

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Matter of the Application of Duke )  
Energy Ohio, Inc. For an Increases in ) Case No. 08-0709-EL-AIR  
Electric Rates. )

In the Matter of the Application of Duke )  
Energy Ohio, Inc. For Tariff Approval. ) Case No. 08-0710-EL-ATA

In the Matter of the Application of Duke )  
Energy Ohio, Inc. for Approval To ) Case No. 08-0711-EL-AAM  
Change Accounting Methods. )

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

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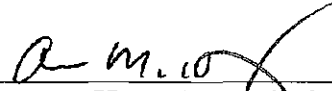
The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential utility customers, moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in these proceedings where Duke Energy filed an application to propose a rate increase for its customers.<sup>1</sup> OCC's Motion should be granted because OCC meets the legal standards for intervention, as explained in detail in the attached Memorandum in Support.

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

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

On July 25, 2008, Duke Energy ("Duke") filed its application ("Application") for the approval of its proposed distribution rate increase, along with applications in cases associated with the Application. The approval of the Application would allow Duke to raise rates paid by Duke's approximately 607,000 customers. OCC is the state agency that represents Ohio's residential utility consumers. The Commission should grant OCC's Motion to Intervene in these proceedings so that OCC can fully participate in the proceedings and protect the interests of Duke's customers.

**II. INTERVENTION**

Pursuant to R.C. Chapter 4911, the OCC moves to intervene under its legislative authority to represent residential utility customers of Ohio. OCC meets the standards for intervention found in Ohio's statutes and the PUCO's rules.

The interests of residential electric customers in areas served by Duke are “adversely affected” by these cases, pursuant to the intervention standard in R.C. 4903.221. 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 consumers may be “adversely affected” by these proceedings, especially if the customers are unrepresented in proceedings where Duke is seeking to increase rates paid by its customers. Thus, OCC satisfies the intervention standard in R.C. 4903.221.

OCC also meets the criteria for intervention in R.C. 4903.221(B), which requires the PUCO, in ruling on motions to intervene, to consider the following:

- (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 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 the OCC’s interest is to represent the residential customers of Duke, regarding rates paid by residential customers, terms for service and the service quality provided by Duke, among other issues. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's legal positions include, without limitation, that residential customers' rates must be just and reasonable as established under R.C. 4909.18, with adequate service quality. This legal position directly relates to the merits of the cases.

Third, OCC's intervention will not unduly prolong or delay the proceedings, but should provide insights that will expedite the PUCO's effective treatment of the cases. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the proceedings 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 cases 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 residential utility consumer advocate for the State of Ohio, OCC has a real and substantial interest in these proceedings where the outcome will have an effect on the service rates paid by residential consumers.

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 Commission 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 recently confirmed OCC's right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC's intervention and that OCC should have been granted intervention.<sup>2</sup>

### **III. CONCLUSION**

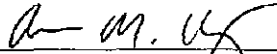
OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio's residential consumers, the Commission should grant OCC's Motion to Intervene.

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<sup>2</sup> *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶13-20 (2006).

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
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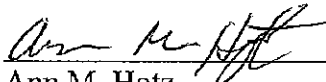
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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below via first class U.S. Mail, postage prepaid, this 5th day of August, 2008.

  
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