

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review)
of its Rules for Competitive Retail Natural) Case No.12-925-GA-ORD
Gas Service Contained in Chapters)
4901:1-27 Through 4901:1-34 of the Ohio)
Administrative Code.

**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 where the Public Utilities Commission of Ohio ("Commission" or "PUCO") has opened a docket for the purposes of reviewing its rules for Competitive Retail Natural Gas ("CRNG") service contained in Ohio Admin. Code Chapters 4901:1-27 through 4901:1-34. OCC is filing on behalf of residential natural gas utility customers of Ohio.

R.C. 119.032 requires all state agencies, including the Commission, to conduct a review, every five years, of their rules. Under this review the Commission must determine whether to continue the rules without change, amend the rules, or rescind the rules. In its review the Commission is required to consider the purpose, scope, and intent of the statute, whether changes should be made to permit more flexibility at the local level, where changes should be made to eliminate unnecessary paperwork, and whether the rule duplicates, overlaps or conflicts with other rules. Additionally, the Commission must consider the continued need for the rule, the nature of any complaints or comments received concerning the rule, and other relevant factors that may have changed in the subject matter area affected by the rule.

The reasons the Commission should grant OCC's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

BRUCE J. WESTON
CONSUMERS' COUNSEL

/s/ Kyle L. Kern

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MEMORANDUM IN SUPPORT

On March 12, 2012, a docket was opened for the purposes of evaluating the rules contained in Ohio Admin. Code Chapters 4901:1-27 through 4901:1-34. OCC has authority under law to represent the interests of residential natural gas utility customers, pursuant to R.C. Chapter 4911.

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, especially if residential customers were unrepresented in a proceeding where the Commission is evaluating the rules governing CRNG service. 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 the residential natural gas customers in this case involving the Commission's review of its rules for CRNG 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 residential customers will include advancing the position that the CRNG rules should sufficiently meet the needs of Ohio's residential utility consumers. 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 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 advocate for residential utility customers, OCC has a very real and substantial interest in this case where the Commission is evaluating its rules for

CRNG service.

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

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

Respectfully submitted,

BRUCE J. WESTON
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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 30th day of May 2012.

/s/ Kyle L. Kern

Kyle L. Kern

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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Kern, Kyle Mrs.