

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of                     )  
Duke Energy Ohio, Inc., to Adjust                     ) Case No. 12-1811-GE-RDR  
Rider DR-IM and Rider AU for 2011                     )  
SmartGrid Costs.   )

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

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The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case that involves collecting charges from customers for costs associated with the SmartGrid program of Duke Energy Ohio, Inc. ("Duke" or "Company"). OCC is filing on behalf of all of the Company's approximately 660,000 residential electricity customers and approximately 380,000 residential gas customers.<sup>1</sup> The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

BRUCE J. WESTON  
CONSUMERS' COUNSEL

/s/ Terry L. Etter  
Terry L. Etter, Counsel of Record  
Assistant Consumers' Counsel

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

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**MEMORANDUM IN SUPPORT**

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On June 20, 2012, Duke filed an Application for riders to collect from customers the Company's actual spending on its SmartGrid program in 2011.<sup>2</sup> Through Rider DR-IM, the Company proposes to collect \$3.30 per month from each residential electricity customer for SmartGrid costs.<sup>3</sup> Through Rider AU, Duke proposes to collect \$2.40 per month from each residential gas customer for SmartGrid costs, and to give the Company's gas-only customers in Adams County, Georgetown and Lebanon a credit of \$1.36 per month.<sup>4</sup> OCC has authority under law to represent the interests of all the Company's approximately 660,000 residential electricity customers and approximately 380,000 residential gas customers, 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 were unrepresented in a proceeding involving the rates that the Company's

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<sup>2</sup> See Application at 1.

<sup>3</sup> See id., Direct Testimony of Peggy Laub ("Laub Testimony"), Calculation of Rider DR-IM, Schedule 13.

<sup>4</sup> See Laub Testimony, Calculation of Rider AU, Schedule 13. According to Ms. Laub, Duke provides only gas service in Adams County, Georgetown and Lebanon. The customers are given a credit reflecting the common costs of the electric and gas SmartGrid programs and the allocable project management organization costs. See id. at 6.

residential customers may pay for electric and/or gas service. 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 Company's residential consumers. This interest is different from that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for consumers will include, *inter alia*, advancing the position that the Company's customers should receive adequate service at a reasonable rate under Ohio law.<sup>5</sup> 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, OCC's intervention will not unduly prolong or delay the proceedings. 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.

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<sup>5</sup> R.C. 4905.22.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. 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, OCC has a very real and substantial interest in this case in which the Commission must address whether the Company is providing adequate service for reasonable rates under Ohio law.

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 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 confirmed OCC's right to intervene in PUCO proceedings. In deciding two appeals involving claims the PUCO erred by

denying OCC's interventions, the Court found that the PUCO abused its discretion and that OCC should have been granted intervention in both proceedings.<sup>6</sup>

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 consumers, the Commission should grant OCC's Motion to Intervene.

Respectfully submitted,

BRUCE J. WESTON  
CONSUMERS' COUNSEL

/s/ Terry L. Etter  
Terry L. Etter, Counsel of Record  
Assistant Consumers' Counsel

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<sup>6</sup> See *Ohio Consumers' Counsel v. Pub. 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 11<sup>th</sup> day of July 2012.

/s/ Terry L. Etter \_\_\_\_\_  
Terry L. Etter  
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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**7/11/2012 10:12:03 AM**

**in**

**Case No(s). 12-1811-GE-RDR**

Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.