**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| --- | --- | --- |
| In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Change Accounting Methods. | ))) | Case No. 19-1771-EL-AAM |

**MOTION TO INTERVENE**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

Duke[[1]](#footnote-2) seeks PUCO approval to use deferral accounting so that in the future it can collect from customers $7 million in tree-trimming expenses it spent in 2019, plus carrying charges. Those charges would be over and above the $20 million in tree-trimming expenses it already charged customers that year.[[2]](#footnote-3) By doing so, Duke can circumvent the test year requirement that protects customers by limiting expenses collected from customers to a discrete period that follows a utility’s application for a rate increase. This case is another example of how the use of so-called riders in Ohio’s 2008 energy law favors utilities over consumers in the ratemaking process. Yet, on December 4, 2019, the PUCO Staff recommended that the PUCO grant Duke’s application.

The Office of the Ohio Consumers’ Counsel’s (“OCC”) is moving to intervene for consumer protection. The PUCO should grant OCC’s motion to intervene for the reasons set forth in the attached Memorandum in Support.

Respectfully submitted,

 Bruce Weston (#0016973)

 Ohio Consumers’ Counsel

 /s/ *Bryce McKenney*

 Bryce McKenney (0088203)

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## MEMORANDUM IN SUPPORT

Duke already charges customers $20.7 million per year for tree-trimming. But now it seeks to defer an additional $7 million in tree-trimming costs for potential future collection from customers.

OCC has authority under law to represent the interests of Duke’s approximately 639,394 residential electric utility customers under R.C. Chapter 4911. 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. That is especially so if the customers are unrepresented in a proceeding where the PUCO will be ruling on a utility request that undermines the test period concept and will allow the utility to collect even more money than it is already charging customers for an expense. 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;

(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 Duke’s residential electric utility consumers. This interest is different from that of any other party and especially different from that of the Utility, whose advocacy includes the financial interest of Duke’s shareholders.

Second, OCC’s advocacy for residential customers will include, among other things, advancing the position that Duke’s customers are already paying enough for tree trimming. And customers should not be made to pay more unless Duke can show that its rates to customers will be just and reasonable and the expenses incurred to provide service to customers are prudent and necessarily incurred. Duke hasn’t shown that. 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 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 customers, OCC has a very real and substantial interest in this case where the PUCO will determine whether Duke can defer $7 million in tree-trimming costs that will potentially be charged to consumers in the future.

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.” 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 customers. 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.[[3]](#footnote-4)

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 PUCO should grant OCC’s Motion to Intervene.

Respectfully submitted,

 Bruce Weston (0016973)

 Ohio Consumers’ Counsel

 /s/ *Bryce McKenney*

 Bryce McKenney (0088203)

Counsel of Record

Amy Botschner O’Brien (0074423)

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 (willing to accept service by e-mail)

**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 16th day of December 2019.

 /s/ *Bryce McKenney*

 Bryce McKenney

 Assistant Consumers’ Counsel

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

**SERVICE LIST**

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1. Duke Energy Ohio, Inc. (“Duke”). [↑](#footnote-ref-2)
2. Duke already charges its customers $10,720,877 per year in base distribution rates and $10,000,000 per year in Rider ESRR for tree-trimming. [↑](#footnote-ref-3)
3. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20. [↑](#footnote-ref-4)