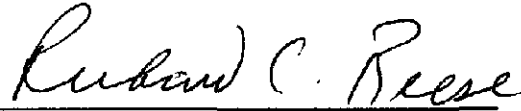


Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



Richard C. Reese, Counsel of Record
David C. Bergmann
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
614-466-8574 (Telephone)
reese@occ.state.oh.us
bergmann@occ.state.oh.us

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review)
of Chapters 4901:1-7 and 4901:1-18 and) Case No. 08-723-AU-ORD
Rules 4901:1-5-07, 4901:1-10-22, 4901:1-)
13-11, 4901:1-15-17, 4901:1-21-14, and)
4901:1-29-12 of the Ohio Administrative)
Code.)

MEMORANDUM IN SUPPORT

I. INTRODUCTION

With its Entry of June 25 2008, the PUCO issued for comment proposed amendments to a number of its rules. The rules govern the terms and conditions under which Ohio's residential consumers can establish and maintain service with utilities regulated by the Commission. Perhaps most importantly, the rules propose modifications to payment plans, including the Percentage of Income Payment Plan ("PIPP"), that are the only means by which many consumers can afford to avoid disconnection of their natural gas or electric service.

The PUCO's proposed rules will affect all residential customers of Ohio's regulated natural gas and electric utilities. The Commission should grant OCC's Motion to Intervene in this proceeding so that OCC can fully participate in this proceeding and protect the interests of Ohio's residential natural gas and electric customers.

II. INTERVENTION

OCC moves to intervene under its legislative authority to represent residential utility consumers in Ohio, under R.C. Chapter 4911.02(B)(2). R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding may seek intervention in that proceeding. OCC meets this standard because the interests of Ohio’s residential consumers may be “adversely affected” if the Commission’s rules do not adequately take into account the growing problem that low-income Ohioans have in establishing and maintaining their gas and electric service. Ensuring that all Ohioans have access to affordable gas and electric service is essential.

These rules will have an impact on the rates that all residential natural gas and electric customers will pay, and the interests of these residential customers may be adversely affected if OCC is not permitted to intervene in this case. Thus, the “adversely affected” element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission 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 proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

OCC meets these criteria.

First, the nature and extent of OCC’s interest is representing Ohio’s residential natural gas and electric consumers. This interest is different than that of any other party

because OCC represents *all* residential ratepayers of Ohio's regulated natural gas and electric distribution utilities.

Second, OCC's legal position is that the rules that the Commission adopts in this proceeding must be reasonable to protect the interests of residential customers and must be permissible under Ohio law. OCC's position, therefore, is directly related to the merits of this case pending before the PUCO that regulates public utilities.

Third, OCC's intervention will not unduly prolong or delay the proceeding. OCC has longstanding expertise and experience in PUCO proceedings, and will contribute to the process of the case.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will present arguments 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 in a proceeding, a party should have a "real and substantial interest," according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a very real and substantial interest in this case where the Commission seeks comment on rules that will determine whether Ohioans can afford to establish and maintain electric and 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) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission 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 because it has been uniquely 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 has confirmed OCC’s right to intervene in PUCO proceedings in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC’s intervention and that OCC should have been granted intervention.²

OCC meets the criteria set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11. Additionally, granting OCC intervention is consistent with the intervention standards explained by the Supreme Court of Ohio. On behalf of Ohio’s residential utility customers, the Commission should grant OCC’s Motion to Intervene.

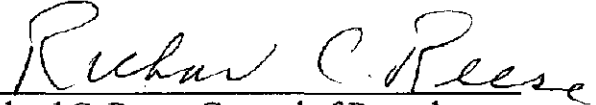
III. CONCLUSION

For the reasons stated above, the Commission should grant OCC’s Motion to Intervene on behalf of the millions of Ohioans who have an interest in the outcome of this case.

² *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

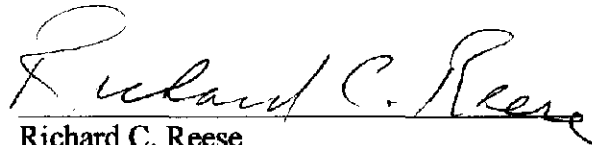
A handwritten signature in cursive script that reads "Richard C. Reese". The signature is written in black ink and is positioned above a horizontal line.

Richard C. Reese, Counsel of Record
David C. Bergmann
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
614-466-8574 (Telephone)
reese@occ.state.oh.us
bergmann@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's *Motion to Intervene* was served upon the persons listed below via first class U.S. Mail, postage prepaid, this 3rd day of July, 2008.



Richard C. Reese
Assistant Consumers' Counsel

SERVICE LIST

Duane Luckey
Attorney General's Office
Public Utilities Section
180 East Broad Street, 9th Floor
Columbus, OH 43215

Noel Morgan
Legal Aid Society of Southwest Ohio LLC
215 East Ninth St., Ste. 500
Cincinnati, OH 45202