

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., for an Adjustment to) Case No. 16-542-GA-RDR
Rider MGP Rates.)

In the Matter of the Application of Duke) Case No. 16-543-GA-ATA
Energy Ohio, Inc., for Tariff Approval)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case in which Duke Energy Ohio, Inc. ("Duke Energy") seeks to collect unlawful charges from customers for the cleanup of defunct manufactured gas plant ("MGP") sites that are not used and useful in the provision of current public utility service.¹ The Public Utilities Commission of Ohio (the "PUCO") should grant OCC's motion for the reasons set forth in the attached memorandum in support.

¹ See R.C. Chapter 4911; R.C. 4903.221; Ohio Adm. Code 4901-1-11; Merit Brief and Appendix of Joint Appellants, The Office of the Ohio Consumers' Counsel, Kroger Company, Ohio Manufacturers' Association, and Ohio Partners for Affordable Energy at 1, *In the Matter of Duke Energy Ohio, Inc. for an Increase in Its Natural Gas Distribution Rates*, Case No. 2014-0328 (Ohio May 27, 2014).

Respectfully submitted,

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OHIO CONSUMERS' COUNSEL

/s/ Christopher Healey

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

Duke Energy seeks to unlawfully collect through its Rider MGP millions of dollars from customers for imprudently incurred clean-up costs at MGP sites. Ohio law authorizes OCC to represent the interests of all of Duke Energy's approximately 400,000 residential natural gas customers.²

R.C. 4903.221 provides that any person "who may be adversely affected" by a PUCO proceeding is entitled to intervene in that proceeding. The interests of Ohio's residential consumers may be adversely affected by this case because residential customers pay charges through Rider MGP as part of their natural gas distribution rates. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

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;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;

² See R.C. Chapter 4911; R.C. 4903.221; Ohio Adm. Code 4901-1-11.

- (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 Duke Energy's residential consumers and ensuring that the rates that they pay are just and reasonable. This interest is different from 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, among other things, advancing the position that Duke Energy's customers should receive adequate service at a reasonable rate under Ohio law.³ OCC's position is therefore directly related to the merits of this case, which 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 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

³ See R.C. 4905.22 ("All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission . . .").

intervene, a party should have a "real and substantial interest." *See* Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a real and substantial interest in this case where Duke Energy seeks to unlawfully charge millions of dollars for attempting to remediate MGP facilities that have not been used and useful in over 50 years.⁴

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), which OCC already has addressed and which OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the PUCO shall consider the "extent to which the person's interest is represented by existing parties." Although OCC does not concede that the PUCO must consider this factor, OCC satisfies it because OCC has been uniquely 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, in deciding two consolidated appeals regarding OCC's right to intervene, the Supreme Court of Ohio has confirmed that "intervention ought to be liberally allowed."⁵ In those cases, OCC explained in its motion to intervene that the proceeding could negatively impact residential consumers, and OCC established that the interests of consumers would not be represented by existing parties.⁶ Because there was no evidence disputing OCC's position, nor any evidence that OCC's intervention would

⁴ *See* Case No. 12-1685-GA-AIR, Supplemental Direct Testimony of Andrew C. Middleton on Behalf of Duke Energy Ohio, Inc. at 4 (Feb. 25, 2013) (stating that manufacture of gas at the "West End" MGP site ended in 1928 and manufacture of gas at the "East End" MGP site ended in 1963).

⁵ *See Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 2006-Ohio-5853, ¶ 20 (2006).

⁶ *Id.* ¶¶ 18-20.

unduly delay the proceedings, the Supreme Court found that the PUCO could not deny OCC the right to intervene.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 consumers, the PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

BRUCE J. WESTON (0016973)
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⁷ *Id.* ¶¶ 13-20.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below via electric transmission this 4th day of May 2016.

/s/ Christopher Healey
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Summary: Motion Motion to Intervene by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Healey, Christopher Mr.