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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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2009 JUN -9 PM 4: 10

In the Matter of the Application of The East)
Ohio Gas Company d/b/a Dominion East)
Ohio to Adjust its Pipeline infrastructure) Case No. 09-458-GA-UNC
Replacement Program Cost Recovery Charge)
and Related Matters.)

PUCO

**MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential utility consumers of the East Ohio Gas Company d/b/a Dominion East Ohio ("DEO" or "Company"), moves¹ the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant the OCC's intervention in this case wherein DEO filed a prefilng Notice of Intent to file an application ("PFN") to seek an annual adjustment to its Pipeline Infrastructure Replacement Program ("PIR") Rider rates. The Company seeks an increase (estimated in the amount of \$0.85 per month) to the PIR Rider Rate beginning in the fourth quarter of 2009, to be charged to DEO's 1.1 million residential customers.² The reasons the PUCO should grant this Motion are more fully explained in the attached Memorandum in Support.

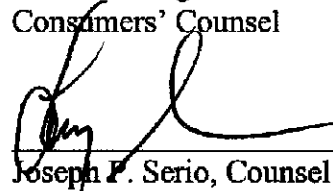
¹ R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

² PFN at Exhibit 7.

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Respectfully submitted,

Janine L. Migden-Ostrander
Consumers' Counsel

A handwritten signature in black ink, appearing to read 'Joe Serio', is written over a horizontal line.

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On May 29, 2009, the Company filed a PFN Pursuant to Ohio Adm. Code 4901:1-19-05(A), Chapter I, General Instruction (B) of the Standard Filing Requirements, Ohio Adm. Code 4901-7-01, and the PUCO's Opinion and Order dated October 15, 2008, to notify the mayors and legislative authorities of the municipalities within DEO's service territory of the proposed PIR Rider Rate increase that DEO would ask customers to pay. Under the PIR, DEO is installing plastic mains and service lines to replace the cast iron and bare steel mains and metallic service lines throughout its service territory in an accelerated time period.³ The procedure for requiring the annual filing of the PFN was agreed to in the recent DEO rate case ("DEO Rate Case") proceeding, Case No. 07-829-GA-AIR, et al.⁴ DEO's PFN filing includes nine months of actual and three months of estimated data for the fiscal year ending June 30, 2009, which will subsequently be updated with twelve months of actual 2008-2009 data.⁵

³ PFN at Exhibit 6.

⁴ *In the Matter of the Application of Dominion East Ohio for an Increase in Rates*, Case No. 08-829-GA-AIR, et al Stipulation and Recommendation at 8-10 (August 22, 2008).

⁵ PFN at Tab 7.

II. INTERVENTION

Pursuant to R.C. Chapter 4911, the OCC moves to intervene under its legislative authority to represent the interests of the natural gas residential utility customers in DEO's service territory. The procedure for requesting the annual increases to DEO's PIR Rider rates was agreed to in the DEO Rate Case; however, the amount of the increase and DEO's evidence in support of the increase are open to investigation and challenge.

The interests of DEO's residential natural gas customers in Ohio may be "adversely affected" by this case, depending on, among other things, the amount of the increase to the PIR Rider rate that is ultimately approved, thus satisfying the intervention standard in R.C. 4903.221. The OCC also meets the Commission's required showing for a party that has a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2), and should therefore be permitted to intervene in this case.

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 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 includes that residential customers are affected by the affordability of their energy bills, especially during the winter heating season. An unjust and unreasonable increase to DEO's PIR Rider rate would adversely affect these

customers' interests. The General Assembly deemed the interests of residential customers worthy of protection through legislative authority in R.C. Chapter 4911. The OCC should be permitted to intervene to protect these interests.

Second, the legal positions advanced by the OCC regarding the reasonableness and lawfulness of the Application have an actual, and not just "probable," relation to the merits of the case. Third, OCC's participation will not unduly prolong or delay the proceeding. In fact, OCC's intervention will provide insights based upon expertise to assist the Commission in its treatment of the Application. Fourth, OCC's advocacy for consumers will significantly contribute to the full development and equitable resolution of the issues herein. Therefore, OCC's intervention is consistent with and supported by the statute.

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. The nature and extent of OCC's interest lies in assuring that the provision of natural gas services will effectively and efficiently serve the energy needs of DEO's residential consumers.

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.⁶

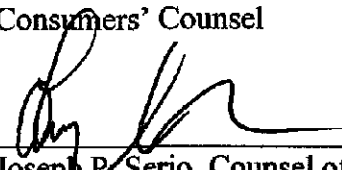
For the reasons discussed above, the OCC satisfies the criteria set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11. Therefore, OCC's Motion to Intervene should be granted.

III. CONCLUSION

Therefore, for all the reasons stated above, the PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

Janine L. Migden-Ostrander
Consumers' Counsel



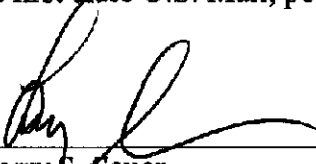
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⁶ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶13-20 (2006).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's *Motion to Intervene* was provided to the persons listed below via first class U.S. Mail, postage prepaid, this 9th day of June 2009.



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