

In the Matter of the Joint Motion to )  
 Modify the June 18, 2008 Opinion and ) Case No. 12-1842-GA-EXM  
 Order in Case No. 07-1224-GA-EXM. )

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case<sup>1</sup> where The East Ohio Gas Company d/b/a Dominion East Ohio ("Dominion" or "the Utility") filed a settlement between it, the Ohio Gas Marketers Group<sup>2</sup> and OCC. Dominion is asking the Public Utilities Commission of Ohio ("Commission" or "PUCO") to modify the Exemption Order to allow Dominion, beginning April 1, 2013, to discontinue the availability of Standard Choice Offer ("SCO") service to Choice-eligible non-residential customers (meaning those customers could no longer purchase natural gas through Dominion).<sup>3</sup> OCC is filing on behalf of all of Dominion's approximately 1.1 million residential utility customers. The reasons the PUCO should grant OCC's Motion are further set forth in the attached Memorandum in Support.

<sup>3</sup> Joint Motion to Modify Order at 1 (June 15, 2012). The Joint Motion was filed by Dominion and The Ohio Gas Marketers Group.

Respectfully submitted,

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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 customers may be “adversely affected” by this case, where a Stipulation between Dominion, the Ohio Gas Marketers Group and OCC has been filed and where the subject of the case relates to Dominion’s exit of the merchant function (which Dominion proposes only for non-residential customers). The issue of an “exit” involves whether the PUCO will require a natural gas utility to continue to provide customers with their historic default option to purchase natural gas through the utility [in this instance through the SCO]. For the above reasons, the initial element of the intervention standard in R.C. 4903.221 is satisfied.

- (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 is representing the residential customers of Dominion in this case. Dominion has proposed to exit the merchant function for non-residential customers only. Dominion and the Ohio Gas Marketers Group filed a Joint Motion stating: "[t]he information gleaned from a full exit for [non-residential] customers will provide valuable insight into whether it would be appropriate to fully exit the merchant function for residential customers, should [Dominion] or another LDC eventually seek to do so."<sup>4</sup> OCC's interest is different than that of any other party and especially different than that of the utility and a competitive retail natural gas supplier ("CRNGS") whose advocacy includes the financial interest of their stockholders.

Second, OCC's legal position relates to, among other things, the Stipulation and Recommendation ("Stipulation") that Dominion, the Ohio Gas Marketers Group and OCC signed and that Dominion and the Ohio Gas Marketers Group then filed in this case. As part of the Settlement, OCC negotiated the right to obtain certain aggregated non-CRNGS specific rate, usage and customer count information to enable OCC to periodically analyze the impact of an exit from the merchant function for non-residential customers.<sup>5</sup> OCC also negotiated a process for any proposal to exit the merchant function for residential customers in order to, in part, ensure procedural safeguards for residential customers in the event that Dominion decides to seek such an exit regarding

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<sup>4</sup> Joint Motion at 1 (June 15, 2012).

<sup>5</sup> Stipulation at 4 (June 15, 2012).

that service to residential consumers.<sup>6</sup> Therefore, OCC's participation is directly related to the merits of this case that is 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 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's participation in this case will help OCC obtain and develop information that the PUCO should consider in order to ensure that any decision is equitable, lawful and in the public interest for Ohioans.

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 advocate for residential utility customers, OCC has a very real and substantial interest in this case where Dominion and the Ohio Gas Marketers Group have filed a settlement between them and OCC.

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

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<sup>6</sup> Id. at 3.

uniquely has been designated as the state representative of the interests of Ohio's residential utility customers. 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.<sup>7</sup>

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.

Respectfully submitted,

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<sup>7</sup> See *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 this *Motion to Intervene* was served on the persons stated below *via* electronic mail this 30th day of August 2012.

/s/ Larry S. Sauer

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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Sauer, Larry S.