

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates.	) ) )	Case No. 14-0375-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.	) )	Case No. 14-0376-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates.	) ) )	Case No. 15-0452-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.	) )	Case No. 15-0453-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates.	) ) )	Case No. 16-0542-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.	) )	Case No. 16-0543-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates.	) ) )	Case No. 17-0596-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.	) )	Case No. 17-0597-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates.	) ) )	Case No. 18-0283-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.	) )	Case No. 18-0284-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for Implementation of the Tax Cuts and Jobs Act of 2017.	) ) )	Case No. 18-1830-GA-UNC
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of Tariff Amendments.	) ) )	Case No. 18-1831-GA-ATA

In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates.	) ) )	Case No. 19-0174-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.	) )	Case No. 19-0175-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Defer Environmental Investigation and Remediation Costs.	) ) ) )	Case No. 19-1085-GA-AAM
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.	) )	Case No. 19-1086-GA-UNC
In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates.	) ) )	Case No. 20-0053-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.	) )	Case No. 20-0054-GA-ATA

**MOTION FOR LEAVE TO INTERVENE OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

Now comes the Retail Energy Supply Association (“RESA”)¹ who, pursuant to Ohio Revised Code Section 4903.221 and Ohio Administrative Code 4901-1-11, moves to intervene in the above-styled 18 proceedings as a full party of record. The reasons supporting this request for intervention are contained in the accompanying Memorandum in Support. RESA respectfully requests that the Commission grant this motion for leave to intervene because its members will be directly affected by the newly proposed and combined resolution of these cases and it has

¹ The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

demonstrated good cause and the existence of extraordinary circumstances. RESA should be made a full party of record.

Respectfully Submitted,

/s/ Michael J. Settineri
Michael J. Settineri (0073369), Counsel of Record
Gretchen L. Petrucci (0046608)
Anna Sanyal (0089269)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, OH 43215
Telephone 614-464-5462
mjsettineri@vorys.com
glpetrucci@vorys.com
aasanyal@vorys.com
(All willing to accept service via e-mail)

Counsel for the Retail Energy Supply Association

**MEMORANDUM IN SUPPORT OF
THE MOTION FOR LEAVE TO INTERVENE**

Ohio Revised Code Section (“R.C.”) 4903.221 and Ohio Administrative Code (“Rule”) 4901-1-11 establish the standard for intervention in the above-styled proceedings as a full party of record. Rule 4901-1-11 states in part:

(A) Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:

* * *

(2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person’s interest is adequately represented by existing parties.

In addition to establishment of a direct interest, the Public Utilities Commission of Ohio (the “Commission”) also considers the nature of the intervenor’s interest, the extent that interest is represented by existing parties, the intervenor’s potential contribution to a just and expeditious resolution of the issues involved, and whether intervention would result in an undue delay of the proceeding. *See also* R.C. 4903.221(B) upon which the above rule is authorized.

The Supreme Court of Ohio has stated that intervention in Commission proceedings should **be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the Commission.** *Ohio Consumers’ Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 384, 388, 2006-Ohio-5853.

A. RESA has a real and substantial interest in these 18 proceedings.

The above-captioned 18 proceedings originally involved two distinct issues. In a majority of these cases, Duke Energy Ohio, Inc. (“Duke”) sought approval to modify its manufactured gas plant (“MGP”) rider and defer environmental remediation costs related to the MGP sites. Most of these MGP cases were consolidated, litigated, and have been awaiting a Commission decision

since early 2020.² Case Nos. 20-53-GA-RDR and 20-54-GA-ATA were not consolidated with any of the other MGP-related cases and no intervention deadline has been set yet (making this petition timely for those cases). The non-MGP-related cases involve passing back benefits to customers from the reduced corporate tax established by the Tax Cuts and Jobs Act of 2017 (“TCJA”).³ These TCJA cases were consolidated, litigated, and have been awaiting a Commission decision since 2019.

Prior to August 31, 2021, the applications and filings in these 18 proceedings did not involve any supplier-related issues. On August 31, 2021, Duke, Staff, Ohio Consumers’ Counsel (“OCC”), and the Ohio Energy Group signed and filed a stipulation to collectively resolve **all** the proceedings. The Ohio Manufacturers’ Association Energy Group, The Kroger Company and Ohio Partners for Affordable Energy signed as non-opposing parties who agreed to not challenge the stipulation. While wholly unrelated to the MGP and TCJA issues and cases, the stipulation includes certain terms that will affect the supplier industry and choice market in Ohio. These terms address agreements for: Duke’s transition away from its gas cost recovery (“GCR”) process and adoption of a natural gas auction process (“SSO”) that will not include a standard choice offer; a new bill format proposal to include an SSO price-to-compare message on natural gas bills; and giving OCC upon request 24-months of historic “shadow billing” data, which will include data comparing an aggregate of shopping customer costs with the GCR or SSO. *In re Duke Energy Ohio*, Case Nos. 14-375-GA-RDR, *et al.*, Stipulation (Aug. 31, 2021), at pp. 16-19.

² The following twelve, above-captioned MGP-related cases were consolidated and proceeded to hearing: Case Nos. 14-375-GA-RDR, 14-376-GA-ATA, 15-452-GA-RDR, 15-453-GA-ATA, 16-542-GA-RDR, 16-543-GA-RDR, 17-596-GA-RDR, 17-597-GA-ATA, 18-283-GA-RDR, 18-284-GA-ATA, 19-174-GA-RDR and 19-175-GA-ATA. The intervention deadline for those 12 cases has passed. Two other MGP-related cases (Case Nos. 19-1085-GA-AAM and 19-1086-GA-UNC) proceeded separately to a comment cycle and the intervention deadline in those two cases has passed. Case Nos. 20-53-GA-RDR and 20-54-GA-ATA were not consolidated with any of the other MGP-related cases and no intervention deadline has been set yet.

³ The above-captioned TCJA-related cases are Case Nos. 18-1830-GA-UNC and 18-1831-GA-ATA, and they proceeded separately from the MGP-related cases to hearing and the intervention deadline has passed.

Addressing the criteria for intervention, initially, RESA notes that it has a real and substantial interest in these proceedings because it represents a broad and diverse group of retail energy suppliers, including active competitive suppliers operating in Duke's choice program. The stipulation filed in these 18 cases would affect the retail choice program, choice customers, and the competitive market. The stipulation proposes swift and significant changes to the operation of Duke's competitive marketplace and to the provision of shopping information and data, which are of direct interest and affect RESA and its members. Thus, RESA has a substantial interest in addressing the stipulation and in ensuring that these issues are properly resolved. RESA is also knowledgeable regarding Duke's market and the newly introduced issues in these proceedings, namely the GCR and SSO processes, bill formats, and shadow billing data, and can significantly contribute to the Commission's analysis of these issues and their equitable and expedient resolution. RESA strongly believes that its participation will assist the Commission in evaluating the proposed stipulation. Next, RESA's interests are not currently represented by Duke or by the other stipulation parties and no suppliers were involved in settlement negotiations. Intervention will not cause prejudice to any party. Resolution without RESA, however, would prejudice RESA members as there is no other opportunity to address the stipulation. Finally, RESA's intervention will not unduly prolong or delay the proceedings. That is because the Commission has not yet established a procedural schedule for the submission of evidence to consider the August 31, 2021 stipulation within the framework of its three-prong test for evaluating stipulations, or consolidated the 18 cases for such a proceeding. Thus, RESA's intervention is warranted for Case Nos. 20-53-GA-RDR and 20-54-GA-ATA for which no intervention deadline has been set and also, given good cause and extraordinary circumstances, warranted in the remaining 16 cases for which the intervention deadline has passed.

B. Good cause and extraordinary circumstances support RESA’s intervention for those proceedings in which the deadline has passed.

Importantly, both the Revised Code and prior Commission precedent support RESA being allowed to intervene in these proceedings. R.C. 4903.221(A)(2) states that the Commission “may, in its discretion, grant motions to intervene which are filed after the deadlines set forth in divisions (A)(1) and (2) of this section for good cause shown.” Furthermore, Commission precedent also indicates that intervention should be granted when extraordinary circumstances exist. *See, e.g., In re Dayton Power & Light Co.*, Case Nos. 02-2779-EL-ATA, *et al.*, Opinion and Order (Sept. 2, 2003) at 8-9 (granting Green Mountain Energy Company’s motion to intervene, which was filed during the hearing and after the deadline for intervention, because it could not have known it was required to intervene prior to the filing of the stipulation in that proceeding); *In re Long-Term Forecast Report of Ohio Power Company and Related Matters*, Case Nos. 10-501-EL-FOR, *et al.*, Opinion and Order (Jan. 9, 2013) at 12-13 (allowing RESA to intervene after the need for a solar energy resource compliance project became an issue to be decided in Ohio Power Company’s long-term forecast case instead of its SSO case).

Here, **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 had no notice and received no notice that GCR and SSO processes, bill formats, and shadow billing data would be added to a stipulation in proceedings that only related to the MGP and TCJA issues. There cannot be any well-founded challenge to this point. The majority of these cases were filed many years ago, litigated years ago, and awaiting decision for an extended period of time without supplier-related issues.⁴ It is only

⁴ In addition, the MGP cases that proceeded forward did so separately from the TCJA issues because they too are distinct and separate issues.

now with the stipulation proposed in August 2021 that supplier-related issues are being introduced. Because these issues have now been raised via the August 2021 stipulation, there is good cause and extraordinary circumstances for RESA to seek intervention to protect its members' interests. RESA should be allowed to intervene in all cases for which the intervention deadline has passed pursuant to R.C. 4903.221 and prior Commission precedent.

C. Conclusion

For all of these reasons, RESA satisfies the requirements for intervention in these Commission proceedings. Its members have real and substantial interests and will be prejudiced without the opportunity to participate in these proceedings to address its interests. Also, due to the good cause and extraordinary circumstances demonstrated, intervention should be granted so that the position of RESA, an entity with a real and substantial interest in the proceedings, can be considered by the Commission. RESA respectfully requests that the Commission grant this motion for leave to intervene and that RESA be made a full party of record.

Respectfully Submitted,

/s/ Michael J. Settineri
Michael J. Settineri (0073369), Counsel of Record
Gretchen L. Petrucci (0046608)
Anna Sanyal (0089269)
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, OH 43215
Telephone 614-464-5462
Facsimile 614-719-5146
msettineri@vorys.com
glpetrucci@vorys.com
aasanyal@vorys.com
(All willing to accept service via e-mail)

Counsel for the Retail Energy Supply Association

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being sent (via electronic mail) on the 29th day of September 2021 on all persons/entities listed below:

Duke Energy Ohio, Inc.	rocco.dascenzo@duke-energy.com jeanne.kingery@duke-energy.com larisa.vaysman@duke-energy.com
Staff of the Public Utilities Commission of Ohio	werner.margard@ohioAGO.gov
Ohio Consumers' Counsel	larry.sauer@occ.ohio.gov christopher.healey@occ.ohio.gov william.michael@occ.ohio.gov amy.botschner.obrien@occ.ohio.gov
Ohio Energy Group	jkylern@bklawfirm.com kboehm@bklawfirm.com mkurtz@bklawfirm.com
Ohio Partners for Affordable Energy	rdove@keglerbrown.com
The Kroger Co.	paul@carpenterlipps.com
Ohio Manufacturers Association Energy Group	bojko@carpenterlipps.com
Interstate Gas Supply, Inc.	michael.nugent@igs.com bethany.allen@igs.com evan.betterton@igs.com

/s/ Michael J. Settineri

Michael J. Settineri