

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Approval of) Case No. 14-2128-EL-UNC
Changes to Bill Format.)

**MOTION TO INTERVENE
AND
INITIAL COMMENTS
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 "the Utility") seeks to change the way it bills customers for electric generation services. OCC is filing this Motion on behalf of the approximately 600,000 residential utility customers of Duke.

In the Application, the Utility proposes the following: 1) revisions to language on the bill that standardizes price-to-compare language, 2) inclusion of the competitive retail electric service ("CRES") provider logo or name on the customer bill, 3) charges to CRES providers of \$250.00 for each new logo set-up or each revised logo, and 4) approval of charges of approximately \$1.1 million to implement changes to the billing system and modifications to website.² The Utility will implement the billing system and website functionality changes approximately one year after the Public Utilities Commission of Ohio ("PUCO") approves the Application.

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

² *In the Matter of the Application Duke Energy Ohio, Inc., for Approval of Changes to Bill Format*, Case No. 14-2128-EL-UNC, Application at 1 -3 (November 21, 2014).

On January 5, 2015, the Attorney Examiner found that additional information and investigation was necessary to thoroughly review Duke's application in this case. The Examiner's Entry suspended the 45-day automatic approval process. The reasons the PUCO should grant OCC's Motion to Intervene are further set forth in the attached Memorandum in Support, which includes initial comments on Duke's Application.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Joseph P. Serio

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** Will accept service via electronic transmission*

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Approval of) Case No. 14-2128-EL-UNC
Changes to Bill Format.)

**MEMORANDUM IN SUPPORT OF MOTIONS
AND
INITIAL COMMENTS**

I. BACKGROUND

On December 12, 2012, the PUCO opened an investigation into the vitality of Ohio's competitive retail electric service market. The PUCO presented a series of questions to stakeholders about the market design and corporate separation as they impact the CRES market.³ On March 23, 2014, the PUCO adopted, in part, the recommendations in the Staff's Market Development Work Plan.⁴ The PUCO issued its final Entry on Rehearing on May 21, 2014, directing electric distribution utilities to file applications, within six months, to revise to their consolidated bill formats so that they conform with the law(R.C. 4928.02, 4928.07, 4928.10), and the findings in the PUCO Investigation Case.⁵

On November 21, 2014, Duke filed an Application requesting approval of the proposed changes to its customers' bills.⁶ Specifically Duke requests PUCO approval of 1) revised price-to-compare language, 2) provision of CRES provider logo or name, 3)

³ *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI, Entry (December 21, 2012) ("Retail Market Investigation Case").

⁴ Retail Market Investigation Case, Entry on Rehearing at 10-11 (May 21, 2014).

⁵ Id. at 16.

⁶ *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of a Revised Bill Format for Electric Service*, Case No. 14-2128-EL-UNC, Application at 1-2 (November 21, 2014).

charges to CRES providers of \$250.00 for each logo set-up for each new or revised logo, and 4) approval of charges of approximately \$1.1 million to implement these changes to the billing system and website.⁷

These proposed changes may impose more costs on Duke's 615,000 residential customers -- costs that are more appropriately borne by CRES providers. The OCC respectfully requests that the PUCO grant it intervention and reject Duke's request to charge its customers for billing system changes necessary to reformat customers' bills to include marketer information. In the alternative, if the PUCO wishes to review the costs associated with Duke's proposed bill format changes, the PUCO should establish a procedural schedule that allows for parties to intervene, conduct discovery, file testimony, and proceed to an evidentiary hearing.

II. MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

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 Duke's residential customers⁸ may be "adversely affected" by this case, especially if the customers were unrepresented in a proceeding where the Utility has proposed changes to the way it bills customers for electric service. Customers' utility bills, by rule, must contain "clear and understandable form and language." The proposals of the Utility could adversely affect customers who have to decipher and pay electric utility bills. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

⁷ Id., Application at 1-2 (November 21, 2014).

⁸ OCC has authority under law to represent the interests of all Duke residential utility customers pursuant to R.C. Chapter 4911.

R.C. 4903.221(B) requires the PUCO 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 the Company in this case involving Duke's request for changes to its bill format, especially if the changes do not result in customers being able to easily differentiate between supplier charges and distribution charges. Additionally bill changes should enable customers to calculate their bills. This interest is different than that of any other party and particularly different than that of the Utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential customers will include advancing the position that customers' bills should be accurate and understandable to the customer. Customers should also be able to easily differentiate between supplier charges and distribution charges and being able to calculate their bills.⁹ 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.

⁹ Ohio Admin. Code 4901:1-10-22(B).

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.

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 Duke has requested expedited review of proposed changes to its bill format.

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 PUCO 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.¹⁰

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 PUCO should grant OCC's Motion to Intervene.

III. INITIAL COMMENTS

Duke's Proposed Bill Format Changes Must Be Properly Analyzed In Order To Determine If The Alleged Costs Are Justified And Whether The Changes Make Customers' Bills Easily Understandable.

Though the Utility requests that the PUCO approve the charges to CRES of \$250.00 for each logo set-up, Duke also alleges that it will cost \$1.1 million to make the changes to its billing system. In addition, Duke claims there are incremental operation costs but does not specify what these costs are. Duke has cited no legal authority nor provided any supporting data or analysis to substantiate the alleged costs. Additionally, this case does not involve the ratemaking authority of the PUCO. There has been no utility application that seeks authority to increase rates or implement new charges to customers. Nor has Duke shown that the costs are just and reasonable. This rulemaking has not yet provided parties with an opportunity to conduct discovery according to R.C. 4903.082, or review the costs allegedly incurred to comply with the PUCO's directives for Case No. 12-3151-EL-COI.

As stated in the Utility's Application, "Duke Energy Ohio estimates that costs to design, develop, test and migrate these bill changes into the Duke Energy Ohio billing

¹⁰ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

system in order to comply with the Commission's mandate will be approximately \$1.1M”¹¹ The Utility provides no legal basis upon which the PUCO can allow these charges. In the PUCO's 2012 case investigating Ohio's retail electric service market, the PUCO determined that EDUs could file applications for authority to defer expenses related to the bill format changes. However, the PUCO determined that it would “then evaluate the applications for deferral authority to determine whether the deferred costs are reasonable, appropriately incurred, clearly and directly related to the circumstances for which they were authorized, and in excess of expense amounts already included in rate at the time of approval.”¹²

Duke makes no request to defer any expenses. In fact, the Application simply states that the cost to comply with the billing system changes is \$1.1 million plus incremental operation costs. Duke provides no cost support, does not ask for deferral authority, nor propose any method of cost recovery. There is no specific request with regard to the \$1.1 million and the PUCO should not rule upon it. All EDUs are under the same obligation to make the necessary bill format changes and when AEP filed its Application to make bill format changes on the same day as Duke, it stated that “AEP Ohio's projected costs associated with this new regulatory requirement are not significant enough to be discretely collected in a separate charge.”¹³

OCC recommends that CRES providers pay for all costs associated with putting their logos or any other marketing-related material on public utility distribution customer

¹¹ Id. at 3 (Nov. 21, 2014).

¹² Retail Market Investigation Case, Entry at 10 -11 (May 21, 2014).

¹³ *In the Matter of the Application of Ohio Power Company for Approval of a Change in Bill Format*, Case No. 14-2119-EL-UNC, Application at 2 (November 21, 2014).

bills. Costs of competitive market practices, processes and market rules should be paid by those entities that most directly benefit from them -- CRES providers.

Additionally, to include competitive generation suppliers' logos on public utility distribution customers' bills goes against Ohio law. R.C 4909.15(A)(4) only allows the costs to be included in distribution rates are those that were incurred to render public utility service. The costs to put competitive generation suppliers' logos on public utility distribution customers' bills do not meet the statutory requirements of R.C.

4909.15(A)(4). Such costs are not costs of rendering public utility service. To impose CRES-created charges upon all distribution customers is unlawful because these charges are not related to the provision of distribution service. And Ohio law prohibits cross subsidization of competitive services (generation) by distribution service.¹⁴

Duke's proposed price to compare message appears to conform verbatim to the PUCO requirements in the PUCO Order in Case 12-3051-EL-ORD. However, the proposed price to compare message does not appear to comply with Ohio Admin. Code 4901:1-10-22(B)(24) that requires the message to inform customers that a written explanation of the price to compare can be obtained from the Utility. Because customers may want to obtain a better understanding of the price to compare to enable more informed shopping, the price to compare message should conform to the PUCO rules. OCC has attached to this pleading a bill format which it recommends be adopted by the

¹⁴ R.C. 4928.02(H).

PUCO.¹⁵ OCC's proposed bill format conforms to the PUCO rules, and this bill sample conforms to the PUCO rules.¹⁶

To help promote efficiency in the implementation of the proposed bill format changes, OCC supports the request made by DP&L that the implementation of the proposed bill format changes coincide with bill format changes that are being ordered by the PUCO in Case No. 14-1411-EL-ORD.

IV. CONCLUSION

OCC meets the standards for intervention in this proceeding. The PUCO should grant OCC's Motion to Intervene.

OCC also recommends that the PUCO not rule on the Utility's claim of alleged costs of \$1.1 million to implement bill format changes. If the PUCO chooses to consider the cost and charges proposed by Duke, further review is appropriate at this time. In that even the PUCO should establish a procedural schedule that allows for parties to intervene, conduct discovery, file testimony, and have an evidentiary hearing.

¹⁵ This format is similar, not identical to, the bill format proposed by OCC in the Retail Market Investigation Case (February 6, 2014).

¹⁶ OCC's proposed bill format is a summary page only. In order to comply with the PUCO rules, detailed charges and other pertinent information would appear on subsequent pages.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Joseph P. Serio

Joseph P. Serio (Reg. No. 0036959)
Counsel of Record
Assistant Consumers' Counsel *

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** Will accept service via electronic
transmission*

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene and Initial Comments* was served on the persons stated below via electronic transmission this 4th day of February 2015.

/s/ Joseph P. Serio

Joseph P. Serio
Assistant Consumers' Counsel

SERVICE LIST

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Counsel for Duke Energy-Ohio

OHIO Utility Co.

www.ohioutilityco.com
1-800-555-5555

Page 1 of 2

Shop

Billing Summary

Acct. # 100-000-000-0-0

Total Amount Due Aug 26 \$56.40

Cut out and keep this with you when shopping for a better rate.

For billing, outage or service inquiries call:

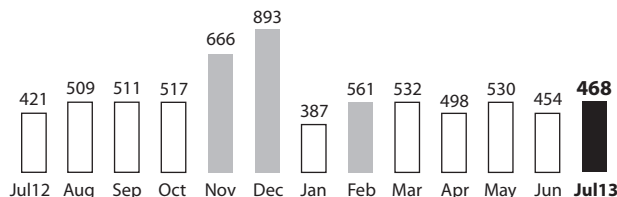
1-800-555-5555

Pay by phone: 1-800-555-5555

Required pursuant to commission rules and orders
(See additional messages on pg. 2)

Message

History



Your average monthly kWh usage is **540**
GRAY bars indicate usage above your monthly average

Usage

Month	Total kWh	Days	kWh/day	Cost/day	Avg Temp
Current	468	32	31	\$4.54	71° F
Previous	454	31	36	\$5.20	76° F
One year ago	421	30	37	\$4.94	75° F
Your total kWh for past 12 months is 6,479					

Meter

Meter	Service Period		Meter Reading Detail			
Number	From	To	Previous	Code	Current	Code
999999999	06/28	07/29	15337	Actual	15805	Actual
Multiplier 1			Metered Usage 468 kWh			
Next scheduled read date should be between Aug 29 and Aug 31						

SUPPLY

ABC Energy LLC

www.abcenergyllc.com
1-800-555-5555

Your supplier price until [date] is

Total Supply

Includes tax & other charges (see pg. 2)

6.50 ¢/kWh

\$30.42

Price-to-Compare

Your utility's Price-to-Compare* is
You are currently paying

7.30 ¢/kWh

6.50 ¢/kWh

* For **tariff 820**, in order for you to save money off of your utility's supply charges, a supplier must offer you a price lower than the utility's price of x.xx cents per kWh for the same usage that appears on this bill. To review available competitive supplier offers, visit the Public Utilities Commission of Ohio's "Energy Choice Ohio" website at www.energychoice.ohio.gov. Customers can obtain a written explanation of the price-to-compare by calling the utility at the number listed below.

DELIVERY

OHIO Utility Co.

www.ohioutilityco.com
1-800-555-5555

Total Delivery

Includes tax & other charges (see pg. 2)

\$25.98

Summary

Amount due at last billing	\$55.18
Payment on [date] - Thank you	55.18
Previous balance due	0.00
Total supply charges	30.42
Total delivery charges	25.98
Total amount due on Aug 26	\$56.40

Please tear on dotted line

Return bottom portion with your payment

OHIO Utility Co.

www.ohioutilityco.com
1-800-555-5555

Account Number
100-000-000-0-0
CY 21

\$56.40	\$ _____
Total Amount Due	Amount Enclosed
Due Aug 29, Pay \$57.64 After This Date	

Send inquiries to:
PO BOX 12345
ANYTOWN, OH 99999-9999
R-10-9999999999

Service Address:
OHIO GS1 BILL READY
123 ANY STREET
ANY CITY, OH 99999-9999

The Neighbor to Neighbor program helps disadvantaged customers pay their electric bill. I want to help. My payment reflects my gift of \$ _____

Make check payable and send to:
OHIO UTILITY CO
PO BOX 12345
ANYTOWN OH 99999-9999

OHIO Utility Co.

www.ohioutilityco.com
1-800-555-5555

Page 1 of 2

Shop

Billing Summary

Acct. # 100-000-000-0-0

Total Amount Due Aug 26 \$60.14

Cut out and keep this with you when shopping for a better rate.

For billing, outage or service inquiries call:

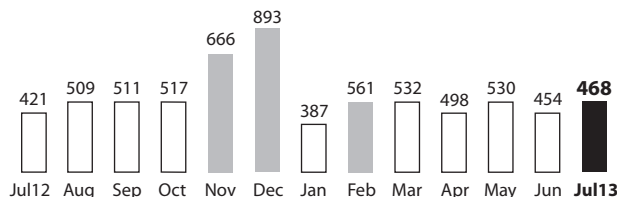
1-800-555-5555

Pay by phone: 1-800-555-5555

Required pursuant to commission rules and orders
(See additional messages on pg. 2)

Message

History



Your average monthly kWh usage is **540**
GRAY bars indicate usage above your monthly average

Usage

Month	Total kWh	Days	kWh/day	Cost/day	Avg Temp
Current	468	32	31	\$4.54	71° F
Previous	454	31	36	\$5.20	76° F
One year ago	421	30	37	\$4.94	75° F
Your total kWh for past 12 months is 6,479					

Meter

Meter	Service Period		Meter Reading Detail			
Number	From	To	Previous	Code	Current	Code
999999999	06/28	07/29	15337	Actual	15805	Actual
Multiplier 1			Metered Usage 468 kWh			
Next scheduled read date should be between Aug 29 and Aug 31						

SUPPLY

OHIO Utility Co.

www.ohioutilityco.com
1-800-555-5555

Your supplier price until [date] is

7.30 ¢/kWh

Total Supply

\$34.16

Includes tax & other charges (see pg. 2)

Price-to-Compare

Your utility's Price-to-Compare* is
You are currently paying

7.30 ¢/kWh

7.30 ¢/kWh

* For **tariff 820**, in order for you to save money off of your utility's supply charges, a supplier must offer you a price lower than the utility's price of x.xx cents per kWh for the same usage that appears on this bill. To review available competitive supplier offers, visit the Public Utilities Commission of Ohio's "Energy Choice Ohio" website at www.energychoice.ohio.gov. Customers can obtain a written explanation of the price-to-compare by calling the utility at the number listed below.

DELIVERY

OHIO Utility Co.

www.ohioutilityco.com
1-800-555-5555

Total Delivery

\$25.98

Includes tax & other charges (see pg. 2)

Summary

Amount due at last billing	\$55.18
Payment on [date] - Thank you	55.18
Previous balance due	0.00
Total supply charges	34.16
Total delivery charges	25.98
Total amount due on Aug 26	\$60.14

Please tear on dotted line

Return bottom portion with your payment

OHIO Utility Co.

www.ohioutilityco.com
1-800-555-5555

Account Number
100-000-000-0-0
CY 21

\$60.14	\$ _____
Total Amount Due	Amount Enclosed
Due Aug 29, Pay \$61.38 After This Date	

Send inquiries to:
PO BOX 12345
ANYTOWN, OH 99999-9999
R-10-9999999999

Service Address:
OHIO GS1 BILL READY
123 ANY STREET
ANY CITY, OH 99999-9999

The Neighbor to Neighbor program helps disadvantaged customers pay their electric bill. I want to help. My payment reflects my gift of \$ _____

Make check payable and send to:
OHIO UTILITY CO
PO BOX 12345
ANYTOWN OH 99999-9999

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Summary: Motion Motion to Intervene and Initial Comments by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Serio, Joseph P.