

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Pike)
Natural Gas Company for Approval of an) Case No. 08-941-GA-ALT
Alternative Rate Plan Proposing a)
Revenue Decoupling Mechanism)

MEMORANDUM IN SUPPORT

This case involves the review of the reasonableness and lawfulness of Pike's proposed alternative rate plan.² The plan was filed on August 1, 2008.³ In the plan, pursuant to R.C. 4929.051, Pike does not propose an overall increase in rates; rather, Pike is proposing to use the billing determinants and revenue requirement from its most recent rate case to set new rates, and is proposing a new energy conservation program. This entails, however, a proposed 28.6 percent increase in the customer charge accompanied by a proposed 1.5 percent reduction in the volumetric rate for natural gas distribution service.⁴

OCC has authority under law to represent the interests of all the approximately 7,200 residential utility customers of Pike, pursuant to R.C. Chapter 4911. This case, along with 08-940, is the first gas alternative regulation case filed since the effective date of R.C. 4929.051, which was adopted as part of Senate Bill 221 and became effective on July 31, 2008. It is the first case containing a proposal to not exceed the revenue

² The plan was filed pursuant to R.C. 4929.02 and 4929.051.

³ Also filed on that date was an almost identical plan filed by Eastern Natural Gas Company ("Eastern"), in Case No. 08-940-GA-ALT ("08-940"). OCC is also moving to intervene in 08-940.

⁴ On August 29, 2008, the Staff of the PUCO docketed a letter in 08-940 and 08-941 asserting that Pike's application was "not in substantial compliance" with Ohio Adm. Code Chapter 4901:1-19. On September 15, 2008, a "Motion for Reconsideration of Deficiency Letter or, in the Alternative, Motion for Waivers" was filed by the companies in 08-940 and 08-941, and on October 3, 2008, the companies filed a "Supplemental Memorandum." The Commission has not acted on the Motion.

requirements from a company's last rate case.

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 are unrepresented in a proceeding affecting their natural gas rates. Thus, this 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.

First, the nature and extent of OCC's interest is representing the residential consumers of Pike in order to ensure that the proposed rate increases are reasonable and fair for the utility's paying customers. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for consumers will include advancing the position that Pike's proposed rate increases 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 that 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 the 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 residential utility consumer advocate, OCC has a very real and substantial interest in this case where rate increases in natural gas are being proposed.

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.

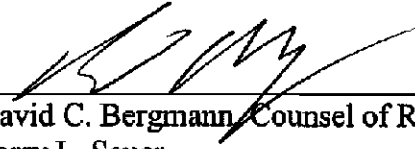
Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the "extent to which the person's interest is represented by existing parties." While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative 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 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.⁵

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 Commission should grant OCC's Motion to Intervene.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



David C. Bergmann, Counsel of Record
Larry L. Sauer
Assistant Consumers' Counsel

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

⁵ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene by the Office of the Ohio Consumers' Counsel* was served on the persons stated below via U.S. mail, postage prepaid, this 17th day of October 2008.



David C. Bergmann
Assistant Consumers' Counsel

SERVICE LIST

M. Howard Petricoff
Steven M. Howard
Vorys, Sater, Seymour and Pease, LLP
52 East Gay Street, P.O. Box 1008
Columbus, Ohio 43216-1008

Anne L. Hammerstein
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 9th Floor
Columbus, Ohio 43215-3796