

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke )  
Energy Ohio, Inc., to Amend Its Tariffs. ) Case No. 16-862-GA-ATA

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**DUKE ENERGY OHIO, INC.'S MEMORANDUM CONTRA THE MOTION TO  
INTERVENE AND MOTION TO DISMISS OF OHIO PARTNERS FOR AFFORDABLE  
ENERGY**

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On May 2, 2016, Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) initiated the above-captioned proceeding seeking to amend its Charge for Reconnection of Service Tariff, P.U.C.O. Gas No. 18, Sheet 82.5 (Tariff). On May 4, 2016, Ohio Partners for Affordable Energy (OPAE) moved to dismiss and intervene in the proceeding. In its motion to intervene, OPAE states that Duke Energy Ohio's application is a request "to amend its tariffs so that Duke may collect a fixed delivery charge at a premise [*sic*] even for months when Duke has no customers at the premise."<sup>1</sup> Accordingly, OPAE argues that it should be granted intervention. As OPAE indicated in its motion, interventions in Commission proceedings are governed by R.C. 4903.221 and O.A.C. 4901-1-11. However, OPAE's motion fails to set forth a sufficient basis for intervention in this tariff proceeding. As Duke Energy Ohio demonstrates herein, OPAE's motion should be denied.

In its motion to dismiss, OPAE requests that Duke Energy Ohio's application must be dismissed because "The purpose of this application is to increase charges for the reconnection of

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<sup>1</sup> OPAE Motion to Intervene, at pg. 2.

service.”<sup>2</sup> As Duke Energy Ohio demonstrates herein, the motion to dismiss should also be denied, as its Application does not seek a rate increase.

**A. OPAE’S MOTION FOR INTERVENTION**

**1. Nature of the Prospective Intervenor’s Interest**

The first element to be considered by the Public Utilities Commission of Ohio (Commission), pursuant to R.C. 4903.221, is the nature and extent of the prospective intervenor’s interest. In its Motion to Intervene, OPAE states that its “primary focus is to protect the interests of low and moderate income Ohioans whose provision of natural gas distribution service may be affected by this application.”<sup>3</sup> Although OPAE does not articulate how such customers may be affected, the only logical conclusion is that OPAE believes such customers would be asked to incur additional costs as a result of the proposed tariff revision. But this justification cannot be applied to the circumstance at issue here, as residential customers are not being asked to pay additional charges – just those charges already approved by the Commission. The proposed tariff change would simply protect the majority of residential customers, including those who have low or moderate incomes, from the few who attempt to shift a substantial portion of their annual cost responsibility to others.

To allow OPAE to intervene in this proceeding is improper and does not warrant intervention here.

**2. Legal Position and Probable Relation to Merits of the Case**

The second element to be considered by the Commission, pursuant to R.C. 4903.221, is the prospective intervenor’s legal position and its probable relation to the merits of the case. Again, however, OPAE’s interest appears to relate to its desire to object to an increase in rates,

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<sup>2</sup> OPAE Motion to Dismiss, at pg. 1.

<sup>3</sup> OPAE Motion to Intervene, at pg. 2.

which Duke Energy Ohio is not seeking in this proceeding. Thus, allowing OP&E's intervention in this matter would be improper and wasteful of the Commission's resources.

**3. Undue Delay and Significant Contribution**

The third and fourth elements to be considered by the Commission, pursuant to R.C. 4903.221, are 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. Neither of these elements is satisfied in the instant request for intervention. As Duke Energy Ohio set forth in the Application, these proceedings seek approval of a tariff amendment and do not seek any increase; thus, no hearing is required under R.C. 4909.18. Thus, OP&E's effort to intervene in these proceedings can have no other impact than to delay the resolution.

The elements to be considered for intervention in Commission proceedings have not been met by OP&E.

**B. OP&E'S MOTION TO DISMISS**

**1. OP&E's Motion to Dismiss is Without Merit.**

The statutory provision that appears at the center of the arguments provided by OP&E in its motion to dismiss is R.C. 4909.18. Specifically, the statute states, in part:

Any public utility desiring to establish any rate, joint rate, toll, classification, charge, or rental, or to modify, amend, change, increase, or reduce any existing rate, joint rate, toll, classification, charge, or rental, or any regulation or practice affecting the same, shall file a written application with the public utilities commission.

OP&E asserts that the purpose of Duke Energy Ohio's application is to increase its rates and therefore, must be dismissed. OP&E is wrong. The proposed change does not alter the current rate for reconnection of service or any other rate for natural gas distribution service. The

Company simply seeks to amend the terms of the Tariff to mitigate cost shifting among customers.

When the commission first approved the Company's current rate design for gas distribution services in 2008, it did so with the recognition that most gas distribution costs are unrelated to usage. "Under traditional rate design, the ability of a company to recover its fixed costs of providing service hinges in large part on its actual sales, even though the company's *costs remain fairly constant regardless of how much gas is sold.* . . . The levelized rate design, however, has the added benefit of producing more stable customer bills throughout all seasons because fixed costs will be recovered evenly throughout the year."<sup>4</sup>

As the Commission has explained at that time, those costs, like all costs that the Commission considers, should be paid by the customers who cause the costs to be incurred.

The levelized rate design also promotes the regulatory objective of providing a more equitable cost allocation among customers regardless of usage. *It fairly apportions the fixed costs of service, which do not change with usage, among all customers, so that everyone pays his or her fair share.* Customers who use more energy for reasons beyond their control, such as abnormal weather, large number of persons sharing a household, or older housing stock, will no longer have to pay their own fair share plus someone else's fair share of the costs.<sup>5</sup>

As it considered this new rate design at that time, the Commission was aiming to decrease or eliminate the connection between usage and the Company's revenues. The Commission recognized that most of the costs of the distribution system were not linked in any way to usage and could, therefore, be levelized throughout the year and the ratepayers. "The undisputed evidence of record is that the new levelized rates will more closely match fixed costs

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<sup>4</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Rates*, Case No. 07-589-GA-AIR, Opinion and Order, at pp. 17-18 (May 28, 2008)(emphasis added).

<sup>5</sup> *Id.*, Opinion and Order, at pg. 19 (May 28, 2008)(emphasis added). *See also id.*, Entry on Rehearing, at pp. 4, 5 (July 23, 2008).

with fixed revenues, thereby ensuring that residential distribution customers pay their fair share of the costs incurred to serve them.”<sup>6</sup>

When a customer disconnects from Duke Energy Ohio’s system over the summer months, the costs of the system do not decrease. By disconnecting over the summer, those customers are attempting to avoid the effect of the Commission’s decision by shifting some of their annual responsibility for the costs to other users. The Company’s rates were set to collect the annual fixed costs of owning and operating the distribution system. This proceeding is not a request for a rate increase; it is a request to amend the tariff to forestall the ability of some ratepayers to avoid the rates that the Commission already approved.

OPAE’s opposition to the Company’s proposed tariff change puts it in the peculiar and unexpected position of advocating to have one group of customers unfairly shift their responsibility for the cost of gas service to all other customers. Any customer who cannot discontinue gas service during the summer months will necessarily be making up for those customers who can take advantage of the current tariff language and temporarily suspend service, even though the annual costs to provide those customers is essentially the same. In fact, Duke Energy Ohio’s actual rate for reconnection of gas service remains at \$17 for most customers and is the lowest reconnection rate of all major Ohio gas distribution companies. Nothing in the Company’s Application proposes to change that rate. The modification to the language, if approved, will simply ensure that customers do not avoid responsibility for the actual cost of providing their service at the Commission-approved rates – rates that are not being modified in this application.

As such, and for the reasons stated above, OPAE’s motion to dismiss should be denied.

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<sup>6</sup> *Id.*, Entry on Rehearing, at pg. 5 (July 23, 2008).

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission deny the OP&E's motion for intervention and its motion to dismiss.

Respectfully submitted,

DUKE ENERGY OHIO, INC.



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal delivery, or electronic mail, on this 19th day of May 2016, to the parties listed below.

  
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