BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matters of the Applications of Duke Energy Ohio, Inc., for Adjustments to Rider MGP Rates.	)	Case No. 14-375-GA-RDR
	)	Case No. 15-452-GA-RDR
	)	Case No. 16-542-GA-RDR
	)	Case No. 17-596-GA-RDR
	)	Case No. 18-283-GA-RDR
	)	Case No. 19-174-GA-RDR
	)	Case No. 20-53-GA-RDR
In the Matters of the Applications of Duke Energy Ohio, Inc. for Tariff Approval.	)	Case No. 14-376-GA-ATA
	)	Case No. 15-453-GA-ATA
	)	Case No. 16-543-GA-ATA
	)	Case No. 17-597-GA-ATA
	)	Case No. 18-284-GA-ATA
	)	Case No. 19-175-GA-ATA
	)	Case No. 19-1086-GA-ATA
	)	Case No. 20-54-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Implementation of the Tax Cuts and Jobs Act of 2017.	)	Case No. 18-1830-GA-UNC
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of Tariff Amendments.	)	Case No. 18-1831-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Defer Environmental Investigation and Remediation Costs.	)	Case No. 19-1085-GA-AAM

MEMORANDUM CONTRA IGS'S MOTION TO INTERVENE AND MOTION FOR PROCEDURAL SCHEDULE
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL

Interstate Gas Supply, Inc. ("IGS") wants to intervene in these cases. Some of the cases have been pending for more than seven years without its intervention, and its intervention now

would unnecessarily delay approval of the Stipulation and Recommendation[1] (the "Settlement") and the benefits to consumers under that Settlement.[2]

The PUCO should deny the IGS's motion to intervene because it does not meet the standards for intervention under R.C. 4903.221. To the extent the PUCO does grant IGS's motions to intervene—which it shouldn't—it should exercise its authority under O.A.C. 4901-1-27(B)(7) and limit its participation in these cases. Further, the PUCO should reject IGS's proposed procedural schedule and instead establish a more reasonable procedural schedule that allows consumers to receive the benefits of the Settlement without delay.

I. RECOMMENDATIONS

A. IGS does not meet the standards for intervention under R.C. 4903.221 because it will not be adversely affected.

By law, a party may intervene if it "may be adversely affected by a public utilities commission proceeding."[3] It is true, as IGS points out, that the Ohio Supreme Court has ruled that intervention "ought to be liberally allowed."[4] The Court also clarified, however, that intervention "ought to be liberally allowed so that the positions of all persons with a *real and substantial* interest in the proceedings can be considered by the PUCO."[5] Where a party's interest is *insubstantial*, therefore, the precedent for liberal application of the intervention law does not apply.

[1] Stipulation and Recommendation (Aug. 31, 2021).

[2] Motion for Leave to Intervene, Motion for Procedural Schedule, and Memorandum in Support of Interstate Gas Supply, Inc. (the "IGS Motion") (Sept. 17, 2021).

[3] R.C. 4903.221.

[4] *OCC v. PUCO*, 111 Ohio St.3d 384, 388 (2006).

[5] *Id.* (emphasis added).

IGS fails this statutory requirement.[6] The primary issues in these proceedings are (i) resolution of Duke's manufactured gas plant ("MGP") cases and the charges to consumers for Duke's remediation costs, and (ii) the impacts of the 2017 Tax Cuts and Jobs Act ("TCJA") on consumers' bills. IGS did not seek to intervene in these proceedings, some of which have been pending for more than seven years, thus demonstrating that the MGP and TCJA issues do not adversely affect it. In a separate motion to intervene, the Retail Energy Supply Association (of which IGS is a member) explicitly admits, in fact, that these issues do not impact marketers.[7]

Instead, IGS seeks intervention because of three consumer issues addressed in the Settlement: (i) Duke's agreement to file an application to transition from its current gas cost recovery ("GCR") process to a standard service offer ("SSO") (the "SSO Issue"),[8] (ii) Duke's agreement to provide OCC with shadow billing information comparing, in the aggregate, what consumers paid to marketers with what they would have paid under Duke's standard offer or GCR, as applicable (the "Shadow Billing Issue"),[9] and (iii) Duke's agreement to provide a "price-to-compare" message on shopping customers' bills comparing what they actually paid to their marketer with what they would have paid under Duke's standard offer or GCR (the "Price-to-Compare Issue").[10] IGS will not be adversely impacted by these issues.

First, IGS already has an opportunity to be heard regarding the SSO issue. Under the Settlement, Duke was required to file a notice of intent to file an application for the transition to

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[6] R.C. 4903.221.

[7] *See* Motion for Leave to Intervene of the Retail Energy Supply Association at 7 (Sept. 29, 2021) (the "RESA Motion") ("RESA had no prior reason to intervene in these proceedings because the applications for these cases and prior filings only involved issues of Duke's MGP rider, environmental remediation costs, and the TCJA."); RESA Motion at 5 ("Prior to August 31, 2021, the applications and filings in these 18 proceedings did not involve any supplier-related issues.").

[8] Settlement at 16-18.

[9] Settlement at 19.

[10] Settlement at 18.

an SSO and to hold stakeholder meetings.[11] Duke has filed such a notice of intent, and IGS can file a motion to intervene in that proceeding.[12] Further, Duke has begun to hold the SSO stakeholder meetings, and IGS was invited to participate. Thus, approval of the SSO issue as part of the Settlement will have no adverse impact on IGS.

Second, Duke's agreement is to provide shadow billing data to OCC—nothing more. Perhaps, in the future, if OCC were to use that information in its advocacy, IGS might have an interest in responding to OCC's use of the information. But OCC's mere possession of data cannot possibly adversely impact IGS.

Third, IGS is not adversely impacted by Duke adding a price-to-compare message on consumers' bills. The sole purpose of this Settlement term is to educate consumers. It provides them with two data points: what they actually paid to a marketer and what they would have paid under Duke's standard offer or GCR. This information is important because it provides transparency to consumers. And the PUCO has already found that this type of information is appropriate for electric utility consumers' bills.[13]

B. IGS's intervention request, if granted at all, should be limited to those narrow issues in the Settlement related to competitive markets.

Under O.AC. 4901-27(B)(7), the PUCO has discretion to take action that it deems necessary to "[a]void unnecessary delay" and "[p]revent the presentation of irrelevant or cumulative evidence."

[11] Settlement at 16.

[12] *In re Application of Duke Energy Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services*, Case No. 21-903-GA-EXM.

[13] O.A.C. 4901:1-10-33(C)(18).

The Settlement resolves a decade of litigation of Duke's proposed charges to consumers for the cleanup of environmental waste from former manufactured gas plants.[14] It requires Duke to credit consumers with insurance proceeds that should have been credited to consumers years ago.[15] It places various restrictions on Duke's future ability to charge distribution customers for MGP-related expenses.[16] It requires Duke to pass on to consumers the benefits of lower taxes under the TCJA (including an adjustment to Duke's base rates).[17] It requires Duke to provide bill payment assistance to low-income consumers and seniors.[18] None of these issues has anything to do with competitive markets in Ohio or IGS's business in Ohio. Thus, any evidence that IGS might offer in this case would be irrelevant as to these issues under O.A.C. 4901-1-27(B)(7)(b). It would also unnecessarily delay approval of the Settlement, which delay would be to the detriment of consumers.

If IGS is granted intervention in these cases—which it should not be, for the reasons explained above—the PUCO should exercise its authority under O.A.C. 4901-1-27(B)(7) and limit its participation in the proceedings to the SSO Issue, Price-to-Compare Issue, and Shadow Billing Issue. While OCC firmly believes that even these issues do not adversely affect IGS (as described above), at a minimum, IGS should not be allowed to challenge the Settlement as it pertains to MGP-related issues or the TCJA.

[14] Settlement at 8-16.

[15] *Id.* at 10.

[16] *Id.* at 13.

[17] *Id.* at 10-13.

[18] *Id.* at 14-16.

C. The PUCO should reject IGS's proposal to delay this case with a lengthy procedural schedule.

According to IGS, before the PUCO can proceed to rule on the Settlement, it must formally consolidate the various dockets identified above.[19] IGS cites no authority for this claim, and there is none. While it is true that at times the PUCO has *elected* to consolidate cases for administrative convenience, there is no requirement under any rule, law, or precedent that says that the PUCO must issue an Entry or Order consolidating cases whenever there is a settlement resolving more than one case. To the contrary, the PUCO has in the past ruled on settlements resolving multiple cases without formally consolidating the dockets.[20] Thus, IGS's claim that there must be a formal "consolidation" of the cases before proceeding further is meritless.

IGS then proposes that it be given 60 days to file testimony after its proposed consolidation and another 30 days after that before a hearing is held.[21] There is no basis for such a substantial delay. The issues that IGS might address in this case are narrow and do not impact many of the substantial consumer issues in the Settlement related to charges to consumers for MGP remediation and benefits to consumers under the TCJA.

The PUCO should reject IGS's attempts to delay approval of the Settlement which will delay delivering significant benefits to consumers, including the consumers that IGS and other RESA members serve. Instead, the PUCO should set these cases for hearing as soon as possible—no later than October 2021. OCC would agree to IGS's proposal for expedited

[19] IGS Motion at 7.

[20] *See, e.g., In re Fuel Adjustment Clauses for Columbus S. Power Co. & Ohio Power Co.*, Case No. 09-872-EL-FAC, Order on Global Settlement Stipulation (Feb. 23, 2017) (approving global settlement of 17 cases without formally consolidating all of them).

[21] IGS Motion at 8.

discovery response time of 10 calendars days (or even shorter) to facilitate prompt resolution of these cases.

II. CONCLUSION

For the reasons stated above, the PUCO should deny IGS's motion to intervene. If it does grant it, IGS's intervention should be strictly limited to the three issues in the Settlement related to competitive markets. And the PUCO should deny IGS's motion for a protracted procedural schedule. Instead, the PUCO should move this case forward quickly so that consumers can receive the significant benefits from the Settlement as soon as possible.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Memorandum Contra was served by electronic transmission upon the parties below this 4th day of October 2021.

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The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: Memorandum Memorandum Contra IGS’s Motion to Intervene and Motion for Procedural Schedule by Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J. Greene on behalf of Healey, Christopher