

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., to Establish Reliability) Case No. 13-1539 -EL-ESS
Targets.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene¹ in this case where Duke Energy Ohio, Inc. ("Duke" or "Utility") has proposed performance standards for the reliability of the electric service that it provides to its 630,000 customers. Duke's application is filed to review the performance standards established by stipulation in Duke's last performance standards review. The further review of those standards was considered necessary to assess the impact of system design changes, technological advancements, geographical effects, and the results of Duke's updated customer perception survey.² OCC is filing on behalf of all of Duke's residential electric utility customers to review Duke's updated assessment of service quality and to ensure that Duke is taking appropriate steps to improve service quality. 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.

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

² *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of Proposed Reliability Standards*, Case No. 09-757-EL-ESS, Stipulation and Recommendation filed May 19, 2010, ¶11, approved by Opinion and Order of July 29, 2010.

Respectfully submitted,

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., to Establish Reliability) Case No. 13-1359-EL-ESS
Targets.)

MEMORANDUM IN SUPPORT

On June 28, 2013, Duke filed its application to update its reliability performance standards that affect the quality of its customers' electric service. Duke's application was filed for the purpose of complying with O.A.C. 4901:1-10-10 and its commitment, in Case No. 09-757-EL-ESS,³ to file an updated reliability performance standard application no later than June 30, 2013.

Duke claims that its filing is in accordance with PUCO Opinions and Orders in Case Nos. 08-920-EL-SSO and 09-757-EL-ESS.⁴ In those cases, the PUCO approved Stipulations between the parties setting forth System Average Interruption Frequency Index (SAIFI) and Customer Average Interruption Duration Index (CAIDI) through 2015, respectively. SAIFI's significance for customers is that it is the measure for how often the average customer experiences a sustained interruption in service. CAIDI's significance for customers is that it is the measure for the average time to restore service following an interruption.

³ In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of Proposed Reliability Standards, Case No. 09-757-EL-ESS, Stipulation and Recommendation filed May 19, 2010, ¶11; approved by Opinion and Order of July 29, 2010.

⁴ In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan, Case No. 08-920-EL-SSO, Stipulation and Recommendation filed October 27, 2008; approved by Opinion and Order of December 17, 2010. In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of Proposed Reliability Standards, Case No. 09-757-EL-ESS, Stipulation and Recommendation filed May 19, 2010; approved by Opinion and Order of July 29, 2010.

Duke has tendered its filing to comply with the terms of Stipulations in Case Nos. 08-920-EL-SSO and 09-757-EL-ESS. But Duke’s filing in this case lacks the detail and supporting justification prescribed by the Commission’s Rules in O.A.C. 4901:1-10-10 and the assessment required by paragraph 11 of the Stipulation at 09-757-EL-ESS. That Stipulation required that Duke file an updated reliability performance standards application “that assesses the impact of system design changes, technological advancements, geographical effects, and the results of Duke’s updated customer perception survey.”⁵

Instead, Duke has simply asked to extend the SAIFI performance standards established in Case No. 08-920-EL-SSO through 2015 and thereafter. Specifically, Duke has proposed the following SAIFI standards: 1.24 for 2013; 1.17 for 2014; and 1.10 for “2015 and thereafter.”⁶

Duke has proposed the following CAIDI standards: 118.14 for 2013; 121.25 for 2014; and 124.37 for 2015. However, for 2016 and thereafter, Duke has proposed an increase of “3 minutes per year.” This additional “3 minutes per year” was not part of the Stipulation in Case No. 09-757-EL-ESS. Instead, that Stipulation indicated that CAIDI would be maintained at or below 124.37 minutes in 2016 and beyond.⁷

While Duke’s application includes an updated customer perception survey, it does not assess, as required by the Stipulation in 09-757-EL-ESS, how system design changes,

⁵ *Id.* at ¶11.

⁶ Application, p. 2 (¶5).

⁷ In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of Proposed Reliability Standards, Case No. 09-757-EL-ESS, Stipulation and Recommendation filed May 19, 2010, ¶¶5, 10.

technological advancements, geographical effects, and customer perception should impact the establishment and achievement of performance reliability standards.

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 where the determination of reliability standards may impact the quality of service received by customers. 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 residential customers of Duke involving the proposals for updating the performance standards that affect the reliability of their service. OCC seeks to ensure that service quality for residential customers is adequately assessed. OCC also seeks to ensure that residential customers receive a quality of service that is consistent with, or higher than, the service standards set forth in the Revised Code, the Commission’s Rules, and the Stipulations agreed to between the parties and approved by the PUCO. This interest is different than

that of any other party and especially different than that of Duke whose advocacy includes the financial interest of its stockholders.

Second, OCC's advocacy for residential customers will include advancing the position that customers are entitled to service quality that is reasonable, adequate, and consistent with legal and regulatory standards. OCC's position is therefore directly related to the review by the PUCO, the authority with regulatory control of public utilities' rates and service obligations 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.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues.

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 advocate for residential utility customers, OCC has a very real and substantial interest in this case where, inter alia, the quality of service to residential customers is being evaluated and future standards are being established.

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 customers. 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 in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying OCC's interventions and that OCC should have been granted intervention in both proceedings.⁸

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 OCC's Motion to Intervene.

Respectfully submitted,

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⁸ 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 to the persons listed below, this 31st day of July 2013.

/s/ Edmund "Tad" Berger

Edmund "Tad" Berger
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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 Berger, Tad Mr.