

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of)	
Gail Lykins,)	
)	
Complainant,)	
)	Case No. 15-298-GE-ESS
v.)	
)	
Duke Energy Ohio, Inc.)	
)	
Respondent.)	

**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 examining whether the utility service of two residential consumers who died from hypothermia² was unlawfully disconnected by Duke Energy Ohio, Inc. ("Duke"). OCC is filing on behalf of Duke's residential utility customers. The reasons the Public Utilities Commission of Ohio ("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 See Complaint (February 11, 2015) at 2.

Respectfully submitted,

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OHIO CONSUMERS' COUNSEL

/s/Terry L. Etter

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of)	
Gail Lykins,)	
)	
Complainant,)	
)	Case No. 15-298-GE-CSS
v.)	
)	
Duke Energy Ohio, Inc.)	
)	
Respondent.)	

MEMORANDUM IN SUPPORT

This case involves allegations that Duke unlawfully disconnected utility service to a single-family home in Cincinnati during November 2011. Because there was no utility service, the home was without heat during cold weather. Two residential consumers in the home died from hypothermia. The PUCO has adopted special rules limiting disconnection of residential service between November 1 and April 15.³ These rules are a vital consumer protection.⁴ OCC has authority under law to represent the interests of Duke's residential utility customers, pursuant to R.C. Chapter 4911.

³ Ohio Adm. Code 4901:1-1-18-06(B).

⁴ In its Answer, filed on February 27, 2015, Duke stated that it "denies that the 10-day notice requirement under O.A.C. 4901:1-18-06(B) applied to the subject disconnection of electric service at the Property because the electric service was disconnected only for the non-payment of utility services incurred during August, September and October 2011, and relevant late fees, and *not* for the nonpayment of charges incurred during the winter heating season." Answer at 4, ¶8 (emphasis in original). Regarding this Duke interpretation of PUCO regulations, OCC notes that it is not a prerequisite for the consumer protection required by Ohio Adm. Code 4901:1-18-06(B) or the 2011 winter reconnection order (Case No. 11-4913-GE-UNC, Finding and Order (September 14, 2011)) for the charges at issue to be incurred by the consumer during the winter heating season.

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. OCC and the residential consumers it represents may be “adversely affected” by this case, especially where a utility may have violated PUCO rules, PUCO orders, and Ohio law designed to protect customers from the harm associated with disconnecting utility service in the winter. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

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 that of the state’s representative of residential consumers in this case. The case involves a possible violation of essential consumer protections in the PUCO’s winter disconnection rules and in the PUCO’s emergency orders regarding the special reconnect procedures for the winter heating season. 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, OCC’s legal position includes, among other things, that Ohioans should be protected against unlawful disconnections, especially during the winter heating season. And OCC’s legal position includes, among other things, that public utilities should follow Ohio law and the PUCO’s rules and orders. 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 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 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 advocate for residential utility customers, OCC has a very real and substantial interest in this case where a utility may have unlawfully disconnected residential customers during the winter heating season.

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.⁵

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.

Respectfully submitted,

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/s/Terry L. Etter

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⁵ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

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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 14th day of May 2015.

/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

5/14/2015 4:56:43 PM

in

Case No(s). 15-0298-GE-CSS

Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Etter, Terry L Mr.