

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy for Approval of a Market Rate)
Offer to Conduct a Competitive Bidding)
Process for a Standard Service Offer) Case No. 10-2586-EL-SSO
Electric Generation Supply, Accounting)
Modifications, and Tariffs for Generation)
Service.)

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

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 this proceeding where an application by Duke Energy for the approval of their proposed Market-Rate Offer could result in rate increases for their customers.¹ OCC's Motion should be granted because OCC meets the legal standards for intervention, as further explained in the attached Memorandum in Support.

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

PUCO

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Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On November 15, 2010, Duke Energy ("Company") filed their application ("Application") for the approval of their proposed Market-Rate Offer ("MRO"). The Application proposes a process for procuring standard service offer ("SSO") electric generation service that would begin on January 1, 2012.² The approval of the Application could permit the Companies to increase rates paid by the Companies' approximately 600,000 residential customers. OCC is the state agency that represents Ohio's residential utility consumers. The Commission should grant OCC's Motion to Intervene so that it can fully participate in this proceeding and protect the interests of the Companies' residential customers.

² Application at 12.

II. INTERVENTION

Pursuant to R.C. Chapter 4911, 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 the Company are "adversely affected" by this case, 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 this proceeding, especially if the customers are unrepresented in a proceeding where the Company's standard service offers paid by residential customers could increase. 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 OCC's interest is to represent the residential customers of the Company regarding rates paid by residential customers and the terms for obtaining that service that are likely to be important topics in the above-captioned case.

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 the rates paid by residential customers, and the service provided for those rates, should be reasonable and lawful. This legal position directly relates to the merits of the case.

Third, OCC's intervention will not unduly prolong or delay the proceeding, but should provide insights that will expedite the PUCO's effective treatment of the Application. OCC, with its longstanding expertise and experience in PUCO proceedings that include the Company's last proceedings to determine standard service offers, will duly allow for the efficient processing of this proceeding with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. This case significantly relates to the recent enactment of Sub. S.B. 221 and the standard service offer proceedings after enactment of Sub. S.B. 221.³ The OCC has extensive knowledge concerning all these matters. 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 residential utility consumer advocate for the State of Ohio, OCC has a real and substantial interest in

³ *In re Initial SSO Cases After S.B. 221*, Case Nos. 08-935-EL-SSO, et al., Application (July 31, 2008).

this proceeding where the outcome will have an effect on the service rates paid by residential consumers.

In addition, OCC meets the criteria of Ohio Adm. Ode 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.⁴

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.

⁴ *Ohio Consumers’ Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶13-20 (2006).

Respectfully submitted,

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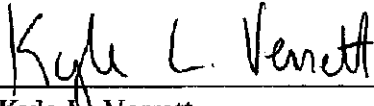
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CERTIFICATE OF SERVICE

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 26th day of November 2010.

** by m.y.*


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