**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Suburban Natural Gas Company for Approval of an Adjustment to the Infrastructure Replacement Program Rider. | ))))) | Case No. 22-705-GA-RDR |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene. Suburban Natural Gas Company (“Suburban”) seeks to increase charges to residential consumers by more than $54,330 per year[[1]](#footnote-2) under its Infrastructure Replacement Program (“IRP”) Rider. Through a single-issue ratemaking rider, Suburban proposes to collect from consumers costs associated with customer notification and education and costs for repair or replacement of service lines.[[2]](#footnote-3)

OCC is filing on behalf of 19,000 residential utility consumers of Suburban.[[3]](#footnote-4) The reasons the Public Utilities Commission of Ohio (“PUCO”) should grant OCC’s motion are further set forth in the attached memorandum in support.

Respectfully submitted,

Bruce Weston (0016973)

 Ohio Consumers’ Counsel

*/s/ Amy Botschner O’Brien*

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## MEMORANDUM IN SUPPORT

Suburban seeks to increase charges to each of its 19,000 residential consumers $0.24 per month under an Infrastructure Replacement Program Rider.[[4]](#footnote-5) Suburban states that the charges are for costs incurred to repair or replace service lines and costs associated with customer notification and education. Under the PUCO order authorizing the Infrastructure Replacement Program Rider, the IRP program should have concluded as of October 31, 2020.[[5]](#footnote-6) If Suburban wants to continue collecting an IRP Rider rate after October 31, 2020, it has the burden of proof to demonstrate good cause for the continuation of the IRP Rider through a rider adjustment application.[[6]](#footnote-7)

In addition, R.C. 4929.05 and R.C. 4909.18 set forth requirements for alternative rate plans and related rate applications. Among those requirements is that the rate plan cannot be implemented unless the PUCO finds it to be just and reasonable. The burden of proof is on the utility.[[7]](#footnote-8) Suburban has not made this showing. OCC has authority under

law to represent the interests of all the Suburban’s residential utility consumers 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 consumers may be “adversely affected” by this case, especially if the consumers were unrepresented in a proceeding where Suburban seeks to charge them

$54,330 or more under the Infrastructure Replacement Program Rider. 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; and

(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 consumers of Suburban involving proposed charges for Suburban’s infrastructure replacement costs. This interest is different from that of any other party and especially different from that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC’s advocacy for residential consumers will include, among other things, advancing the position that rates should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. OCC’s position is therefore directly related to the merits of this case, which 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 consumers, OCC has a very real and substantial interest in this case where Suburban seeks to charge every residential consumer a flat charge of $0.24 per month under its Infrastructure Replacement Program Rider.

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 consumers. 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.[[8]](#footnote-9)

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.

Respectfully submitted,

Bruce Weston (0016973)

 Ohio Consumers’ Counsel

*/s/ Amy Botschner O’Brien*

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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 23rd day of August 2022.

 */s/ Amy Botschner O’Brien*

 Amy Botschner O’Brien

 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**

|  |  |
| --- | --- |
| john.jones@ohioAGO.gov | bojko@carpenterlipps.comwygonski@carpenterlipps.com |

1. *See* Pre-Filing Notice for Approval of an Adjustment to the Infrastructure Replacement Program Rider (“Pre-Filing Notice”) (proposing to increase charge from the IRP rider rate set at $0/month to $0.24/customer/month for total annual residential bills of 229,056) (July 14, 2022). [↑](#footnote-ref-2)
2. *See*, Pre-Filing Notice, First Revised Sheet No. 9. [↑](#footnote-ref-3)
3. *See* R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11. [↑](#footnote-ref-4)
4. *See* Pre-Filing Notice, July 14, 2022. [↑](#footnote-ref-5)
5. Opinion and Order, Case No. 15-1048-GA-RDR (October 28, 2015). [↑](#footnote-ref-6)
6. *Id*. [↑](#footnote-ref-7)
7. In addition to the utility’s general obligation under R.C. 4905.22 that the utility furnishes necessary and adequate service and facilities which, in all respects, must be just and reasonable. [↑](#footnote-ref-8)
8. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-9)