

In the Matter of the Application for )  
 Authority to Establish a Right-of-Way ) Case No. 21-943-GA-RDR  
 Rider. )

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene because the Ohio Gas Company ("Ohio Gas") has filed an application for accounting authority to defer certain municipal rights of way costs for future collection from its consumers. In addition, Ohio Gas seeks authority from the PUCO to charge consumers for costs associated with municipal rights of way. If its application is approved, Ohio Gas intends to establish a Right-of-Way Rider ("ROW Rider") with an initial charge to consumers of \$1.88 per month from January 1, 2022 through September 30, 2022.<sup>1</sup> Ohio Gas further proposes that the ROW Rider will be updated in annual filings made by March 31<sup>st</sup> each year.<sup>2</sup>

OCC represents the interests of Ohio Gas's approximately 50,000 residential gas utility consumers.<sup>3</sup> The PUCO should grant OCC's motion to intervene for the reasons set forth in the attached memorandum in support.

<sup>3</sup> See, R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

Respectfully submitted,

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Ohio Consumers' Counsel

*/s/ William J. Michael*  
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Ohio Gas is proposing to charge consumers approximately \$1 million for costs associated with rights of way.<sup>4</sup> This translates to a \$1.88 charge per month on consumers' bills, from January 2022-September 2022.<sup>5</sup>

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 Gas’s residential consumers may be “adversely affected” by this case, especially if the consumers were unrepresented in a proceeding where Ohio Gas is seeking to charge them for costs associated with rights of way. 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;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings;

<sup>5</sup> *See id.*

- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is representing the residential consumers of Ohio Gas in this case where Ohio Gas seeks to charge them for rights of way. This interest is different from that of any other party and especially different from that of Ohio Gas, whose advocacy includes the financial interest of shareholders.

Second, OCC's advocacy for residential consumers will include advancing the position that Ohio Gas should charge consumers only amounts that are just and reasonable under law. OCC's position is therefore 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 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 advocate for residential utility consumers, OCC has a very real and substantial interest in this case where the PUCO will determine whether to allow Ohio Gas to charge consumers for rights of way under Ohio law.

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 PUCO 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 (“Court”) 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>6</sup>

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Court for intervention. On behalf of Ohio residential consumers, the PUCO should grant OCC’s Motion to Intervene.

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

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 transmission, this 22nd day of September 2021.

/s/ William J. Michael  
William J. Michael  
Counsel of Record

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: Motion Motion to Intervene by Office of The Ohio Consumers' Counsel  
electronically filed by Mrs. Tracy J. Greene on behalf of Michael, William J.