

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Regulation of the)
Purchased Gas Adjustment Clause) Case No. 15-218-GA-GCR
Contained Within the Rate Schedules of)
Duke Energy Ohio, Inc. and Related)
Matters.)

ENTRY

The attorney examiner finds:

- (1) By Entries issued on February 25, 2015, the Commission, inter alia, initiated this case to review the gas cost recovery (GCR) rates, the purchased gas adjustment clause, and related matters within the rate schedules of Duke Energy Ohio, Inc. (Duke or the Company). The Entries required that the financial and management/performance audit reports for Duke be filed by December 11, 2015. The Entries also scheduled this matter for hearing on February 9, 2016, and directed Duke to file any direct testimony at least 16 days prior to the hearing.
- (2) R.C. 4903.221 provides that any person who may be adversely affected by a Commission proceeding may seek to intervene. The criteria for intervention, set forth in R.C. 4903.221, are as follows:
 - (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 proceedings; (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.
- (3) On June 16, 2015, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene in this case. In support of its motion, OCC states that it represents Duke's residential consumers and, therefore, it has an interest to ensure that Duke is acting reasonably and prudently, both when purchasing its natural gas supplies and in passing on its gas supply costs to

customers. OCC submits that its participation in this case will not unduly prolong or delay the proceedings and that it will significantly contribute to the full development and equitable resolution of the issues. No memorandum contra was filed in opposition to OCC's motion to intervene.

- (4) The attorney examiner finds that OCC's motion to intervene should be granted.
- (5) On January 14, 2016, Interstate Gas Supply, Inc. (IGS) also filed a motion to intervene in this case. In support of its motion, IGS states that, on January 6, 2016, the Commission, in *In re Duke Energy Ohio, Inc.*, Case No. 15-50-GA-RDR (*Duke Rider Case*), issued an Opinion and Order that relied upon the audit report prepared by the auditor, Exeter Associates, Inc. (Exeter), in this proceeding. IGS states that neither IGS nor any other party had an opportunity to cross-examine the auditor or review the audit report in the *Duke Rider Case* because the audit report was issued after the hearing in that case and Exeter was not a party. IGS notes that, in this proceeding, the issues in the audit report—including Duke's gas balancing tariffs and capacity and storage asset portfolio—will be subject to additional consideration. IGS, therefore, maintains that it has an interest in this proceeding.
- (6) IGS also states that it currently serves natural gas customers in Duke's service territory and that it has a real and substantial interest in this proceeding, as it may impact the balancing service that IGS is required to take from Duke. IGS submits that its interests will not be adequately represented by other parties to this proceeding and that the disposition of this proceeding, without IGS's participation, may impair IGS's ability to protect its interest. IGS further submits that its participation in this proceeding will not cause undue delay, will not unjustly prejudice any existing party, and will contribute to the just and expeditious resolution of the issues and concerns raised in this proceeding.
- (7) On January 15, 2016, Duke filed a memorandum contra IGS's request for intervention. In the memorandum contra, Duke argues that IGS's motion to intervene should be denied because it does not meet the criteria for intervention set forth in R.C. 4903.221 and Ohio Adm.Code 4901-1-11.

- (8) With regard to the first of the intervention criteria required under R.C. 4903.221 and Ohio Adm.Code 4901-1-11, concerning the nature and extent of the prospective intervenor's interest, Duke argues that IGS neglects to recognize that the Exeter audit report itself notes that the issues of interest to IGS will be resolved in the *Duke Rider Case* (audit report, page 79) and that the Commission, in its Opinion and Order in the *Duke Rider Case*, took administrative notice of this case so that the issues relevant to IGS could be determined in the *Duke Rider Case*. Therefore, according to Duke, there is no need for IGS to intervene in this proceeding. Duke argues that, if IGS is concerned that it was unable to cross-examine a representative of Exeter in the *Duke Rider Case*, such concern should be raised and argued in that case. Further, any claim of prejudice in the *Duke Rider Case* has absolutely no bearing on the present review of Duke's GCR.
- (9) With regard to the second criterion listed under R.C. 4903.221 and Ohio Adm.Code 4901-1-11, the prospective intervenor's legal position and its probable relation to the merits of the case, Duke states that IGS's interests are unrelated to the matters pertinent to this proceeding. Duke notes that IGS is interested in the legal matters related to the firm balancing and enhanced firm balancing tariffs that are under consideration in the *Duke Rider Case*, not in this GCR audit. Duke argues that IGS should not be granted intervention, as its reasons for intervention are not relevant in this case and will be determined elsewhere.
- (10) Duke notes that, pursuant to the third and fourth criteria, the Commission must consider whether the requested intervention will unduly prolong or delay the proceeding and whether the prospective intervenor will provide a significant contribution to full development and equitable resolution of the factual issues. Duke argues that IGS seeks to raise issues that are unrelated to the prudence of the Company's gas costs and management, and whether the accounting for the GCR has been accurately and correctly recorded. Moreover, according to Duke, IGS has waited until the last possible moment to intervene – far beyond what is reasonable. Thus, Duke contends that IGS's intervention will unduly prolong or delay the proceeding. Duke argues that, based upon IGS's motion, IGS has no discernible contribution to make to the full development and equitable resolution of the factual issues.

- (11) On January 22, 2016, IGS filed a reply to Duke's memorandum contra IGS's request for intervention. In the reply, IGS states that, in this proceeding, the Commission will review and evaluate the prudence and appropriateness of Duke's capacity and storage procurement decisions. IGS states that the resolution of the issues identified in the audit report in this proceeding may impact the amount of capacity and storage assigned to suppliers, as well as the price that suppliers may ultimately pay to Duke for balancing services, in the *Duke Rider Case*. Further, IGS reiterates its argument that neither IGS nor any other party had an opportunity to cross-examine Exeter or review the audit report in the *Duke Rider Case* because the audit report was issued after the hearing in that case and Exeter was not a party. IGS, therefore, maintains that, because it has satisfied the criteria for intervention under the Commission's liberal intervention standard, and considering past precedent, the Commission should grant IGS's motion to intervene in this proceeding.
- (12) In the *Duke Rider Case*, the Commission stated that "Exeter's recommendations regarding Duke's storage levels and any other balancing issues will be addressed in the 2015 GCR Case." *Duke Rider Case*, Opinion and Order (Jan. 6, 2016) at 9. In light of this statement, the attorney examiner finds that IGS's request for intervention is reasonable and should be granted. As IGS states in its motion to intervene, Duke's storage levels and balancing issues will be subject to additional consideration in this case. The attorney examiner, thus, believes that IGS has demonstrated a real and substantial interest for its intervention in this proceeding. In addition, the attorney examiner notes that the Supreme Court of Ohio has held that the intervention criteria should be liberally construed in favor of intervention. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 2006-Ohio-5853, 865 N.E.2d 940, ¶ 20. Therefore, considering the arguments advanced for and against intervention in this matter, the attorney examiner finds that IGS has satisfied the intervention criteria set forth in R.C. 4903.221.

It is, therefore,

ORDERED, That the motions to intervene filed by OCC and IGS be granted. It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Kerry K. Sheets

By: Kerry K. Sheets
Attorney Examiner

jrj/vrm

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Case No(s). 15-0218-GA-GCR

Summary: Attorney Examiner Entry granting motions to intervene filed by OCC and IGS; electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio