

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

FAX

In the Matter of the Application of Duke Energy)
Ohio for Administration of the Significantly)
Excessive Earnings Test under Section)
4928.143(F), Revised Code, and Rule)
4901:1-35-10, Ohio Administrative Code.)

Case No. 11-2954-EL-UNC

**. OHIO PARTNERS FOR AFFORDABLE ENERGY'S
MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT
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,



Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45839-1793
Telephone: (419) 425-8860
FAX: (419) 425-8862
e-mail: cmooney2@columbus.rr.com

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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 administration of the significantly excessive earnings test ("SEET") as required under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code for Duke Energy Ohio, Inc., ("Duke"). In its application, Duke submits that the test is to be applied to it consistent with the Stipulation and Recommendation approved by the Commission in Case No. 08-920-EL-SSO, et al., Opinion and Order (December 17, 2008). Duke also recognizes that the interpretation of the governing statute and administrative rule are addressed in the Commission's order in its generic SEET proceeding. Case No. 09-786-EL-UNC, et al., Finding and Order (June 30, 2010). Finally, Duke states that its application and testimony demonstrate that Duke has not earned significantly excessive earnings.

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 the significantly excessive earnings test for Duke. 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 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

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

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 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. OPAE is also a signatory party to the Stipulation and Recommendation in Case No. 08-920-EL-SSO cited by Duke in its application. This stipulation, approved by the Commission on December 17, 2008, set forth details for the administration of the SEET as it pertains to Duke. Subsequent to the approval of the Stipulation, the Commission implemented administrative rules for the filing requirements for the SEET. Case No. 09-786-EL-UNC, Finding and Order (June 30, 2010).

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.

Respectfully submitted,

Colleen L. Mooney

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45840
Telephone: (419) 425-8860
FAX: (419) 425-8862
cmooney2@columbus.rr.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene and Memorandum of Support was served by regular U.S. Mail upon the following parties identified below in this case on this 31st day of May 2011.

Colleen L. Mooney

Colleen L. Mooney

Amy B. Spiller
Elizabeth H. Watts
Duke Energy Business Services
139 East Fourth Street, EA025
Cincinnati, Ohio 45201
amy.spiller@duke-energy.com
elizabeth.watts@duke-energy.com

William Wright
Attorney General's Office
Public Utilities Commission Section
180 E. Broad Street, 9th Floor
Columbus, Ohio 43215-3793
William.Wright@puc.state.oh.us

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com