

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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|--|---|-------------------------|
| |) | Case No. 14-375-GA-RDR |
| |) | Case No. 15-452-GA-RDR |
| In the Matters of the Applications of Duke |) | Case No. 16-542-GA-RDR |
| Energy Ohio, Inc., for Adjustments to Rider |) | Case No. 17-596-GA-RDR |
| MGP Rates. |) | Case No. 18-283-GA-RDR |
| |) | Case No. 19-174-GA-RDR |
| |) | Case No. 20-53-GA-RDR |
| |) | Case No. 14-376-GA-ATA |
| |) | Case No. 15-453-GA-ATA |
| |) | Case No. 16-543-GA-ATA |
| In the Matters of the Applications of Duke |) | Case No. 17-597-GA-ATA |
| Energy Ohio, Inc. for Tariff Approval. |) | Case No. 18-284-GA-ATA |
| |) | Case No. 19-175-GA-ATA |
| |) | Case No. 19-1086-GA-ATA |
| |) | Case No. 20-54-GA-ATA |
| In the Matter of the Application of Duke |) | |
| Energy Ohio, Inc., for Implementation of the |) | Case No. 18-1830-GA-UNC |
| Tax Cuts and Jobs Act of 2017. |) | |
| In the Matter of the Application of Duke |) | |
| Energy Ohio, Inc., for Approval of Tariff |) | Case No. 18-1831-GA-ATA |
| Amendments. |) | |
| In the Matter of the Application of Duke |) | |
| Energy Ohio, Inc., for Authority to Defer |) | Case No. 19-1085-GA-AAM |
| Environmental Investigation and Remediation |) | |
| Costs. |) | |

**MEMORANDUM CONTRA RESA’S MOTION TO INTERVENE
BY
OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Retail Energy Supply Association (“RESA”) wants to intervene in these cases.¹

Some of the cases have been pending for more than seven years without its intervention, and its

¹ Motion for Leave to Intervene of the Retail Energy Supply Association (Sept. 29, 2021) (the “RESA Motion”).

intervention now would unnecessarily delay approval of the Stipulation and Recommendation² (the “Settlement”) and the benefits to consumers under that Settlement.

The PUCO should deny the RESA’s motion to intervene because it does not meet the standards for intervention under R.C. 4903.221. To the extent the PUCO does grant RESA’s motions to intervene—which it shouldn’t—it should exercise its authority under O.A.C. 4901-1-27(B)(7) and limit its participation in these cases.

I. RECOMMENDATIONS

A. RESA does not meet the standards for intervention under R.C. 4903.221 because it will not be adversely affected.

By law, a party may intervene if it “may be adversely affected by a public utilities commission proceeding.”³ It is true that the Ohio Supreme Court has ruled that intervention “ought to be liberally allowed.”⁴ The Court also clarified, however, that intervention “ought to be liberally allowed so that the positions of all persons with a *real and substantial* interest in the proceedings can be considered by the PUCO.”⁵ Where a party’s interest is *insubstantial*, therefore, the precedent for liberal application of the intervention law does not apply.

RESA fails this statutory requirement.⁶ The primary issues in these proceedings are (i) resolution of Duke’s manufactured gas plant (“MGP”) cases and the charges to consumers for Duke’s remediation costs, and (ii) the impacts of the 2017 Tax Cuts and Jobs Act (“TCJA”) on consumers’ bills. RESA did not seek to intervene in these proceedings, some of which have been

² Stipulation and Recommendation (Aug. 31, 2021).

³ R.C. 4903.221.

⁴ *OCC v. PUCO*, 111 Ohio St.3d 384, 388 (2006).

⁵ *Id.* (emphasis added).

⁶ R.C. 4903.221.

pending for more than seven years, thus demonstrating that the MGP and TCJA issues do not adversely affect it. RESA explicitly admits, in fact, that these issues do not impact marketers.⁷

Instead, RESA seeks intervention because of three consumer issues addressed in the Settlement: (i) Duke's agreement to file an application to transition from its current gas cost recovery ("GCR") process to a standard service offer ("SSO") (the "SSO Issue"),⁸ (ii) Duke's agreement to provide OCC with shadow billing information comparing, in the aggregate, what consumers paid to marketers with what they would have paid under Duke's standard offer or GCR, as applicable (the "Shadow Billing Issue"),⁹ and (iii) Duke's agreement to provide a "price-to-compare" message on shopping customers' bills comparing what they actually paid to their marketer with what they would have paid under Duke's standard offer or GCR (the "Price-to-Compare Issue").¹⁰ RESA will not be adversely impacted by these issues.

First, RESA already has an opportunity to be heard regarding the SSO issue. Under the Settlement, Duke was required to file a notice of intent to file an application for the transition to an SSO and to hold stakeholder meetings.¹¹ Duke has filed such a notice of intent, and RESA can file a motion to intervene in that proceeding.¹² Further, Duke has begun to hold the SSO stakeholder meetings, and RESA was invited to participate. Thus, approval of the SSO issue as part of the Settlement will have no adverse impact on RESA.

⁷ See RESA Motion at 7 ("RESA had no prior reason to intervene in these proceedings because the applications for these cases and prior filings only involved issues of Duke's MGP rider, environmental remediation costs, and the TCJA."); RESA Motion at 5 ("Prior to August 31, 2021, the applications and filings in these 18 proceedings did not involve any supplier-related issues.").

⁸ Settlement at 16-18.

⁹ Settlement at 19.

¹⁰ Settlement at 18.

¹¹ Settlement at 16.

¹² *In re Application of Duke Energy Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services*, Case No. 21-903-GA-EXM.

Second, Duke's agreement is to provide shadow billing data to OCC—nothing more. Perhaps, in the future, if OCC were to use that information in its advocacy, RESA might have an interest in responding to OCC's use of the information. But OCC's mere possession of data cannot possibly adversely impact RESA.

Third, RESA is not adversely impacted by Duke adding a price-to-compare message on consumers' bills. The sole purpose of this Settlement term is to educate consumers. It provides them with two data points: what they actually paid to a marketer and what they would have paid under Duke's standard offer or GCR. This information is important because it provides transparency to consumers. And the PUCO publishes the price-to-compare for all utilities—gas and electric—on its Energy Choice Ohio website.¹³ Further, the PUCO has already found that this type of information is appropriate for electric utility consumers' bills.¹⁴

B. RESA's intervention request, if granted at all, should be limited to those narrow issues in the Settlement related to competitive markets.

Under O.A.C. 4901-27(B)(7), the PUCO has discretion to take action that it deems necessary to “[a]void unnecessary delay” and “[p]revent the presentation of irrelevant or cumulative evidence.”

The Settlement resolves a decade of litigation of Duke's proposed charges to consumers for the cleanup of environmental waste from former manufactured gas plants.¹⁵ It requires Duke to credit consumers with insurance proceeds that should have been credited to consumers years ago.¹⁶ It places various restrictions on Duke's future ability to charge distribution customers for

¹³ <http://www.energychoice.ohio.gov/AppletoApples.aspx>.

¹⁴ O.A.C. 4901:1-10-33(C)(18).

¹⁵ Settlement at 8-16.

¹⁶ *Id.* at 10.

MGP-related expenses.¹⁷ It requires Duke to pass on to consumers the benefits of lower taxes under the TCJA (including an adjustment to Duke’s base rates).¹⁸ It requires Duke to provide bill payment assistance to low-income consumers and seniors.¹⁹ None of these issues has anything to do with competitive markets in Ohio or RESA members’ business in Ohio. Thus, any evidence that RESA might offer in this case would be irrelevant as to these issues under O.A.C. 4901-1-27(B)(7)(b). It would also unnecessarily delay approval of the Settlement, which delay would be to the detriment of consumers.

If RESA is granted intervention in these cases—which it should not be, for the reasons explained above—the PUCO should exercise its authority under O.A.C. 4901-1-27(B)(7) and limit its participation in the proceedings to the SSO Issue, Price-to-Compare Issue, and Shadow Billing Issue. While OCC firmly believes that even these issues do not adversely affect RESA (as described above), at a minimum, RESA should not be allowed to challenge the Settlement as it pertains to MGP-related issues or the TCJA.

II. CONCLUSION

For the reasons stated above, the PUCO should deny RESA’s motion to intervene. If it does grant it, RESA’s intervention should be strictly limited to the three issues in the Settlement related to competitive markets. The PUCO should move this case forward quickly so that consumers can receive the significant benefits from the Settlement as soon as possible.

¹⁷ *Id.* at 13.

¹⁸ *Id.* at 10-13.

¹⁹ *Id.* at 14-16.

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Memorandum Contra was served by electronic transmission upon the parties below this 6th day of October 2021.

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Summary: Memorandum Memorandum Contra RESA's Motion to Intervene by Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J. Greene on behalf of Healey, Christopher