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FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Defer Environmental Investigation and Remediation Costs	))))	Case No. 08-606-GA-AAM

MOTION TO INTERVENE AND COMMENTS BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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BY
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The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene on behalf of all the approximately 1.2 million residential consumers of Columbia Gas of Ohio, Inc. ("COH" or "Company") in this case in which the Company filed an application ("Application") and most recently an annual deferral report seeking authority to revise its accounting treatment of certain environmental costs so that it may be permitted to defer on its books environmental investigation and remediation costs, which experience teaches is a prelude to COH seeking collection of costs from customers.[1] OCC moves the Public Utilities Commission of Ohio ("Commission" or "PUCO") to grant the OCC's intervention in the above-captioned proceeding, pursuant to R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11. The reasons for granting the OCC's Motion are further set forth in the attached Memorandum in Support.

[1] Application at 1 (May 19, 2008).

Respectfully submitted,

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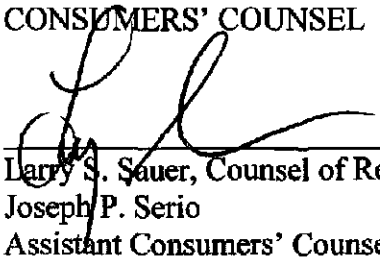
CONSUMERS' COUNSEL



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MEMORANDUM IN SUPPORT

I. INTRODUCTION

In this proceeding, COH sought authority to defer certain environmental investigation and remediation costs associated with two sites where manufactured gas plants ("MGP") were formerly operated in Ohio.[2] The Commission arranged for the granting of the Company's annual deferral report filing, if the PUCO Staff does not file an objection to the Company's annual deferral report within thirty days of the filing. OCC explains through Comments included herein that there is ample reason for objecting to the Company's proposed deferral of these costs identified in COH's 2009 Deferral Report, for the following reasons. First, the costs COH proposes to defer are associated with facilities involved in the production of natural gas, but would potentially be collected from customers through future natural gas distribution rates creating a subsidy in violation of R.C. 4929.02(A)(8). Second, the MGP facilities are not used and useful. Third, the potential collection of these deferred costs through the gas cost recovery ("GCR") mechanism would be unlawful under R.C. 4905.302, and the Commission's rules.

[2] Application at 2. ("Although no longer existent, MGP sites were prevalent in Ohio from approximately 1850 to 1950. MGP sites allowed for the production of commercial grade gas from the combustion of coal, oil, and other fossil fuels. The remnants of these former MGP sites may include subsurface structures and associated residuals, such as coal tar, scrubber waste, chemicals, and tanks.")

II. PROCEDURAL HISTORY

On May, 19, 2008, COH filed an application ("Application") seeking accounting authority to defer certain environmental investigation and remediation costs. The costs that COH is seeking to defer by this Application relate to the following matters:

a. A search of background and corporate history to confirm if Columbia or one of its corporate predecessors has any corporate connection to the former site.

b. Phase I Environmental Site Assessment ("PHI ESA") costs are incurred where a corporate connection to the former site is identified. The PHI ESA will include research on the MGP property using available public records such as historic Sanborn Fire Insurance maps. Environmental Protection Agency ("EPA") databases and a myriad of other information sources. The purpose of the PHI ESA is to determine if there are any potential Recognized Environmental Conditions in the form of stressed vegetation ,settlement of building foundations, cracks in support walls, history of industrial use, or proximity to sensitive receptors. Based on the result of the PHI ESA, Columbia will begin to formulate a work plan for a Phase II Site Investigation which is a more detailed study of the property and includes the collecting of soil, sediment, ground water and other samples,

c. Site Investigation costs are incurred to determine if there are impacts due to the former MGP. Considerable effort may be required to negotiate access with third party land owners, including compensation for claims made for damages. If impacts are present, additional investigations are necessary to define the vertical and horizontal extent of any MGP impacts within the soil, sediment and/or ground water. Examples of the work typically completed include: test pitting with backhoes to find former MGP structures; surface and subsurface soil sampling and chemical analysis; ground water sampling and chemical analysis from existing and new wells; soil vapor evaluations; indoor building air quality evaluations; and specialized evaluations such as geophysics or other remote sensing technologies.

d. Risk Assessment ("RA") costs are incurred to identify and prioritize those areas of the property that may contain unacceptable risks or potential future risk associated with

human and/or ecological health. The RA defines those areas where remediation is required and those areas that may be controlled through passive means.

e. Feasibility Study costs are incurred during the preparation of a study to review all data collected during previous investigations, to evaluate the available technologies that may be considered to create a remedial alternative, and evaluate these alternatives based upon the ability to implement, as well as cost and technical merits.

f Remedial Work Plan costs are incurred for the development of a plan that describes, in detail, the remedy. The Remedial Work Plan may also include the actual engineering design and specifications that are typically provided to the Ohio EPA for approval or used by Columbia for remediation in those cases where no EPA approval is required.

g. Design and bid specification costs result from the retention of an engineering company to develop the standard engineering design and bid specifications for the chosen remedy.

h. Remediation costs which will be impacted by such factors as the current and use; future land use; in addition to type of remediation. and

i. Other costs.[3]

On September 24, 2008, the Commission issued an Entry ("Entry") that granted COH the requested deferral authority. In that Entry, the Commission established an annual review process for the costs that COH proposes to defer. The Commission stated:

> Prior to their deferral on its books, we require Columbia to make an annual filing in this docket detailing the costs incurred in the prior 12-month period covered by the

[3] Application at 4-6.

> deferrals and the total amount deferred to date. Unless the Staff files an objection to any of the requested deferrals within 30 days of the filing, deferral authority shall be considered granted.[4]

On November 22, 2008, COH filed an Annual Deferral Report ("2008 Deferral Report"), and in that report, COH proposed the deferral of approximately $45,000.

On December 1, 2009, COH filed an Annual Deferral Report ("2009 Deferral Report"), and in that report, COH proposes to defer approximately $650,000.

The Staff did not object to the Company's 2008 Deferral Report. OCC is filing this Motion, and Comments to provide its rationale for objecting to the Company's 2009 Deferral Report within the thirty-day period, and to recommend to the Commission that a procedural schedule, including an evidentiary hearing, should be established in order to address any Staff objections and to address the issues raised in OCC's Comments.

III. INTERVENTION

Pursuant to R.C. Chapter 4911, the OCC moves to intervene under its legislative authority to represent the interests of all the approximately 1.2 million residential natural gas utility customers of COH. 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, in which COH is seeking authority to defer the following environmental and remediation costs that it may incur relative to former MGP sites[5]:

[4] Entry at 3.

[5] Application at 2.

COH has identified twenty-four former MGP sites in Ohio; COH currently has no ownership interest in twenty of the sites.[6] COH has alleged that it has or may incur or may be compelled to incur environmental investigation and remediation costs for all of these sites.[7] COH stated, "site investigation and remediation of former MGP sites takes four to seven years to complete and *can cost millions of dollars* per site."[8] These are costs that COH may ultimately seek to collect from its customers. Thus residential customers may be adversely affected by COH's Application, and this element of the intervention standard in R.C. 4903.221 is therefore 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 interests are in assuring the PUCO only would consider granting COH authority to defer charges that are lawful and reasonable. While the PUCO has authority to "establish a system of accounts to be kept by public utilities" and to "prescribe the forms of accounts, records, and memorandums to be kept"

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[6] Application at 3.

[7] Application at 3.

[8] Application at 3 (emphasis added).

by those public utilities pursuant to R.C. 4905.13 the PUCO should not authorize costs to be booked to those accounts unless lawful, and any such costs should not be allowed that would result, if collected from customers, in rates that are not just and reasonable.

OCC has an interest in preventing unlawful, imprudent, unreasonable, or inappropriate deferral of charges for environmental investigation and remediation costs of the MGP sites COH identifies. 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 COH should only be permitted to defer expenses that it proves to be reasonable and lawful under Ohio law.

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. The nature and extent of OCC's interest lies in

preventing the excessive or unjustified deferral of charges associated with environmental investigation and remediation costs for the identified MGP plant sites.

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.[9]

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 COH's residential consumers, the Commission should grant OCC's Motion to Intervene.

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

IV. COMMENTS

It is OCC's position that there are ample reasons for objecting to the Company's 2009 Deferral Report as explained below. The PUCO Staff has until December 31, 2009, to file such an objection. As stated, the PUCO established this time line by Entry. The PUCO should also consider OCC's objections as follows:

A. The Costs COH Proposes To Defer In The 2009 Deferral Report Are Objectionable Because The Collection Of Such Costs Would Create An Unlawful Subsidy In Violation Of R.C. 4929.02(A)(8).

In the Entry, the Commission through an accounting authorization will potentially allow COH the opportunity to collect from customers natural gas production costs through distribution rates. Such action would violate R.C. 4929.02(A)(8) and create an unlawful subsidy. R.C. 4929.02(A)(8) states:

> (A) It is the policy of this state to, throughout this state:
>
> * * *
>
> (8) Promote effective competition in the provision of natural gas services and goods by avoiding subsidies flowing to or from regulated natural gas services and goods;

In this case, the provision of the natural gas commodity is a competitive retail natural gas service under R.C. 4929.04, and distribution service is a noncompetitive service under R.C. 4929.03. R.C. 4929.02(A)(8) specifically precludes allowing COH to recover production-related costs through distribution rates. In this case, COH would be potentially collecting costs associated with the production of gas, an unregulated natural gas service, through distribution rates, a regulated natural gas service. Such a result is precisely what the law prohibits.

In an analogous case, the Ohio Supreme Court reversed and remanded a Commission decision granting FirstEnergy[10] accounting authority to defer fuel-related expenses that would have been potentially collected through future FirstEnergy distribution rates.[11] In *Elyria,* the Court reviewed the PUCO's approval of FirstEnergy rate-certainty plan. The rate-certainty plan created a mechanism that would have allowed FirstEnergy to partially recover its fuel-cost increases. Under the plan, if actual increased fuel costs were more than those amounts recovered through the fuel-recovery mechanism, the difference was to be deferred and recovered in future distribution rate cases of FirstEnergy companies for rates commencing in 2009. Fuel deferrals were to be recovered over a 25-year period as regulatory assets in the rate base as part of future distribution rate cases of the FirstEnergy companies after the rate-certainty plan ended.[12]

In its Opinion, the Court noted that generation service is a competitive retail electric service under R.C. 4928.03 and 4928.14(A).[13] The Court added that distribution service is a noncompetitive service under R.C. 4928.15(A).[14] R.C. 4928.02(G) prohibits public utilities from using revenues from competitive generation-service components to subsidize the cost of providing noncompetitive distribution service, or vice versa.[15] Thus the Court concluded that the PUCO violated R.C. 4928.02(G) when it allowed

[10] FirstEnergy refers to The Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company.

[11] *Elyria Foundry Co. v. Pub. Util. Comm.* (2007), 114 Ohio St. 3d 305.

[12] Id. at ¶44 and 45.

[13] Id. at ¶50.

[14] Id.

[15] Id. at ¶50.

FirstEnergy to collect deferred increased fuel costs through future distribution rate cases, and reversed the Commission's Order on this issue.[16]

As explained in COH's Application, the MGP sites were allegedly used "for the production of commercial grade gas from the combustion of coal, oil, and other fossil fuels."[17] These sites allegedly were exclusively used in the production of the natural gas commodity and there is no claim or explanation as to how they are currently used in the provision of natural gas distribution service to COH's consumers. Nonetheless, COH noted that should it seek collection of the deferred costs, it would do so through rates developed through a natural gas distribution rate case for natural gas distribution service.[18]

In this case, COH's GCR or commodity service is analogous to FirstEnergy's generation service, and the distribution costs (that would be recovered in a future rate case) are the same as FirstEnergy's distribution costs. Inasmuch as FirstEnergy was prohibited from collecting deferred fuel costs in a distribution rate case, then COH should be similarly precluded here. Following this precedent, OCC objects to COH's accounting authorization request to defer environmental investigation and remediation costs associated with MGP sites in Ohio for potential subsequent collection through natural gas distribution rates that customers pay.

COH concludes that the Company has responsibility for the environmental investigation and remediation costs by stating:

> The existence of these MGP subsurface structures and associated residuals such as coal tar, scrubber wastes, and other chemicals

[16] Id at ¶79.

[17] Application at 2.

[18] Application at 7.

> may result in a danger to the environment, public health and safety. Pursuant to Ohio Admin. Code §§ 3745-300-1 through 3754-300-15 and the Federal Comprehensive Environmental Response Compensation and Liability Act ("CERCLA" or more commonly "Superfund"), these environmental hazards should be removed in accordance with the applicable State and Federal standards or guidelines. As the generator of the wastes and as the owner of the property at the time of disposal (or their corporate successor), Columbia is identified by Ohio Admin. Code §§ 3745-300-1 and 3754-300-15 and/or CERCLA as a party responsible for removing the environmental and/or public health hazard. In practice the generator of the waste is typically held more responsible for responding to the hazard than are parties responsible simply by reason of owning the property,

However, COH admits that it no longer has ownership interest in a majority of these MGP sites, and the ownership status at the time the MGP sites were operational should also be scrutinized. Therefore, it is not axiomatic from COH's Application that the Company should have liability or responsibility for these costs. COH in its Application stated:

> Columbia currently has identified 24 former MGP sites in Ohio that may have ties to it or its corporate predecessors. Of these 24 sites, Columbia currently has no ownership interest in 20 of the sites. Under State and Federal laws even if a company does not currently own a former MGP site, any entity who previously owned or operated a former MGP site can be liable for some of the environmental remediation costs associated with such former MGP sites. Columbia or one of its predecessor companies at one time operated or had ownership interests in these former MGP sites. As a result, Columbia may incur, or can be compelled to incur, environmental investigation and remediation costs for some or all of these sites.[19]

[19] Application at 3. Inasmuch as COH no longer has ownership in twenty of the twenty-four sites, then it is incumbent on COH to use due diligence in establishing responsibility for the environmental investigation or remediation costs from any and all potentially liable persons, or those affiliated with any other person that is potentially liable, in accordance with relevant Federal and State environmental laws to assure appropriate cost sharing and recovery parameters are adhered to.

With the lack of ownership interest in mind, OCC objects to COH's conclusion. The review process in these cases should not be done in a vacuum or in secrecy, but should be open to other interested parties who should have the opportunity to raise objections to the expenses COH intends to defer.[20] The PUCO's decision serves as an unlawful prelude for COH to later claim that customers should pay millions of dollars for each of these old natural gas production sites through distribution rates.[21] Such a result creates an unlawful subsidy in violation of R.C. 4929.02(A)(8).

B. The Costs COH Proposes To Defer In The 2009 Deferral Report Are Objectionable Because The Manufactured Gas Plant Facilities Are No Longer Used And Useful, And In Most Case, COH No Longer Has An Ownership Interest In These Sites.

The PUCO said that its decision is only for a change to accounting procedures and does not reflect any increase in rates.[22] In a similar case involving Duke Energy Ohio, Inc. ("Duke MGP Case"), the PUCO Staff requested "confirmation that the properties in question were presently used and useful as set forth in R.C. 4909.15" which is titled "Fixation of reasonable rates."[23] Accordingly, R.C. 4909.15 requires that the PUCO may make a determination of whether property is used and useful after a hearing. If in fact the PUCO were making no ratemaking determination in the Duke MGP Case, then there should be no reason to address the issue of the used and useful nature of the properties in

[20] Entry at 3. ("Prior to their deferral on its books, we require Columbia to make an annual finding in this docket detailing the costs incurred in the prior 12-month period covered by the deferrals and the total amount deferred to date. Unless the Staff files an objection to any of the requested deferrals within 30 days of the filing, deferral authority shall be considered granted").

[21] Application at 4.

[22] Entry at 3.

[23] *In Re Duke MGP Case*, Case No. 09-712-GA-AAM, Duke Letter (October 29, 2009).

question. In its Application, COH made no claim that the MGP facilities are now, or for that matter, were ever included in COH's Ohio jurisdictional natural gas distribution rate base. Furthermore, the MGP sites are not currently used and useful for the provision of natural gas distribution service to COH consumers, in as much as these facilities have not been operational since at least 1950.

The Company's Application states:

> MGPs were operated in Ohio from approximately 1850 through 1950 in order to produce commercial grade gas from the combustion of coal, oil and other fossil fuels. These MGPs no longer exist; however the remains of the subsurface structures and associated residuals such as coal tar; scrubber wastes, chemicals and tanks are commonly found to remain under ground.[24]

Because the costs to be deferred have no relationship to COH's used and useful natural gas distribution plant or COH's operating expenses to maintain its used and useful distribution plant currently in service serving COH's residential consumers, it would be unlawful for COH to ever collect these costs through distribution rates. Therefore, there is no lawful means for COH to collect these costs from Ohio jurisdictional customers. Furthermore, the facilities located at a majority of the MGP sites in question are on property where COH retains no ownership interest. COH's Application states:

> Columbia currently has identified 24 former MGP sites in Ohio that may have ties to it or its corporate predecessors. Of these 24 sites, Columbia currently has no ownership interest in 20 of the sites.[25]

The fact that COH admits it does not have an ownership interest in 20 of the 24 sites

[24] Application at 2.

[25] Application at 3.

further supports OCC's argument that the costs that COH proposes to defer will be incurred on facilities that are not used and useful, and any subsequent collection of these costs would be unlawful, and lead to rates that are unjust and unreasonable.

The costs that COH proposes to defer in the 2009 Deferral Report are objectionable, and the Commission should establish a procedural schedule, including an evidentiary hearing, to address the used and useful issue OCC raised herein.

C. The Costs COH Proposes To Defer In The 2009 Deferral Report Do Not Constitute Natural Gas Commodity Costs Thus Potential Recovery Through The Gas Cost Recovery Mechanism Would Be Unlawful.

COH describes the MGP facilities in question as sites "for the production of commercial grade gas from the combustion of coal, oil, and other fossil fuels."[26] As such the sites had nothing to do with the distribution of natural gas but were allegedly involved in the manufacturing of the natural gas as a commodity. The PUCO in its Entry stated:

> Since the requested authority to change Columbia's accounting procedures does not result in any increase in rate or charge, the Commission approves this application without a hearing. The recovery of the deferred amounts will be addressed in Columbia's next base rate case proceeding. As the Supreme Court has previously held, deferrals do not constitute ratemaking. See, e.g., *Elyria Foundry Co. v. Pub. Util. Comm.*, 114 Ohio St.3d 305 (2007).

The Commission should not permit the accounting change requested by COH and delay a decision on the appropriateness of the cost recovery in a future distribution rate case.

Specifically, the costs for which COH would potentially be seeking collection from customers (e.g. environmental investigation and remediation) are directly associated with MGP sites that were allegedly previously used in the production of the commodity

[26] Application at 2.

of natural gas. Recovery of natural gas commodity costs are more appropriately addressed in GCR proceedings as set forth in R.C. 4905.302 (Purchased Gas Adjustment Rule) and Ohio Adm. Code 4901:1-14 (Uniform Purchased Gas Adjustment). By definition, R.C. Chapter 4909, governs the fixation of reasonable rates -- base rates or distribution rates -- and not the commodity of natural gas.

On the other hand, R.C.4905.302 specifically addresses the pricing of the commodity of natural gas as noted in R.C. 4905.302 (A)(1). R.C. 4905.302 (C)(1) requires the PUCO to promulgate a purchased gas adjustment rule to govern the investigation into and the establishment of the cost of the natural gas commodity itself. Ohio Adm. Code 4901:1-14 contains those rules. More specifically, Rule 4901:1-14(H) defines gas as "any vaporized fuel transported or supplied to consumers by a gas or natural gas company including, but not limited to natural gas, synthetic gas, liquefied gas, and propane." Rule 4901:1-14-01 (AA) defines Synthetic gas as "gas formed from feedstocks other than natural gas, including but not limited to coal, oil, or naptha." Thus the MGP facilities that produced gas from coal, oil and other fossil fuels, produced synthetic gas and the Commission's authority to make a determination regarding the collection of such costs must fall under a GCR proceeding.

If COH seeks collection of any costs associated with the manufactured gas plant facilities, then Rule 4901:1-14-05 would preclude the collection of any of these costs. That is because as noted in the Application, the MGP sites no longer exist (having been prevalent from 1850 to 1950). Ohio Adm. Code 4901:1-14-05 states:

> (A) The gas cost recovery rate equals:
>
> (1) The gas or natural gas company's expected gas cost for the upcoming quarter, or other period as approved by the commission,

> pursuant to paragraph (K) of rule 4901:1-14-01 of the Administrative Code, plus or minus;
>
> (2) The supplier refund and reconciliation adjustment, which reflects:
>
> (a) Refunds received from the gas or natural gas company's interstate pipeline suppliers or other suppliers or service providers plus ten per cent annual interest; and
>
> (b) Adjustments ordered by the commission following hearings held pursuant to rule 4901:1-14-08 of the Administrative Code, plus ten per cent annual interest, plus or minus;
>
> (3) The actual adjustment, which compensates for differences between the previous quarter's, or other commission-approved period's, expected gas cost and the actual cost of gas during that period, plus or minus; and
>
> (4) The balance adjustment, which compensates for any under- or over collections which have occurred as a result of prior adjustments, plus or minus.

Ohio Adm. Code 4901:1-14-05 contemplates recovery of natural gas commodity costs. Because the MGP sites are not now presently producing any natural gas for COH's current customers, the Commission could not authorize the recovery of the environmental investigation and remediation costs through the GCR rate.

The Companies deferral request is objectionable because the ultimate collection from customers could not be accomplished through either a distribution rate proceeding or a GCR proceeding. The Commission should establish a procedural schedule, including an evidentiary hearing, to address the issues OCC raised herein.

V. CONCLUSION

For all the reasons stated above, the OCC's Motion to Intervene should be granted, and the Staff should object to the costs that the Company proposes recovering in the 2009 Deferral Report. The Commission to establish a procedural schedule, including an evidentiary hearing, to address any objections filed by the Staff and to address the OCC's arguments raised herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene and Comments* was served on the persons stated below via first class U.S. Mail, postage prepaid, this 22nd day of December 2009.

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