

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Gas Rates.)	Case No.12-1685-GA-AIR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.)	Case No. 12-1686-GA-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Alternative Rate Plan for Gas Distribution Service.)	Case No. 12-1687-GA-ALT
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.)	Case No. 12-1688-GA-AAM
)	

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in these cases where the utility seeks to increase the rates that customers pay for natural gas distribution service. OCC is filing on behalf of all the approximately 380,000 residential utility consumers of Duke Energy Ohio, Inc. ("Duke" or "Company"), and moves the Public Utilities Commission of Ohio ("Commission" or "PUCO") to grant the OCC's intervention in the above-captioned proceedings, pursuant to R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11. The reasons for granting the OCC's Motions are further set forth in the attached Memorandum in Support.

Respectfully submitted,

BRUCE J. WESTON
CONSUMERS' COUNSEL

/s/ Joseph P. Serio

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MEMORANDUM IN SUPPORT

On June 7, 2012, Duke Energy Ohio filed with the Public Utilities Commission of Ohio (“PUCO” or “Commission”), pursuant to R.C. 4909.43(B), a Pre-Filing Notice (“Notice”) of its intent to file an application for authority to increase its distribution rates and intent to file an application for approval of an alternative rate plan for its gas distribution service.¹ Pursuant to R.C. Chapter 4911, the OCC moves to intervene under its legislative authority to represent the interests of all the approximately 380,000 residential natural gas utility customers of Duke.

The interests of residential natural gas customers in areas served by the Company are “adversely affected” by these cases, pursuant to the intervention standard in R.C. 4903.221. R.C. 4903.221 provides, in part, that any person “who may be adversely

¹ Notice at 2.

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 these cases, especially if the consumers are unrepresented in a proceeding regarding an overall proposed increase in distribution rates of 6.6 percent or \$44.6 million.² In addition the Company is seeking authority to continue/implement a number of alternative regulation cost recovery mechanisms: (1) Accelerated Main Replacement Program (“AMRP” with projected revenue requirements of \$8.9 million in year 1 to \$30 million in year 4);³ (2) grid modernization initiative (“AU” with projected revenue requirement of \$7.1 million in year 1 to \$7.5 million in year 3);⁴ and (3) Accelerated Service Replacement Program (“ASRP” with projected revenue requirements of \$1.1 million in year 1 to \$47.8 million in year 10).⁵ Finally, the Company is proposing to collect from customers approximately \$65 million in deferred remediation costs associated with manufactured gas plant sites.⁶ 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

² Notice at Tab 7, PFN Exhibit 7.

³ Id.

⁴ Id.

⁵ Id.

⁶ Id.

- (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 the OCC's interest lies in preventing excessive or unjustified charges for residential natural gas distribution service and in the provision of services that will effectively and efficiently serve the energy needs of residential 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 Duke's rates 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 these cases that are 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 cases 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 cases 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 these cases where the Commission will be considering the Duke Application for an increase in its distribution rates, as well as, consideration of an alternative rate plan for its gas distribution service.

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 deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying OCC’s interventions and that OCC should have been granted intervention in both proceedings.⁷

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 customers, the Commission should grant OCC’s Motion to Intervene.

⁷ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below *via* electronic service this 13th day of July 2012.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/11/2012 4:42:57 PM

in

Case No(s). 12-1685-GA-AIR, 12-1686-GA-ATA, 12-1687-GA-ALT, 12-1688-GA-AAM

Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Serio, Joseph P.