

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Approval to Modify) Case No. 15-50-GA-RDR
Rider FBS, Rider EFBS, and Rider FRAS.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene¹ in this case where Duke Energy Ohio, Inc. ("Duke" or "the Utility") filed an Application to modify the terms and rates for Suppliers for various balancing services, in lieu of collecting such charges from its residential gas customers.² OCC is filing this Motion to Intervene on behalf of the approximately 380,000 residential gas customers of Duke.

Specifically, Duke seeks to modify the rates and terms under which Suppliers may choose either Duke's Firm Balancing Service ("FBS") or Enhanced Firm Balancing Service ("EFBS").³ Duke also proposed to modify terms under its Full Requirements Aggregation Service ("FRAS") and Gas Trading Service ("GTS"). Duke proposed these changes because it is paying increased demand charges to Columbia Gas Transmission ("TCO") for transportation into and out of storage, and because of other changes in the natural gas industry.⁴ According to Duke, customers who pay utility rates through the gas cost recovery

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

² *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Modify Rider FBS, Rider EFBS, and Rider FRAS*, Case No. 15-50-GA-RDR, Application at 1-2 (January 15, 2015). ("Duke FBS Application Case").

³ Duke FBS Application Case, Application at 2 (January 5, 2015).

⁴ Duke FBS Application Case, Application at 4-5 (January 5, 2015).

(“GCR”) mechanism would have to pay additional costs if Duke’s Application is not approved.⁵ Customers paying the GCR include the residential customers, whom OCC represents. OCC should be permitted to intervene on behalf of those customers for the reasons detailed in the attached memorandum in support.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS’ COUNSEL

/s/ Joseph P. Serio

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⁵ Id. at 5.

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MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

I. INTERVENTION

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where Duke is requesting a change in the rates and terms for services it provides to suppliers for transporting and storing gas, in lieu of collecting such costs from GCR customers.⁶ OCC is filing on behalf of all the 380,000 residential utility customers of Duke.⁷ The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's Motion are further set forth below.

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 where Duke proposes to modify rates and terms for services Suppliers take in lieu of charging those costs to the GCR paid for by customers, including residential customers.⁸ Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

⁶ Duke FBS Application Case, Application at 5 (January 5, 2015).

⁷ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

⁸ Duke FBS Application Case, Application at 5 (January 5, 2015).

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 in this case involving Duke's proposal to collect from cost causers (suppliers) the increasing cost of transporting and storing gas. OCC's interest is in avoiding another result, were the application denied, where Duke might try to collect such costs from residential gas customers in order to be made whole.⁹ 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 (but not be limited to) advancing the position that residential customers should pay rates that are no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. Residential customers should not be made to pay rates that include costs for buying gas from the spot market during colder than normal weather or selling gas into the spot market during warmer than normal weather which are not costs caused by

⁹ Duke FBS Application Case, Application at 5 (January 5, 2015).

customers.¹⁰ Duke, in its Application, recognizes that cost causers (suppliers) and not consumers should pay the costs associated with those spot market transactions.¹¹

Therefore, Duke's application appears to be reasonable. 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, for reasons stated above.

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.

¹⁰ Id.

¹¹ Id.

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.¹²

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.

II. CONCLUSION

OCC meets the standards for intervention in this proceeding. The PUCO should grant OCC’s Motion to Intervene.

¹² See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Joseph P. Serio

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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 12th day of February, 2015.

/s/ Joseph P. Serio
Joseph P. Serio
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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Serio, Joseph P. Mr.