

FAX

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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DOCKETING DIVISION
Public Utilities Commission of Ohio

In the Matter of the Application of)
Vectren Energy Delivery of Ohio, Inc., for) Case No. 07-1080-GA-AIR
Authority to Amend its Filed Tariffs to)
Increase the Rates and Charges for Gas)
Services and Related Matters.)

In the Matter of the Application of)
Vectren Energy Delivery of Ohio, Inc., for) Case No. 07-1081-GA-ALT
Approval of An Alternative Rate Plan for)
a Distribution Replacement Rider to)
Recover the Costs of a Program for the)
Accelerated Replacement of Cast Iron)
Mains and Bare Steel Mains and Service)
Lines, a Sales Reconciliation Rider to)
Collect Difference Between Actual and)
Approved Revenues, and Inclusion in)
Operating Expense of the Costs of Certain)
Reliability Programs.)

**REPLY BRIEF IN SUPPORT OF
OHIO ENVIRONMENTAL COUNCIL'S MOTION TO INTERVENE**

I. Introduction

Vectren Energy Delivery of Ohio, Inc. ("Vectren") filed on September 28th, 2007 a Notice of its intent to file an application to raise its distribution rates for natural gas, and filed another Notice for an alternate plan for its gas distribution service with the Public Utilities Commission of Ohio ("Commission"). The Staff Report was issued on June 30th, 2008, and subsequently, on July 15th, 2008 the Ohio Environmental Council ("OEC") filed a Motion to Intervene and Memorandum in support for this proceeding. Vectren filed a Memorandum in opposition of OEC's intervention on July 29th, 2008. OEC hereby respectfully submits this Memorandum to address the legal arguments raised by Vectren in their opposition Memorandum.

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II. Argument

Vectren erroneously contends that OEC has failed to demonstrate good cause for intervention, as required by Ohio Revised Code section 4903.221. As the Ohio Supreme Court made clear in evaluating the intervention standard under Ohio Revised Code section 4903.221, “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.”¹ Applying this liberal intervention standard, it is clear that intervention should be granted because OEC satisfies all four factors that the ALJ and Board are to consider in evaluating whether there is good cause for intervention.

A. OEC meets the statutory criteria for intervention.

The statutory criteria for intervention can be found in section 4903.221 of the Ohio Revised Code. The Commission must consider:

- (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.²

Vectren claims OEC fails to meet any of the criteria for intervention, but is lacking on details for some. While, OEC addressed each of these criteria in its Motion to Intervene and Memorandum in support, in order to facilitate a more complete review, OEC will address the specific charges of Vectren.

First, OEC stated that its interest is: “in ensuring that the environment of Ohio is protected to the maximum extent possible.”³ Vectren argues that this is not an interest sufficient

¹ *Ohio Consumers' Council v. Public Utilities Comm'n*, 111 Ohio St.3d 384, 388, 856 N.E. 2d 940, 945 (2006).

² Ohio Rev. Code §4903.221

³ Motion to Intervene by the Ohio Environmental Council at 3 (July 15, 2008).

to being granted intervention status. To be more specific in OEC's interest, the OEC supports rate designs that encourage conservation and energy efficiency investment. We believe that the fixed portion of a consumer's rate should be as low as possible, in order to reward individuals who work hard in their homes and businesses to use less energy and save money. The Vectren straight fixed variable rate design includes higher than tolerable fixed costs. When the fixed portion of a rate-payers bill is high, changes in consumption, whether that is through conscientious savings behavior or new energy efficient heating equipment, new windows and doors, and the like, are not well reflected in the overall charge. This leaves environmentally minded and cost conscious consumers under-compensated for valuable activity; as natural gas prices rise, domestic production slows, and imports increase in volume, consumption reduction is a valuable tool for relieving many intense economic pressures.

Second, OEC stated its legal position as: "the maximum energy efficiency and DSM programs as possible should be achieved to ensure for the protection of the environment of Ohio."⁴ Vectren classifies this not as a legal position, but rather a policy position and posits that the Ohio Consumers Council ("OCC") and the Ohio Partners for Affordable Energy ("OPAE") have similarly staked positions already. While the OEC will not quibble about the differences between legal positions and policy positions, the OEC does take exception to the characterization that OCC and OPAE have the same interests as OEC. As discussed more fully below, OEC's main concern differs from OCC and OPAE in that the OEC's chief concern is the impact to the environment through energy efficiency and conservation. Nevertheless, OEC recognizes the importance and interconnection between financial savings to consumers and the result in achieving the maximum benefit for the environment.

⁴ *Id* at 4.

Third, OEC's intervention will not unduly delay or prolong the proceedings as the issues we have and will raise are limited in scope. Vectren does not address this section in their Memorandum contra, nor has Vectren expressed any prejudice from OEC's intervention.

Finally, the OEC states its "intervention will significantly contribute to the full development and equitable resolution of the factual issues. OEC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the cases in the interest of conservation and efficient use of Ohio's natural resources."⁵ Vectren maintains that OEC has failed to demonstrate that its intervention will contribute to the development and equitable resolution of the regulatory issues properly before the Commission. However, OEC will provide a perspective which the Commission rarely, if ever has on rate cases -- the affect of a narrow but important rate structure on energy efficiency and conservation from the environmental protection perspective.

The OEC demonstrated that it met the requirements of 4903.221 in its initial Motion to Intervene, and has demonstrated once again that it meets the requirements of 4903.221 despite Vectren's objections.

B. OEC meets the Commissioners criteria for intervention.

Under the Commission's criteria for intervention in Ohio Administrative Code 4901-1-11(A)(2), a party seeking to participate needs to show "a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties."

⁵ *Id.*

The OEC has a real and substantial interest in that it represents over 356 members in the counties served by Vectren, and, as stated in Section A above, OEC supports rate designs that encourage conservation and energy efficiency investment. Vectren attacks OEC's interest by noting that OEC's website claims its organizational mission is to secure healthy air, land, and water and then that none of those are at stake in this proceeding. As OEC notes in its Comments, "The cleanest and cheapest form of energy is the energy never used. Energy conservation and efficiency is the best way for Ohio to reduce its impact on the environment and save consumers money."⁶ As rate structures and increases are proposed which hinder energy efficiency and efforts to conserve our natural resources, so is OEC's ability to promote efficiency and conservation as tools for environmental protection as we reference in Section C below.

C. OEC has standing to participate in this proceeding.

Vectren cites to *Ohio Contractors Ass. v. Bicking* for a discussion on the requirements of standing. Although the intervention rules of 4903.221 already establish that the OEC has standing to intervene, the OEC will address the additional standing issues put forth by Vectren as well. An association has standing on behalf of its members if: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit".⁷ Vectren goes on to claim that in order to have standing members must suffer actual injury, and to be compensable the injury must be concrete and not simply abstract or suspected.

⁶ Comments of the Ohio Environmental Council at 1.

⁷ *Ohio Contractors Ass. V. Bicking*, 71 Ohio St.3d 318, 320 (1994), citing *Simon v. E. Kentucky Welfare Rights Org.*, 426 U.S. 26, 40(1976).

OEC has over 356 members in the counties Vectren serves, any of whom would have the right to challenge on their own behalf. OEC also contends that the proposed SFV and its inevitable disincentive for energy efficiency upgrades and conscious conservation of natural gas impact all of OEC's members. Therefore, the OEC meets part (a) of the *Bicking* test.

OEC also meets the second prong of the *Bicking* test. Vectren correctly restates OEC's mission statement which it found on OEC's official website.⁸ From this, Vectren makes the leap that, because rate making cases are not mentioned in the mission statement, then such cases are not germane, and thus intervention is not warranted. No where in the Commission regulations or the *Bicking* test, a requirement for standing to be demonstrated on an organization's website or mission statement. Nevertheless, rate increases and rate structures that hinder energy efficiency and conservation are consequences of certain rate cases, and thus impact OEC's furtherance of its mission. The interests of achieving maximum energy efficiency and conservation of our natural resources is not only are germane to the OEC, but essential to our mission to "to secure healthy air, land, and water for all who call Ohio home." A further perusal of OEC's website (and for that matter in the PUCO docket in electric and power siting board entries), would show that OEC, as an organization, has for years been committed to promoting energy efficiency and conservation of our natural resources.

Encouraging efficiency and conservation in the natural gas energy sector is important to OEC for two important environmental reasons. First of all, from well-head to burner tip, natural gas production can pose a variety of environmental impacts. The exploration, extraction, production and transportation of natural gas negatively impacts the environment through: emissions of air pollutants and greenhouse gasses; impacts to water quality and quantity; and

⁸ See Vectren's Memorandum Contra The OEC's Motion to Intervene at 4 (July 29, 2008).

land disturbances and clear-cutting.⁹ Therefore, OEC sees the efficient use and conservation of this resource as essential to protecting Ohio's other natural resources. Secondly, it is well documented that natural gas is a cleaner burning energy source as compared to other fossil fuels such as coal. Other fossil fuels such as coal, emit harmful amounts of Mercury, Sulfur Dioxide, and Particulate Matter, as well as Greenhouse Gases when combusted for electricity production, and have detrimental impacts to land and water during and after mining of the resource. As state and federal law and policymakers are looking to mitigate the potential impacts of climate change, true reductions in GHGs can only come about through the demonstrated viability of cleaner burning fuels and renewable resources. As OEC has championed energy efficiency in the electricity sector, so must OEC see the same results in the natural gas sector.

Through the years we have found that connecting the environmental benefits of energy efficiency and conservation with the obvious economic and financial benefits is the most productive ways of promoting and hopefully achieving these ends. To this end, representation in this rate case is essential to maintaining the promotion of energy efficiency and conservation at the consumer level through the ratemaking arm of the Commission.

Finally, the OEC believes that the issues raised need not require participation of individual members in the lawsuit to achieve its ends in this proceeding, so the OEC meets (c). At the organizational level, OEC has managed to, and will continue to, represent its members

⁹ For example, "as with other fossil fuels, burning natural gas produces carbon dioxide which is a very important greenhouse gas and contributor to global climate. Also, as with other fuels, natural gas also affects the environment when it is produced, stored and transported. Because natural gas is made up mostly of methane (another greenhouse gas), small amounts of methane can sometimes leak into the atmosphere from wells, storage tanks and pipelines. Exploring and drilling for natural gas will always have some impact on land and marine habitats." Source: Department of Energy, Energy Information Administration, *Natural Gas Annual 2006*, December 2007.

As to the requirements that there be actual injury and it is compensable, that is a gross mischaracterization of Commission requirements. The injury to OEC and its members rests in the clear disincentive of rate payers in the Vectren service area to purchase expensive energy efficient appliances and home upgrades or otherwise conservatively use natural gas. Clearly this injury is neither abstract nor suspected. As Vectren has pointed out in its Memorandum Contra, "OCC and OPAE have each filed multiple objections related to the same issue, espousing the same result proposed by OEC."¹⁰ Obviously, OEC's contention cannot be too abstract if these other organizations focus on identical issues. Also, this injury is not suspected since energy efficiency and conservation are mostly successful at the energy consumer level. The energy consumer reacts to financial incentives, or lack of disincentives, when choosing to purchase energy efficiency upgrades and/or conserve energy. If the consumer does not see the pay-off for doing such environmentally conscious activities, that consumer will cease conservation efforts and/or choose not to purchase energy efficient appliance or building upgrades.

The Commission can redress the injury by approving a rate structure that promotes energy efficiency and conservation of natural resources and simultaneously permits the utility to recover necessary costs and a stable return on investment. OEC believes that this redress can occur by approval of a decoupling mechanism as opposed to the proposed SFV, or perhaps an alternative SFV that demonstrably promotes conservation and efficiency more than the proposed version.

D. OEC does not oppose consolidation of examination of witnesses with OCC and OPAE and being limited to briefing so long as OEC is not bound to sign on to settlements accepted by OCC and OPAE.

¹⁰ Vectren's Memorandum Contra OEC's Motion to Intervene at 5 (July 29, 2008) (citing OCC and OPAE objections).

The requirements for considering whether to limit intervening parties can be found in Ohio Administrative Code section 4901-1-11(D), which states:

Unless otherwise provided by law, the commission, the legal director, the deputy legal director, or the attorney examiner *may* (emphasis added):

(1) Grant limited intervention, which permits a person to participate with respect to one or more specific issues, if the person has no real and substantial interest with respect to the remaining issues or the person's interest with respect to the remaining issues is adequately represented by existing parties.

(2) Require parties with substantially similar interests to consolidate their examination of witnesses or presentation of testimony.

It is left to the discretion of the Commission whether to limit intervention of parties to one or more specific issues.

Vectren is correct, that OEC's objections and issues raised do coincide with similar issues and objections raised by OCC and OPAC. However, as mentioned in OEC's Motion to Intervene, OCC and OPAC's interest in the financial well being and bottom line of residential consumers and low-income consumers respectively, are not exactly the same as the interests of OEC. Nevertheless, OEC would be amenable to consolidation of examination of witnesses with OCC and/or OPAC and being limited to briefing these issues. If the Commission were to so require, OEC would acquiesce to the degree that OCC and/or OPAC agrees, and so long as the Commission does not force the OEC to agree to all stipulations or agreements made by OCC or OPAC. As established elsewhere in this Memorandum, the goals of the OEC and the OCC and OPAC differ in that the OEC is chiefly concerned with the impact of the rate structure on energy efficiency and conservation and the impending impact to Ohio's environment, while OCC and OPAC's main concern is cost to consumers. There may well be an instance where a settlement package will be beneficial to OPAC's constituents (for example

only), but still consist of a rate structure that could pose a threat to OEC's interests. The OEC does not want to be forced to sign off on a document that is contrary to the wishes of its membership base or our mission, and indeed forcing such an action would render the very participation of the OEC in this proceeding meaningless.

E. OEC does not oppose discovery by Vectren.

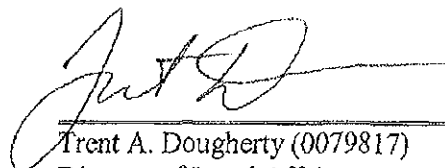
As Vectren pointed out in their Memorandum contra to OEC's intervention, the initiation of discovery in a rate case is governed by Ohio Administrative Code section 4901-1-17, which states in pertinent part, "no party may serve a discovery request later than fourteen days after the filing and mailing of the Staff Report." Although OEC timely intervened by the date required by Rule 4901-1-17 of the Administrative Code and specified by the ALJ's Entry of June 16, 2008, OEC's intervention date of July 15th, 2008, did not permit parties to request discovery within the required time frame.

If the Commission so permits in the interest of fairness, cooperation, and just and expedient resolution of this case, OEC is willing to allow for discovery by Vectren. OEC, in turn will make all concerted efforts to answer such discovery in an expedited manner.

III. Conclusion

Wherefore, for the reasons discussed above, the Commission should grant the OEC's Motion to Intervene. If the Commission does decide that OEC's participation be limited as above, it should still allow OEC to decide what stipulations and settlements it and its members will be bound.

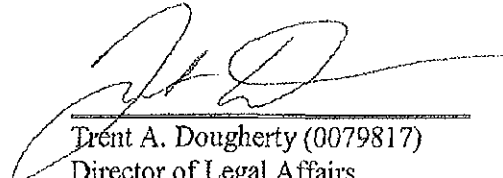
Respectfully submitted



Trent A. Dougherty (0079817)
Director of Legal Affairs
Ohio Environmental Council
1207 Grandview Ave., Suite 201
Columbus, OH 43212
Tele: 614 487 7506
Fax: 614 487 7510
Email: trent@theoec.org

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Intervene and Memorandum in Support was served on the persons listed below via first class U.S. Mail, postage prepaid, this 4th day of August, 2008.



Trent A. Dougherty (0079817)
Director of Legal Affairs
Ohio Environmental Council

SERVICE LIST

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

John W. Bentine
Counsel for Interstate Gas Supply
Chester, Wilcox & Saxbe, LLP
65 East State Street, Ste. 1000
Columbus, OH 43215-4259

John Dosker
General Counsel
Stand Energy Corp.
1077 Celestial Street Suite 110
Cincinnati, OH 45202-1629

Lisa G. McAlister
Gretchen J. Hummel
Joseph M. Clark
McNees Wallace & Nurick LLC
Fifth Third Center
21 East State Street, 17th Floor
Columbus, OH 43215

Ronald E. Christian
Executive Vice President, General Counsel
& Corporate Secretary
Vectren Corporation
P.O. Box 209
Evansville, IN 47702-0209

David C. Rinebolt
Ohio Partners for Affordable Energy
231 West Lime Street
P.O. Box 1793
Findlay, OH 45839-1793

Maureen R. Grady
Joseph P. Serio
Michael E. Idzkowski
Assistant Consumers' Counsel
Office of Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485