allow revenue decoupling within an alternative rate plan that establishes or continues conservation programs.

A. Ohio Statutes Encourage Cost-Effective, Demand Side Natural Gas Conservation.

Ohio statutory policy includes the encouragement of market access for cost-effective natural gas services and goods and the promotion of gas company and customer interests in conservation. Ohio Revised Code 4929.02(A)(4) declares that it is Ohio policy to “Encourage innovation and market access for cost-effective supply-and

⁴ See section B.4 below.

⁵ R.C. 4929.02(A)(12).

⁶ See R.C. 4929.01(O). OCC retains its objection to the characterization of the Straight-Fixed Variable rate design (“SFV”) as a revenue decoupling mechanism, as argued in the cases listed in footnote 11.

demand-side natural gas services and goods.” In addition, state policy also includes the promotion of “an alignment of natural gas company interests with consumer interest in energy efficiency and energy conservation.”⁷ These policies encourage gas utilities to develop, and the PUCO to encourage, energy efficiency and conservation programs. Requiring an analysis of both energy conservation and supply resources will signal to natural gas utilities that cost-effective resources are not only encouraged, but must be utilized.

B. The Analysis Requirement Will Assist the PUCO in its Duty to Promote and Encourage Conservation of Energy.

Ohio statutes charge the PUCO with the development of energy efficiency programs and the encouragement of energy efficiency:

The public utilities commission shall initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, promote economic efficiencies, and take into account long-run incremental costs.⁸

In order for the Commission to evaluate whether energy efficiency programs continue to contribute to the reduction of the growth rate in energy consumption *and* promote economic efficiencies, the requirement as proposed by OCC should be adopted by the PUCO. The analysis as presented will further the execution of the Commission's statutory duty as presented in R.C. 4905.70 because it will provide specific information on the cost-effectiveness of conservation programs and compare them to supply resources.

⁷ R.C. 4929.02(A)(12).

⁸ R.C. 4905.70.

The analysis will also provide the Commission another means to carry out its forecasting duties as outlined in Ohio law:

The commission shall: (1) Estimate statewide and regional needs for energy for the forthcoming five- and ten-year periods which, in the opinion of the commission, will reasonably balance requirements of state and regional development, protection of public health and safety, preservation of environmental quality, maintenance of a sound economy, and conservation of energy and material resources. Other factors and trends which will significantly affect energy consumption such as the effects of conservation measures shall also be included.⁹

Thus, an analysis as proposed will allow a direct cost comparison of supply resources and conservation resources, and provide an additional method for evaluation. By adopting this requirement, the Commission and other interested parties, including Ohio gas utility customers, will have additional information available to evaluate how conservation programs on the demand side compare to supply resource costs, and how the policies listed in the statute above are affected. Comparing the cost and availability of demand-side programs with supply-resource costs and availability will enable the PUCO to determine whether natural gas utilities are serving Ohio customers on a least-cost basis.

C. Requiring a Systematic Assessment of Conservation Resources in the Gas Utility Forecast Filing May Increase the Amount of Conservation Resources Deployed. Those Incremental Conservation Resources Will Not Harm a Gas Utility's Recovery of Its Allowed Distribution Cost.

Ohio law currently allows a natural gas company to propose a revenue decoupling mechanism within an alternative rate plan.¹⁰ Energy efficiency programs geared towards customers, including residential customers, have been implemented by many Ohio

⁹ R.C. 4935.01(A)(1).

¹⁰ R.C. 4929.01(O).

natural gas utilities. The four largest investor-owned gas utilities in Ohio have implemented Straight Fixed Variable (“SFV”) rate designs.¹¹ The energy efficiency programs are part of the alternative rate plan statutory requirements.¹² The Analysis as proposed by OCC will allow the Commission to evaluate the cost-effectiveness of these programs compared to supply resources. This additional information will allow the PUCO to determine whether an appropriate amount of conservation resources are in the gas utility forecasts and whether certain programs should be continued or modified. Given the existing rate design, any increased procurement of conservation resources should not financially harm gas utilities.

D. The Analysis is Further Justified by the Benefits Ohio Customers Receive from the Conservation Programs Currently Employed by Ohio Gas Utilities.

Since Ohio utilities currently offer energy efficiency and conservation programs, it makes sense to further quantify those benefits, which will be possible with the additional information provided by the proposed additional analysis requirement. The four biggest Ohio natural gas utilities have existing natural gas energy efficiency programs implicitly recognizing the benefits accruing to Ohio customers from an

¹¹ See In re: *Duke Energy Ohio*, Case No. 07-589-GA-AIR, Opinion and Order (May 28, 2008) (Duke Rate Case); In re *Dominion East Ohio*, Case No. 07-829-GA-AIR, Opinion and Order (October 15, 2008) (DEO Rate Case); In re *Columbia Gas of Ohio*, Case No. 08-72-GA-AIR, Opinion and Order (December 3, 2008) {Columbia Rate Case}; and in re *Vectren Energy Delivery of Ohio*, Case No. 07-1080-GA-AIR, Opinion and Order (January 7, 2009) (VEDO Rate Case). OCC retains its objection to the characterization of the Straight-Fixed Variable rate design (“SFV”) as a revenue decoupling mechanism, as argued in the cases listed above.

¹² R.C. 4929.051 states: "An alternative rate plan filed by a natural gas company under section 4929.05 of the Revised Code and proposing a revenue decoupling mechanism may be an application not for an increase in rates if the rates, joint rates, tolls, classifications, charges, or rentals are based upon the billing determinants and revenue requirement authorized by the public utilities commission in the company's most recent rate case proceeding **and the plan also establishes, continues, or expands an energy efficiency or energy conservation program.**" (Emphasis added).

optimized natural gas resource plan. Some of these benefits are:

1. Lower future gas costs due to dampened natural gas demand;
2. Dollar savings due to reduction in cost of natural gas used in electric generation;
3. Potential avoidance of some distribution costs (if some congested areas are targeted with energy efficiency programs);
4. Potential Reduction of Percentage of Income Payment Plan arrearages and uncollectibles;
5. Economic development benefits, such as additional jobs with higher compensation;
6. Increase taxes collected by Local and State entities from energy efficiency projects;
7. Programs that boost the local economy and help with existing budget deficits;
8. Environmental benefits (less CO₂, a contributor to global warming, from more efficient appliance and homes);¹³
9. Utility planning flexibility;
10. Development of new technologies; and
11. Transformed market for energy services (more choices, better pricing, better financing opportunities, more and better quality).

A cost-effective analysis will enable the PUCO and other interested parties to further quantify the above-listed benefits using the information provided by the proposed analysis. Thus, the requirement should be adopted.

¹³ Although natural gas is a cleaner burning fuel than coal, its combustion does generate about half the CO₂ of coal, contributing towards global warming.

IV. CONCLUSION

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 Ohio residential customers, the Commission should grant OCC's Motion to Intervene.

The PUCO should also adopt the OCC proposal for the natural gas utilities to file an analysis of economic optimization of demand side conservation as described above. This requirement is justified by Ohio law and will assist the Commission in carrying out its statutory duties. The analysis will also enable the PUCO and other interested parties to quantify the benefits received by Ohio customers from utility-sponsored, energy efficiency programs.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Christopher J. Allwein

Joseph P. Serio, Counsel of Record

Richard C. Reese

Christopher J. Allwein

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (614) 466-8574

serio@occ.state.oh.us

reese@occ.state.oh.us

allwein@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene and Comments* was served on the persons stated below *via* electronic service, this 18th day of January, 2011.

/s/ Christopher J. Allwein_____

Christopher J. Allwein

Assistant Consumers' Counsel

SERVICE LIST

WILLIAM WRIGHT

Assistant Attorney General

Chief, Public Utilities Section

180 East Broad Street, 6th Floor

Columbus, Ohio 43215-3793

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