

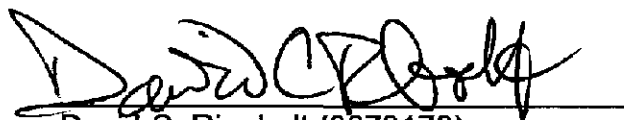
**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Duke Energy Ohio, Inc. for Authority to)	
Defer Environmental Investigation and)	Case No. 09-712-GA-AAM
Remediation Costs.)	

MOTION TO INTERVENE AND MOTION TO DISMISS

Ohio Partners for Affordable Energy ("OPAE") hereby respectfully moves the Public Utilities Commission of Ohio ("Commission") for leave to intervene in the above-captioned matter pursuant to R.C. §4903.221 and Section 4901-1-11 of the Commission's Code of Rules and Regulations, with full powers and rights granted by the Commission specifically, by statute or by the provisions of the Commission's Code of Rules and Regulations to intervening parties. OPAE also respectfully moves the Commission to dismiss the application. The reasons for granting these motions are contained in the memorandum attached hereto and incorporated herein.

Respectfully submitted,



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**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE AND THE
MOTION TO DISMISS**

A. Motion to Intervene

Ohio Partners for Affordable Energy ("OPAE") should be permitted to intervene in this matter pursuant to Section 4903.22.1, Revised Code, and the Commission's Rules and Regulation contained in Rule 4901-1-11 of the Ohio Administrative Code. The above-referenced application made by Duke Energy Ohio, Inc. ("Duke") requests authority for Duke to revise its accounting treatment so that Duke may defer certain environmental investigation and remediation costs. Duke also requests to accrue carrying charges on the deferred amounts from the dates the expenditures are made to the date that recovery commences.

In determining whether to permit intervention, the following criteria are to be considered: the nature of the person's interest; the extent to which that interest is represented by existing parties; the person's potential contribution to the just and expeditious resolution of the proceeding; and, whether granting the intervention will unduly delay or unjustly prejudice any existing party. OPAE meets all four criteria for intervention in this proceeding.

OPAE is an Ohio corporation with a stated purpose of advocating for affordable energy policies for low and moderate income Ohioans. Additionally, OPAE includes as members non-profit organizations located in Duke's service

area.¹ As such, OPAE has a real and substantial interest in this proceeding. OPAE members advocate on behalf of Duke's low- and moderate-income customers. OPAE members also manage bill payment assistance programs to ensure access to essential utility services and provide weatherization and energy efficiency services to low income customers of Duke. OPAE members are also ratepayers of Duke. Moreover, many of OPAE's members are community action agencies. Under the federal legislation authorizing the creation and funding of these agencies, originally known as the Economic Opportunity Act of 1964, community action is charged with advocating for low-income residents of its communities.²

¹ A list of OPAE members can be found on the website: www.ohiopartners.org.

² See 42 U.S.C. 672:

The purposes of this subtitle are--

- (1) to provide assistance to States and local communities, working through a network of community action agencies and other neighborhood-based organizations, for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient (particularly families who are attempting to transition off a State program carried out under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)); and
- (2) to accomplish the goals described in paragraph (1) through--
 - (A) the strengthening of community capabilities for planning and coordinating the use of a broad range of Federal, State, local, and other assistance (including private resources) related to the elimination of poverty, so that this assistance can be used in a manner responsive to local needs and conditions;
 - (B) the organization of a range of services related to the needs of low-income families and individuals, so that these services may have a measurable and potentially major impact on the causes of poverty in the community and may help the families and individuals to achieve self-sufficiency;
 - (C) the greater use of innovative and effective community-based approaches to attacking the causes and effects of poverty and of community breakdown;
 - (D) the maximum participation of residents of the low-income communities and members of the groups served by programs assisted through the block grants made under this subtitle to empower such residents and members to respond to the unique problems and needs within their communities; and
 - (E) the broadening of the resource base of programs directed to the elimination of poverty so as to secure a more active role in the provision of services for--
 - (i) private, religious, charitable, and neighborhood-based organizations; and
 - (ii) individual citizens, and business, labor, and professional groups, who are able to influence the quantity and quality of opportunities and services for the poor.

OPAE's primary interest in this case is to protect Duke's low and moderate-income customers from unlawful, unjust and unreasonable distribution rates. The application proposes to defer costs for future recovery in distribution rates when those costs have not been shown to be lawfully recoverable. This issue will be discussed in the following motion to dismiss the application. In the event that OPAE's motion to dismiss is not granted, OPAE also intends to address any other issues that may arise during consideration of this matter.

For the above reasons, OPAE has a direct, real and substantial interest in this proceeding. The disposition of this proceeding may impair or impede the ability of OPAE to protect its interests. No other party to the proceeding will adequately represent the interests of OPAE. OPAE is a rare organization that serves as an advocate, service provider and nonprofit customer group. No other party represents this group of interests. OPAE's participation in this proceeding will not cause undue delay, will not unjustly prejudice any existing party, and will contribute to the just and expeditious resolution of the issues raised in this proceeding.

Therefore, OPAE is entitled to intervene in this proceeding with the full powers and rights granted by statute and by the provisions of the Commission's Code of Rules and Regulations to intervening parties. OPAE's motion to intervene should therefore be granted.

B. Motion to Dismiss

The Commission should dismiss this application. Duke is requesting to defer on its books environmental investigation and remediation costs for future recovery through its Ohio jurisdictional natural gas distribution rates. These costs should not be deferred for future recovery because they are not lawfully recoverable in Duke's Ohio jurisdictional natural gas distribution rates.

Duke states that the costs are related to former manufactured gas plant ("MGP") sites. Duke apparently owns two former MGP sites and may incur environmental investigation and remediation costs for one or both of these sites. However, these MGP sites no longer exist. Application at 2. In fact, they have not existed since 1950. Id. Not only does Duke make no claim that the MGP sites were ever included in Duke's Ohio jurisdictional natural gas distribution rate base, but it is also obvious that the sites are not currently used and useful for the provision of natural gas distribution service to Ohio jurisdictional customers and not part of Duke's current Ohio jurisdictional natural gas distribution rate base.

While Duke claims that these costs are prudent business costs, this is not relevant to the issue before the Commission. The costs to be incurred have no relation to Duke's used and useful natural gas distribution plant or its operating expenses to maintain its used and useful distribution plant to serve Ohio jurisdictional customers. Therefore, there is no lawful means for Duke to recover these costs from Ohio jurisdictional ratepayers.

Under the circumstances, the costs should not be deferred for future recovery when future recovery cannot lawfully occur. This is consistent with Ohio law and past Commission precedent that costs are not recoverable when they are associated with decommissioning of plant that is not used and useful to serve Ohio jurisdictional customers. In this case, the plant was apparently never included in Ohio jurisdictional rate base at any time.

In sum, the application seeks to defer costs that are not lawfully recoverable from Ohio jurisdictional ratepayers. Costs should not be deferred when there is no likelihood of recovery. Therefore, the application should be dismissed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David C. Rinebolt", written over a horizontal line.

David C. Rinebolt (0073178)

Colleen L. Mooney (0015668)

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene and to Dismiss and Memorandum of Support and the attached Motion to Admit *Pro Hac Vice* was served by regular U.S. Mail upon the parties of record identified below in this case on this 9th day of September, 2009.



David C. Rinebolt

PARTIES OF RECORD

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**MOTION TO ADMIT DAVID C. RINEBOLT TO PRACTICE
PRO HAC VICE BEFORE THE COMMISSION**

Pursuant to Rule 4901-1-08(B) of the Ohio Administrative Code, Colleen L. Mooney (0015668), an attorney licensed to practice in the State of Ohio, respectfully petitions the Public Utilities Commission of Ohio ("Commission") to permit David C. Rinebolt to practice *pro hac vice* before the Commission in the above-referenced proceeding. Mr. Rinebolt represents Ohio Partners for Affordable Energy, which is an Ohio corporation engaged in advocating for affordable energy policies.

Mr. Rinebolt graduated from the Columbus School of Law of the Catholic University of American in May 1981. As an active member of the District of Columbia Bar, Bar No. 367210, Mr. Rinebolt is licensed to practice before the federal courts of the District of Columbia. Furthermore, Mr. Rinebolt has practiced law continuously since being admitted to the District of Columbia Bar in October 1982. He is also registered with the Supreme Court of the State of Ohio in corporate status (Ohio Bar No. 0073178).

WHEREFORE, Colleen L. Mooney respectfully requests that David C. Rinebolt be permitted to practice before the Commission in the aforementioned proceeding.

Respectfully submitted,

Colleen L. Mooney DCP

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