**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Modify Rider FBS and Rider EFBS.In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Modify its Tariff Regarding Rate IMBS. | )))))) | Case No. 21-180-GA-RDRCase No. 21-188-GA-ATA |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

Duke’s application includes a request to increase charges for balancing services provided to Marketers. Duke is reportedly seeking this increase due to changes and increases in storage costs associated with the transportation and demand charges being billed by Columbia Gas Transmission Corporation (“TCO”) and prevailing commodity prices.[[1]](#footnote-2)  It is important that the balancing charges caused by the Marketers are reflected fully in the amount of the storage costs (including any cost increases) charged to the Marketers. Otherwise, these balancing costs caused by Marketers could be passed onto GCR customers that OCC represents.

To make sure that the proposed increased charges are calculated correctly to protect consumers, OCC files this motion to intervene on behalf of the approximately 406,000 residential gas utility customers of Duke. The 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/ William J. Michael*

William J. Michael (0070921)

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## MEMORANDUM IN SUPPORT

The balancing charges that Duke seeks to collect from Marketers include an estimate of storage costs associated with daily balancing for Marketers.[[2]](#footnote-3) The charges collected by Duke are then applied as a credit to the gas cost recovery (“GCR”) mechanism that other customers pay.[[3]](#footnote-4) In this case, Duke seeks to increase the charges for FBS, EFBS, and IMBS rates.[[4]](#footnote-5) Duke asserts that this increase is attributable to increased commodity prices and increased transportation and demand charges billed by Columbia Gas Transmission Corporation (“TCO”).[[5]](#footnote-6) Because the charges collected from Marketers are applied as a credit to the GCR mechanism, it is essential that the balancing charges are accurately calculated in the first instance, to protect GCR consumers from paying unjust and unreasonable rates.

The PUCO has previously recognized that the revenues from Rider FBS and Rider EFBS flow through to GCR customers that initially fund the storage services provided to Duke by TCO but benefit Marketers.[[6]](#footnote-7) Consumers paying the GCR should be protected from rate increases due to changes to the allocation of balancing charges.. Marketers use these balancing services and should pay their fair share.

OCC has authority to represent the interests of the approximately 406,000 residential gas utility customers of Duke, under 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 where charges they pay for the GCR could inappropriately increase if Marketers do not pay for the increased storage costs related to balancing services Duke provides to them. 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;

(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 Duke’s residential gas consumers in a case where the increase to rates is supposed to be shared by Marketers, not fully paid by GCR customers. This interest is different than that of any other party and especially different than that of Duke, whose advocacy includes the financial interest of shareholders.

Second, OCC’s advocacy for residential customers will include, among other things, advancing the position that residential customers should pay only just and reasonable rates, calculated accurately.

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 where customers could be charged more for 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.” OCC does not concede the lawfulness of this criterion. But 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 (“Court”) 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.[[7]](#footnote-8)

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 consumers, the PUCO should grant OCC’s Motion to Intervene.

Respectfully submitted,

Bruce Weston (0016973)

Ohio Consumers’ Counsel

*/s/ William J. Michael*

William J. Michael (0070921)

Counsel of Record

Ambrosia E. Wilson (0096598)

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(willing to accept service by e-mail)

**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 26th day of May 2021.

 */s/ William J. Michael*

 William J. Michael

 Assistant Consumers’ Counsel

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

**SERVICE LIST**

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1. Application at 3. [↑](#footnote-ref-2)
2. Application at 2. [↑](#footnote-ref-3)
3. *Id.* [↑](#footnote-ref-4)
4. Application at 3. [↑](#footnote-ref-5)
5. *Id.* [↑](#footnote-ref-6)
6. *See*, *e.g.,* Case No. 19-27-GA-RDR, Finding and Order (Feb. 20, 2019) at ¶ 8. [↑](#footnote-ref-7)
7. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20. [↑](#footnote-ref-8)