

In the Matter of the Regulation of the)
Purchased Gas Adjustment Clauses) Case No. 12-218-GA-GCR
Contained within the Rate Schedules of)
Duke Energy Ohio, Inc.)

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this utility's gas cost recovery ("GCR") case, where the reasonableness and prudence of the gas costs that the utility charges to customers will be reviewed. OCC is filing on behalf of all the approximately 380,000 residential utility consumers of Duke Energy Ohio, Inc. ("Duke" or "the Company"). 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.

BRUCE J. WESTON
CONSUMERS' COUNSEL

Joseph P. Serio, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-9565 (Serio)
serio@occ.state.oh.us

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Regulation of the)	
Purchased Gas Adjustment Clauses)	Case No. 12-218-GA-GCR
Contained within the Rate Schedules of)	
Duke Energy Ohio, Inc.)	

MEMORANDUM IN SUPPORT

Pursuant to R.C. Chapter 4911, the OCC moves to intervene under its legislative authority to represent the interests of all the approximately 380,000 residential natural gas utility customers of Duke. The interests of residential natural gas customers in areas served by the Company may be “adversely affected” by this GCR case, pursuant to the intervention standard in R.C. 4903.221. This element of the intervention standard in R.C. 4903.221 is satisfied with regard to, among other things, the fact that consumers may be adversely affected by any PUCO determinations related to the reasonableness of Duke’s gas procurement policies and practices during the audit period. And consumers may be adversely affected by any determination related to whether or not the costs passed through the GCR clause of Duke during the audit period were reasonable and prudent.

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 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. 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.

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. 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. 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.

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 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.¹

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.

Respectfully submitted,

BRUCE J. WESTON
CONSUMERS' COUNSEL

/s/ Joseph P. Serio

Joseph P. Serio, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-9565 (Serio)
serio@occ.state.oh.us

¹ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below via electronic service, this 24th day of May 2012.

/s/ Joseph P. Serio

Joseph P. Serio
Assistant Consumers' Counsel

SERVICE LIST

Amy Spiller
Elizabeth Watts
Duke Energy Ohio
139 Fourth Street,
Room 25 ATII
Cincinnati, Ohio 45202
Amy.spiller@duke-energy.com
Elizabeth.watts@duke-energy.com

William Wright
Attorney General's Office
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
William.wright@puc.state.oh.us

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/24/2012 8:36:32 AM

in

Case No(s). 12-0218-GA-GCR

Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Serio, Joseph P.