

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Approval of a) Case No. 11-5905-EL-RDR
Distribution Decoupling Rider.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where Duke Energy Ohio, Inc. ("Duke" or the "Company") proposes to establish a distribution revenue decoupling mechanism that would adjust distribution rates.¹ The OCC files this Motion to Intervene ("Motion") on behalf of all the more than 600,000 residential electric utility customers of Duke. The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant the OCC's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

BRUCE J. WESTON
INTERIM CONSUMERS' COUNSEL

/s/ Joseph P. Serio
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¹ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

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MEMORANDUM IN SUPPORT

On December 8, 2011, Duke filed an application (“Application”) that sought Commission approval for “a distribution revenue decoupling mechanism to adjust rates between rate cases to remove Duke Energy Ohio’s incentive to sell energy.”² The OCC has authority under law to represent the interests of all the more than 600,000 residential electric utility customers of Duke, 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 customers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding that would affect the manner in which Duke conducts its energy efficiency programs and that would affect the manner in which distribution rates for residential and other customers is determined. 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 Application at 2.

- (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 representing the residential customers of Duke in this case that involves both Duke's incentives to pursue energy efficiency programs and the determination of distribution rates for residential and other customers. 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, the OCC's advocacy for residential customers will include advancing the position that cost effective energy efficiency measures should be encouraged and distribution rates should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. The OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio.

Third, the OCC's intervention will not unduly prolong or delay the proceedings. The OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest. The OCC was extensively involved in the cases cited in the Application, Case Nos. 11-3549-EL-SSO, et al., that resulted in PUCO approval of a stipulation that contained provisions regarding Duke's filing of a revenue decoupling mechanism.³

³ Id. at 1-2.

Fourth, the OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. The OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

The OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that the 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 advocate for residential utility customers, the OCC has a very real and substantial interest in this case where a distribution rate setting mechanism is at issue.

In addition, the 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 the OCC already has addressed and that the 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 the OCC does not concede the lawfulness of this criterion, the OCC satisfies this criterion because it has been uniquely designated as the state representative of the interests of Ohio's residential utility customers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed the OCC's right to intervene in PUCO proceedings when it decided two appeals in which the OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion

in denying the OCC's interventions and that the OCC should have been granted intervention in both proceedings.⁴

The 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 residential customers, the Commission should grant the OCC's Motion to Intervene.

Respectfully submitted,

BRUCE J. WESTON
INTERIM CONSUMERS' COUNSEL

/s/ Joseph P. Serio

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

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below via electronic transmission, this 16th day of December 2011.

/s/ Joseph P. Serio

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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel
electronically filed by Ms. Deb J. Bingham on behalf of Mr. Joseph P. Serio