

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**PUCO**

**2010 JUL 30 PM 4:16**

**RECEIVED-DOCKETING DIV**

In the Matter of the five-Year Review of )  
Natural Gas Company Uncollectible Riders. ) Case No. 08-1229-GA-COI  
)

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

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The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential utility consumers, moves<sup>1</sup> the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant the OCC's intervention in this case wherein the Commission deemed it necessary to retain a consultant to "audit, evaluate, and recommend improvements in the collection policies, practices and performance of the four largest natural gas companies."<sup>2</sup> Those four public utilities are Vectren Energy Delivery of Ohio, Inc. ("Vectren"), Dominion East Ohio Gas Company ("Dominion"), Duke Energy Ohio, Inc. ("Duke"), and Columbia Gas of Ohio, Inc. ("Columbia") (or collectively "Companies").

The Commission is also intending to: "evaluate whether these four Companies' collection practices and policies are effective in minimizing uncollectible expense [that customers are asked to pay]; ascertain benchmarks to be used by the Commission to monitor the effectiveness of all Ohio natural gas companies' collection policies, practices, and performance; and recommend "best practices" to be employed by natural gas companies in the state of Ohio to minimize

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<sup>1</sup> R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

<sup>2</sup> Finding and Order at 6 (August 19, 2009).

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uncollectible expense [that customers are asked to pay].”<sup>3</sup>

The reasons the PUCO should grant this Motion are more fully explained in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



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<sup>3</sup> Finding and Order at 6 (August 19, 2009).

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the five-Year Review of       )  
Natural Gas Company Uncollectible       ) Case No. 08-1229-GA-COI  
Riders.       )

**MEMORANDUM IN SUPPORT**

**I. INTRODUCTION**

The uncollectible expense (“UEX”) riders were initially authorized by the PUCO in Case No. 03-1127-GA-UNC. As part of that authorization, the Commission ordered an investigation of the UEX recovery mechanism 60 months after the implementation of its Order.<sup>4</sup> On November 14, 2008, the docket in this case was opened and based upon the Staff Report and filed comments the PUCO decided to retain a consultant, NorthStar, to review the Companies’ credit and collection policies.

On May 3, 2010, NorthStar concluded its audit, and filed its report (“NorthStar Report”). Certain portions of the NorthStar Report contained confidential materials, and OCC entered Protective Agreements with Duke and Columbia in order to receive the redacted materials. The PUCO has not established a procedural schedule, but in anticipation OCC has served discovery on Columbia, Dominion, Duke and Vectren. On July 14, 2010, the Companies filed a Motion to Stay Discovery (“Motion”), and in part supported their argument for the Motion because OCC has not yet intervened. OCC has fully participated in the proceedings up to this point, and for that reason, does not concede that a Motion to Intervene is required in order to engage in discovery or other activities in this proceeding and therefore disagrees with the Companies’

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<sup>4</sup> *In re UEX Proceeding*, Case No. 03-1127-GA-UNC, Finding and Order at 13 (December 17, 2003).

argument that intervention is required.<sup>5</sup> However, to remove as an issue the Companies' assertion about OCC's intervention status, and in an attempt to alleviate the discovery dispute, OCC hereby moves to intervene. In any event, the PUCO should promptly end the unjustified delay in OCC's case preparation that has been interposed by the Companies.

## **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 Columbia's, Dominion's, Duke's and Vectren's service territories. It is essential to determine the effectiveness of the Companies' collection policies, practices, and performance in minimizing the Companies' uncollectible expenses.

The interests of the residential natural gas customers in Ohio may be "adversely affected" by this case, depending on, among other things, the Commission's decision regarding the Companies' credit and collection policies which ultimately can cause increases to the UEX Riders that customers pay, 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;

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<sup>5</sup> See OCC Comments (March 23, 2009) and OCC Reply Comments (April 2, 2009).

- (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 advocating for residential customers who are asked to pay the Companies' uncollectibles expense. 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. These legal positions include that Columbia, Dominion, Duke and Vectren should not charge customers more than just and reasonable rates.

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 review of the Companies' credit and collection policies and practices. 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, where OCC will advocate for residential consumers who are asked to pay the Companies' uncollectible expenses.

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.<sup>6</sup>

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**

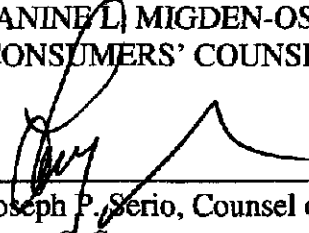
Therefore, for all the reasons stated above, the PUCO should grant OCC’s Motion to Intervene.

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

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



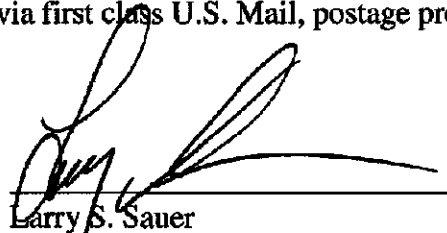
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## **CERTIFICATE OF SERVICE**

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 30th day of July 2010.



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