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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Application of Duke)
Energy Ohio, Inc. to Establish its Fuel)
and Economy Purchased Power)
Component of its Market-Based Standard)
Service Offer for 2009.)

Case No. 09-974-**EL-PUCO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. to Establish its System)
Reliability Tracker of its Market-Based)
Standard Service Offer for 2009.)

Case No. 09-975-EL-RDR

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

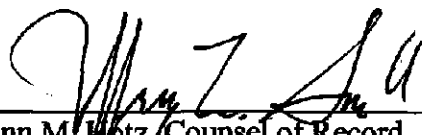
The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of all of the residential utility consumers of Duke Energy Ohio, Inc. ("Duke Energy"), moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in the above-captioned cases where the PUCO will review components of rates that consumers pay for their generation service.¹ The reasons for granting OCC's motion are further set forth in the attached Memorandum in Support.

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¹ R.C. Chapter 4911, R.C. 4903.221, Ohio Adm. Code 4901-1-11 and 4901-1-12.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio, Inc. to Establish its Fuel)	Case No. 09-974-EL-FAC
and Economy Purchased Power)	
Component of its Market-Based Standard)	
Service Offer for 2009.)	

In the Matter of the Application of Duke)	
Energy Ohio, Inc. to Establish its System)	Case No. 09-975-EL-RDR
Reliability Tracker of its Market-Based)	
Standard Service Offer for 2009.)	

MEMORANDUM IN SUPPORT

I. INTRODUCTION

In the December 17, 2008 Order² in the standard service offer (“SSO”) case filed by Duke Energy Ohio, Inc. (“Duke Energy” or the “Company”), the Public Utilities Commission of Ohio (“PUCO” or “Commission”) provided for quarterly reports and audits regarding economy purchased power (“FPP”) and system reliability tracker (“SRT”) components of the price-to-compare riders (referred to as “PTC-FPP” and “PTC-SRT”) of Duke Energy’s SSO that consumers pay.

In its most recent action in the above-captioned cases, the Commission selected an auditor to provide independent services for the purposes described in the Commission’s request for proposal dated November 18, 2009.³ The Commission directed the auditor to complete its first audit, for year 2009, by May 14, 2010⁴ and

² *In re Duke Energy 2008 ESP Case*, Case Nos. 08-920-EL-SSO, et al., Order (December 17, 2008).

³ Entry at 2 (January 7, 2010).

⁴ *Id.* at 2, ¶(7).

provided for the examination of the auditor's work "by any participant to the proceedings."⁵

II. INTERVENTION

OCC moves to intervene under its legislative authority to represent residential utility consumers in Ohio, pursuant to 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 consumers may be "adversely affected" by these cases, especially if the consumers are unrepresented in a proceeding regarding Duke Energy's rates that include fuel and related charges as well as charges related to environmental compliance measures, the principal matters included in the FPP and SRT riders. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission 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 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 OCC's interest is representing the residential customers of Duke Energy. This interest is different than that of any other party and

⁵ Id. at 3, ¶(7).

especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for consumers will include advancing the position that electric rates should be no more than what is reasonable and permissible under Ohio law, for service that is adequate under Ohio law. This advocacy includes the OCC's concern that the process for determining such rates should protect the interests of residential consumers. OCC's position is therefore directly related to the merits of these cases that are pending before the PUCO.

Third, OCC's intervention will not unduly prolong or delay the proceeding. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of these cases 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 was significantly involved in the proceeding decided on December 17, 2008 in which the PTC-FPP and PTC-SRT were initiated, as well as the earlier cases that first introduced the FPP and SRT charges and their progeny in which the Commission reviewed quarterly levels for these charges. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding these 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, OCC has a real and substantial interest in these cases where the generation rates paid by residential customers

are under review by the Commission.

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 has already 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 because OCC has been uniquely designated as the statutory representative of the interests of Ohio’s residential utility consumers.⁶ That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio has 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.⁷

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.

⁶ R.C. Chapter 4911.

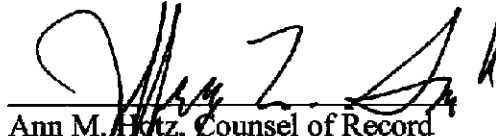
⁷ *Ohio Consumers’ Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20 (2006).

III. CONCLUSION

As set forth herein, OCC satisfies the criteria set forth in R.C. 4903.221 and the Commission's rules, for intervention. Therefore, on behalf of the over 600,000 residential electric customers of Duke Energy, OCC respectfully requests that the Commission grant OCC's Motion to Intervene. OCC's participation will contribute to a just resolution of the serious issues affecting consumers in this proceeding and will not cause undue delay.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

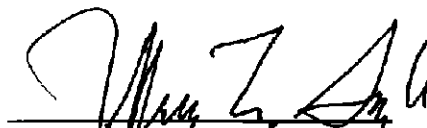


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing The Office of the Ohio Consumers' Counsel's *Motion to Intervene* has been served upon the below-stated counsel, via regular U.S. Mail, postage prepaid, this 4th day of February, 2010.



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