

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Northeast Ohio Natural Gas Corp. for an) Case No. 18-1720-GA-AIR
Increase in Gas Distribution Rates)

In the Matter of the Application of)
Northeast Ohio Natural Gas Corp. for) Case No. 18-1721-GA-ATA
Tariff Approval)

In the Matter of the Application of)
Northeast Ohio Natural Gas Corp. for) Case No. 18-1722-GA-ALT
Approval of Alternative Regulation)

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

Brainard Gas Corp., Orwell Natural Gas Company, Spelman Pipeline Holdings, LLC, and Northeast Ohio Natural Gas Corp. (collectively “NEO” or the “Utilities”) seek authority to increase the amount that they charge customers for natural gas distribution service.¹

NEO cites a 9.5% increase in its Notice of Intent.² But for many customers, the increase is substantially more. Low-use customers would be hit the hardest. Consumers who use no natural gas in a given month would face a *217% bill increase*, for example.³ Monthly bills for customers using 1 to 9 MCF of natural gas would all increase by double digits—

¹ Notice of Intent of Northeast Ohio Gas Company to File an Application for Approval of an Alternative Rate Plan (Nov. 27, 2018) (the “Notice of Intent for an Alternative Rate Plan”); Notice of Intent of Northeast Ohio Gas Company to File and Application for Increase in Rates, for Tariff Approval, and for Approval of Alternative Regulation, (Nov. 27, 2018) (the “Notice of Intent for Rate Increase”).

² Notice of Intent for Rate Increase, Ex. 2.

³ *Id.*, Ex. 4, Schedule E-5.

anywhere from 11% to 95%.⁴ This is because NEO is proposing to more than triple the fixed charge that customers pay from \$6.30 to \$20.00 per month.⁵

NEO is also planning to file an application for an Alternative Rate Plan under R.C. 4929.05, which will include a proposed infrastructure replacement rider and modifications to address the federal Tax Cuts and Jobs Act of 2017.⁶

The Office of the Ohio Consumers' Counsel ("OCC"), as the statutory representative of NEO's 28,000 residential customers, moves to intervene in these cases.⁷ The Public Utilities Commission of Ohio ("PUCO") should grant OCC's motion for the reasons set forth in the attached memorandum in support.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Christopher Healey
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⁴ *Id.*

⁵ *Id.*

⁶ *Notice of Intent for an Alternative Rate Plan*. The TCJA refers to the Tax Cuts and Jobs Act of 2017, which significantly reduced the income tax rate for corporations.

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

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MEMORANDUM IN SUPPORT

In this proceeding, NEO seeks to increase the rates that its distribution customers pay.⁸ The proposed increases to the fixed customer charge residential customers pay will materially and adversely impact customers, especially those with the least usage. OCC has authority under law to represent the interests of all the 28,000 residential utility customers of NEO, pursuant to R.C. Chapter 4911.

In addition, OCC is concerned that these filings are inconsistent with the Utilities' representations to the PUCO in their recently-filed request for approval of their merger. On September 28, 2018, the Utilities filed an application with the PUCO to merge with each other.⁹ In that application, the Utilities stated: "Ohio customers will experience no immediate changes as a result of this transaction. The Ohio Utilities do not anticipate any

⁸ Late rate cases: NEO's last rate case 03-2170-GA-AIR NEO, 97-746-GA-ATA Brainard, and 87-706-GA-ATA Orwell, who are still in existence.

⁹ *In re Verified Joint Application of Brainard Gas Corp., Northeast Ohio Gas Corp., Orwell Natural Gas Company and Spelman Pipeline Holdings, LLC for Approval of Merger and Request for Expedited Approval*, Case Nos. 18-1484-GA-UNC and 18-1485-GA-ATA.

material, immediate changes to the rate base, operations, or customer service associated with this Merger Agreement. Instead, once the merger is completed, customers of the Ohio Utilities will be served under the existing tariff for NEO with certain minor changes.”¹⁰ Yet now, before the PUCO has ruled on the merger application, the Utilities are seeking not only a base rate increase with a significant change in the rate design, but also approval of an infrastructure replacement rider through an Alternative Rate Plan.¹¹ This appears to be inconsistent with the representations made to the PUCO in the merger case.

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 NEO seeks to increase the fixed monthly charge that customers pay by as much as 218% and where NEO is requesting the introduction of a rider of an unknown amount. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

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 proceedings;

¹⁰ *Id.* at ¶ 20.

¹¹ *Id.*

- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is representing the residential customers of NEO in this case where NEO is seeking to increase the amount it charges residential customers for base distribution rates, and significantly change the design of those rates. This interest is different than that of any other party and especially different than that of the Utilities, whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential customers will include advancing the position that the individual components of rates paid for by consumers are important. For example, the PUCO should consider the message sent to consumers when a substantial portion of their natural gas bill is not dependent on the amount of natural gas that they use. 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 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 involving NEO's base distribution rates, which affect the amount that residential customers pay for natural gas 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), which OCC already has addressed, and which 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.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.

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

Respectfully submitted,

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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 transmission, this 21st day of December 2018.

/s/ Christopher Healey
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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 Healey, Christopher Mr.