

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., for an Adjustment to) Case No. 14-375-GA-RDR
Rider MGP Rates)

In the Matter of the Application of Duke) Case No. 14-376-GA-ATA
Energy Ohio, Inc., for Tariff Approval)

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

On February 19, 2014, the Public Utilities Commission of Ohio (“PUCO”) issued an Entry authorizing Duke Energy Ohio, Inc. (“Duke” or “Utility”) to collect from customers \$55.5 million in environmental investigation and remediation costs for two manufactured gas plant (“MGP”) sites that began service in the 1800’s and that have not been used and useful in providing utility service in over 50 years.¹ That PUCO decision is unlawful.

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene in this case where Duke now seeks to collect even more money from its customers for the clean-up of those two defunct MGP sites.² OCC is filing on behalf of all the 390,000 residential

¹ The West End site is located on the west side of downtown Cincinnati and it was constructed by the Cincinnati Gas Light and Coke Company in 1841. Gas for lighting was first produced at the plant in 1843, and the manufacture of gas ceased in 1928. The East End site is located about four miles east of downtown Cincinnati. Construction of the East End site began in 1882 and commercial operations began in 1884, with the manufacture of gas ceasing in 1963. Duke Ex. No. 20(A) (Supplemental Testimony of Andrew Middleton at 25 (February 25, 2013); See also Tr. Vol. I at 183 (April 29, 2013).

² See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

utility customers of Duke. The reasons the PUCO should grant OCC's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Larry S. Sauer

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

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone [Sauer]: (614) 466-1312
Telephone [Serio]: (614) 466-9565
larry.sauer@occ.ohio.gov
joseph.serio@occ.ohio.gov

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| In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates |) | Case No. 14-375-GA-RDR |
| |) | |
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| |) | |

On March 31, 2014, Duke filed an application (“Application”) to increase its Rider MGP rate that customers pay as part of their natural gas bills.³ Duke seeks to increase the Rider MGP rate so that it can collect more money from customers for additional MGP-related investigation and remediation expenses incurred in 2013. OCC has authority under law to represent the interests of all the 390,000 residential utility customers of Duke, 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 the customers were unrepresented in a proceeding in which Duke seeks to charge customers an additional \$8.3 million for MGP site clean-up costs. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

³ Direct Testimony of Peggy Laub at Attachment PAL-2.

R.C. 4903.221(B) requires the PUCO 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 customers of Duke in this case involving charging customers additional MGP-related investigation and remediation expenses through Duke's Rider MGP Rate. According to Duke's testimony supporting the Application, residential customers will be responsible for 68.26% of the \$8.3 million in additional MGP clean-up costs.⁴ 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 Rider MGP rate is unlawful 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 the case with consideration of the public interest.

⁴ Direct Testimony of Peggy A. Laub. Attachment PAL-2 (March 31, 2014).

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 Duke seeks to charge customers an additional \$8.3 million for the cleanup of pollution from MGP facilities that have not been used in over 50 years.

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 PUCO 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.⁵

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 PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Larry S. Sauer

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

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone [Sauer]: (614) 466-1312
Telephone [Serio]: (614) 466-9565
larry.sauer@occ.ohio.gov
joseph.serio@occ.ohio.gov

⁵ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below *via* electronic transmission, this 10th day of April 2014.

/s/ Larry S. Sauer

Larry S. Sauer

Assistant Consumers' Counsel

SERVICE LIST

Amy B. Spiller
Deputy General Counsel
Elizabeth H. Watts
Duke Energy Ohio, Inc.
139 East Fourth Street, 1303-Main
Cincinnati, Ohio 45202
Amy.spiller@duke-energy.com
Elizabeth.watts@duke-energy.com

William Wright
Chief, Public Utilities Section
Public Utilities Commission of Ohio
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
William.wright@puc.state.oh.us

David F. Boehm
Michael L. Kurtz
Judy Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com
jkylercohn@bkllawfirm.com

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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 Sauer, Larry S.