

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy)
Ohio, Inc., for Approval of Tariff for Rate PTR.)

Case No. 10-455-EL-ATA

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT
AND MOTION TO PRACTICE PRO HAC VICE
BEFORE THE COMMISSION**

Ohio Partners for Affordable Energy ("OPAE") hereby respectfully moves the Public Utilities Commission of Ohio ("Commission") for leave to intervene in the above-captioned application pursuant to R.C. §4903.221 and Section 4901-1-11 of the Commission's Code of Rules and Regulations, with full powers and rights granted by the Commission specifically, by statute or by the provisions of the Commission's Code of Rules and Regulations to intervening parties. The reasons for granting this motion to intervene are contained in the memorandum attached hereto and incorporated herein.

Respectfully submitted,

/S/ David C. Rinebolt

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In the Matter of the Application of Duke Energy)
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Case No. 10-455-EL-ATA

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

Ohio Partners for Affordable Energy (“OPAE”) should be permitted to intervene in this matter pursuant to Section 4903.22.1, Revised Code, and the Commission’s Rules and Regulations contained in Rule 4901-01-11 of the Ohio Administrative Code. The above-referenced application concerns the request of Duke Energy Ohio, Inc., (“Duke”) for approval of tariffs for its Peak Time Rebate Residential Pilot Program.

In determining whether to permit intervention, the following criteria are to be considered: the nature of the person’s interest; the extent to which that interest is represented by existing parties; the person’s potential contribution to a just and expeditious resolution of the proceeding; and, whether granting the intervention will unduly delay or unjustly prejudice any existing party. OPAE meets all four criteria for intervention in this application.

OPAE is an Ohio corporation with a stated purpose of advocating for affordable energy policies for low and moderate income Ohioans; as such, OPAE has a real and substantial interest in this matter, which will address Duke’s request for approval of tariffs for its peak time rebate residential pilot program. Additionally, OPAE includes as members non-profit organizations located in the service area that will be affected by this application.¹ Moreover, many of OPAE’s members are community action agencies. Under the federal legislation

¹ A list of OPAE members can be found on the website: www.ohiopartners.org.

authorizing the creation and funding of these agencies, originally known as the Economic Opportunity Act of 1964, community action is charged with advocating for low-income residents of their communities.²

OPAE also provides essential services in the form of bill payment assistance programs and weatherization and energy efficiency services to low income customers of Duke. OPAE members are also ratepayers of Duke.

OPAE's primary interest in this case is to protect the interests of low and moderate income Ohioans whose provision of electric service may be affected by this application. Further, OPAE has been recognized by the Commission in the past as an advocate for consumers and particularly low-income consumers, who may be affected by the outcome of this case.

² See 42 U.S.C. 672:

The purposes of this subtitle are--

(1) to provide assistance to States and local communities, working through a network of community action agencies and other neighborhood-based organizations, for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient (particularly families who are attempting to transition off a State program carried out under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)); and

(2) to accomplish the goals described in paragraph (1) through--

(A) the strengthening of community capabilities for planning and coordinating the use of a broad range of Federal, State, local, and other assistance (including private resources) related to the elimination of poverty, so that this assistance can be used in a manner responsive to local needs and conditions;

(B) the organization of a range of services related to the needs of low-income families and individuals, so that these services may have a measurable and potentially major impact on the causes of poverty in the community and may help the families and individuals to achieve self-sufficiency;

(C) the greater use of innovative and effective community-based approaches to attacking the causes and effects of poverty and of community breakdown;

(D) the maximum participation of residents of the low-income communities and members of the groups served by programs assisted through the block grants made under this subtitle to empower such residents and members to respond to the unique problems and needs within their communities; and

(E) the broadening of the resource base of programs directed to the elimination of poverty so as to secure a more active role in the provision of services for--

(i) private, religious, charitable, and neighborhood-based organizations; and

(ii) individual citizens, and business, labor, and professional groups, who are able to influence the quantity and quality of opportunities and services for the poor.

OPAE is a member of Duke's SmartGrid collaborative, which meets to discuss development of SmartGrid applicable tariffs. OPAE is concerned that Duke continues to allege in this application that waivers of certain Ohio Administrative Code rules, which protect consumers in the event of disconnections and inadequate meter readings, are necessary for this pilot program and other SmartGrid pilot programs to proceed. Duke claims again in this application that it will not be able to implement its proposed pilot programs absent the Commission's granting of its waiver application. OPAE has already discussed at length why waivers as proposed by Duke are not necessary for the pilot programs to proceed. See Case No. 10-249-EL-WVR, *OPAE Motion to Intervene and Protest* (March 10, 2010) and *OPAE Reply to Memorandum Contra* (April 1, 2010).

In addition, OPAE is concerned that, under the proposed peak rebate pilot program tariffs, ratepayers and program participants may not be receiving a fair share of benefits accruing to Duke as a result of the peak rebate pilot program. In the event that Duke sells into the market capacity that is freed up as a result of the peak reduction program, Duke may recognize a gain that ratepayers do not share. The Commission should order a study of the value to Duke of the peak reduction, i.e., the value of the capacity that is freed up by customer action, in order to determine the appropriate level of the credit.

For the above reasons, OPAE has a direct, real and substantial interest in this matter. The disposition of this matter may impair or impede OPAE's ability to protect its interests. No other party to the matter will adequately represent the interests of OPAE. OPAE is a rare organization that serves as an advocate, service provider and nonprofit customer group. No other party represents this group of interests. OPAE's participation in this matter will not cause undue delay, will not unjustly prejudice any

existing party, and will contribute to the just and expeditious resolution of the issues raised by this docket.

Therefore, OPAE is entitled to intervene in this application with the full powers and rights granted by statute and by the provisions of the Commission's Codes of Rules and Regulations to intervening parties. Moreover, OPAE reiterates its position as expressed in its protest and reply in Case No. 10-249-EL-WVR that waiver of vital consumer protections contained in the Ohio Administrative Code is not necessary for the implementation of this or any other SmartGrid pilot program. Finally, the Commission should order a study of the value of the capacity freed up to Duke in order to determine and address the extent of this problem.

Respectfully submitted,

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In the Matter of the Application of Duke Energy)
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Case No. 10-455-EL-ATA

**MOTION TO ADMIT DAVID C. RINEBOLT TO PRACTICE
PRO HAC VICE BEFORE THE COMMISSION**

Pursuant to Rule 4901-1-08(B) of the Ohio Administrative Code, Colleen L. Mooney (0015668), an attorney licensed to practice in the State of Ohio, respectfully petitions the Commission to permit David C. Rinebolt to practice *pro hac vice* before the Commission in the above-referenced case. Mr. Rinebolt represents Ohio Partners for Affordable Energy, which is an Ohio corporation engaged in advocating for affordable energy policies.

Mr. Rinebolt graduated from the Columbus School of Law of the Catholic University of America in May 1981. As an active member of the District of Columbia Bar, Bar No. 367210, Mr. Rinebolt is licensed to practice before the federal courts of the District of Columbia. Furthermore, Mr. Rinebolt has practiced law continuously since being admitted to the District of Columbia bar in October 1982. He has been granted permission to practice *pro hac vice* before this Commission on numerous occasions.

WHEREFORE, Colleen L. Mooney respectfully requests that David C. Rinebolt be permitted to practice before the Commission in the aforementioned docket.

Respectfully submitted,

/S/ Colleen L. Mooney
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene and Memorandum of Support and Motion to Practice Pro Hac Vice was served electronically upon the following parties identified below in this case on this 9th day of April 2010.

/S/ David C. Rinebolt

David C. Rinebolt

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in

Case No(s). 10-0455-EL-ATA

Summary: Motion Ohio Partners for Affordable Energy Motion to Intervene, Memorandum in Support, and Motion to Admit David C. Rinebolt to Practice Pro Hac Vice electronically filed by Mr. David C Rinebolt on behalf of Ohio Partners for Affordable Energy