

In the Matter of the Annual Energy)
Efficiency Portfolio Status Report of Duke) Case No. 16-0513-EL-EEC
Energy Ohio, Inc.)

**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 the PUCO will be reviewing the utility's energy efficiency and peak demand reduction programs that are paid for by customers, including 400,000 residential customers. OCC is intervening on behalf of Duke Energy Ohio, Inc.'s ("Duke") residential customers.¹ The reasons that the Public Utilities Commission of Ohio (the "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.

Respectfully submitted,

BRUCE J. WESTON (#0016973)
OHIO CONSUMERS' COUNSEL

/s/ Christopher Healey
Christopher Healey, Counsel of Record
(0086027)
Kyle L. Kern (0084199)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone (Healey Direct): 614-466-9571
Telephone (Kern Direct): 614-466-9585
Christopher.healey@occ.ohio.gov
(will accept service via email)
Kyle.kern@occ.ohio.gov
(will accept service via email)

In the Matter of the Annual Energy)
Efficiency Portfolio Status Report of Duke) Case No. 16-0513-EL-EEC
Energy Ohio, Inc.)

In this case, the PUCO will review the reasonableness and lawfulness of Duke's energy efficiency and peak demand reduction portfolio programs. These programs are paid for by all customers, including residential customers. OCC has authority under law to represent the interests of all the 400,000 residential 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 in which Duke’s energy efficiency and peak demand reduction programs are being assessed. The programs presented in the status report include Duke’s recent energy efficiency efforts for 2015, which involve significant residential customer participation. 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 representing the residential customers of Duke in this case where their energy efficiency programs offered to and paid for by residential customers are being addressed. This interest is different from that of any other party and especially different from 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 energy efficiency and peak demand reduction programs for residential customers should be appropriately accounted for, cost-effective, and properly maximize opportunities to achieve significant customer savings. 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 energy efficiency and peak demand reduction programs 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 involving Duke’s energy efficiency and peak demand reduction programs and their effects on residential customers’ ability to control energy costs.

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 “[t]he 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.²

² See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

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,

BRUCE J. WESTON (#0016973)
OHIO CONSUMERS' COUNSEL

/s/ Christopher Healey

Christopher Healey, Counsel of Record
(0086027)

Kyle L. Kern (0084199)

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone (Healey Direct): 614-466-9571

Telephone (Kern Direct): 614-466-9585

Christopher.healey@occ.ohio.gov

(will accept service via email)

Kyle.kern@occ.ohio.gov

(will accept service via email)

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 8th day of April, 2016.

/s/ Christopher Healey
Christopher Healey
Assistant Consumers' Counsel

SERVICE LIST

William Wright
Ohio Attorney General's Office
Public Utilities Commission of Ohio
180 E. Broad St., 6th Fl.
Columbus, Ohio 43215
William.wright@puc.state.oh.us

Amy B. Spiller
Elizabeth H. Watts
Duke Energy Ohio Inc.
139 East Fourth Street
1303-Main
Cincinnati, Ohio 45202
Amy.Spiller@duke-energy.com
Elizabeth.Watts@duke-energy.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/8/2016 3:50:28 PM

in

Case No(s). 16-0513-EL-EEC

Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.