

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Modify Rider PSR	)	Case No. 17-872-EL-RDR
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Amend Rider PSR	)	Case No. 17-873-EL-ATA
In the matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)	Case No. 17-874-EL-AAM

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**OHIO ENVIRONMENTAL COUNCIL AND ENVIRONMENTAL DEFENSE FUND’S  
MOTION TO INTERVENE**

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The Application by Duke Energy Ohio, Inc., (“Duke Energy Ohio” or “Company”) regarding its proposed amendments to the Company’s existing Price Stabilization Rider raises financial and environmental concerns to Ohio’s residents and the state’s clean energy future. Therefore, the Ohio Environmental Council (“OEC”) and the Environmental Defense Fund (“EDF”) respectfully moves for leave to intervene in the above-captioned proceeding. Pursuant to OAC §4903.221, the the Public Utilities Commission of Ohio (“the Commission”) should grant OEC and EDF’s Motion because the organizations and their members have a substantial interest in the outcome of this case, they represent interests separate from those of the already existing parties, and their contribution will lead to a just and expeditious resolution of the issues involved in the proceeding without causing undue delay.

The OEC and EDF are not-for-profit organizations devoted to ensuring Ohioans and the United States have access to clean water, clean air, and a healthy environment. OEC and EDF

have provided a more detailed explanation of its standing in this case, its reasons for intervention, and arguments why the Commission should grant their Motion in the accompanying Memorandum in Support.

Respectfully Submitted,

/s/Trent Dougherty  
Miranda Leppla (0086351)  
**Counsel of Record**  
Trent Dougherty (0079817)  
1145 Chesapeake Avenue, Suite I  
Columbus, OH 43212  
614-487-7506  
[mleppla@theoec.org](mailto:mleppla@theoec.org)  
[tdougherty@theOEC.org](mailto:tdougherty@theOEC.org)

*Counsel for the Ohio Environmental  
Council and Environmental Defense Fund*

October 5, 2017

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke	)	
Energy Ohio, Inc., for Approval to	)	Case No. 17-872-EL-RDR
Modify Rider PSR	)	
In the Matter of the Application of Duke	)	
Energy Ohio, Inc., for Approval to	)	Case No. 17-873-EL-ATA
Amend Rider PSR	)	
In the matter of the Application of Duke	)	
Energy Ohio, Inc., for Approval to	)	Case No. 17-874-EL-AAM
Change Accounting Methods.	)	

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**MEMORANDUM IN SUPPORT**

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**I. Ohio law permits intervention of parties in cases before the Public Utilities Commission of Ohio.**

The Ohio Revised Code permits parties “who may be adversely affected by a public utilities commission proceeding [to] intervene in such proceeding.” R.C. §4903.221. The Commission has four factors for consideration of such motions for intervention:

- (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 proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.” R.C. §4903.221(B).

This statute is further amplified by OAC §4901-1-11, which states that the commission may permit intervention based on the following five factors:

- (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 proceedings.
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.
- (5) The extent to which the person’s interest is represented by existing parties.” OAC §4901-1-11(B).

OEC and EDF satisfy this five-factor balancing test based on the argument discussed in detail in the remaining portions of this Memorandum.

**II. The Commission should grant the Ohio Environmental Council and Environmental Defense Fund’s Motion to Intervene in the Commission’s review of Duke’s Application regarding its proposed amendments to the company’s existing Price Stabilization Rider.**

Based on the aforementioned law, the OEC respectfully requests the Commission to grant the OEC’s Motion to Intervene. As the following discussion will show, the OEC’s interest in this case is fundamental to its mission to protect Ohio’s environment and ensure clean energy for all of the State’s citizens, and that interest will fundamentally assist the Commission in its decision regarding Duke’s proposal for its Price Stabilization Rider. And the Ohio Supreme Court has emphasized that “intervention ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the [Commission].” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940, ¶ 20.

**a. The Ohio Environmental Council has a real and substantial interest in the Duke's Application regarding its Price Stabilization Rider.**

The OEC is a not-for-profit organization incorporated in Ohio under Section 501(c)(3) of the U.S. Internal Revenue Code, with approximately 3,000 individual members. Its main office is located at 1145 Chesapeake Avenue, Suite I, Columbus, OH 43212. The OEC's principal purpose is to protect the natural resources and environment of the citizens of the State of Ohio.

EDF is a not-for-profit organization headquartered in New York at 257 Park Avenue South New York, NY 10010. Its purpose is to link science, economics, and law to create innovative, equitable and cost-effective solutions to society's most urgent environmental problems. EDF has over 300,000 members nationwide with 9,590 members located in Ohio.

OEC and EDF can best protect Ohio's environment and natural resources by pursuing a clean energy future for the state, which means they must oppose Duke's proposed cost reduction plan in connection with OVEC. If the Commission approves Duke's proposed Price Stabilization Rider, then Ohio will continue to support coal power while simultaneously passing the costs of such power off to consumers who do not wish to subsidize such sources of electricity. Furthermore, the OEC and EDF have a long history of involvement in similar cases before the Commission. Because the Price Stabilization Rider represents an unnecessary continuation of support for OVEC, the OEC and its members, as well as EDF, should have seats at the table to represent their interests in placing Ohio on a path toward a clean energy future. Duke's interest in OVEC constitutes approximately 200 MWs of generating capacity, and OVEC as a whole represents 2400 MW of generating capacity. See *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Modify Rider PSR*, Case No. 17-872-EL-RDR, Application of Duke Energy Ohio, Inc., at 4, 9 (March 31, 2017). OEC and EDF believes Ohio should invest in a

clean energy replacement for that sizeable amount generating capacity, rather than continue to subsidize a set of coal plants that pollute our valuable atmosphere. Thus, OEC and EDF have a real and substantial interest in the issues, and the outcome, of the Commission's consideration of Duke's Application. Consequently, the OEC and EDF satisfy the first prong of the the OAC's five prong balancing test for permissive intervention before the Commission.

**b. The Ohio Environmental Council and the Environmental Defense Fund advance the legal position that based on the Commission's consideration of the relevant factors, it should deny Duke's Application to modify its Price Stabilization Rider.**

Although EDF and OEC do not outline detailed legal arguments in this section, OEC and EDF maintain that Duke's Application should be properly scrutinized by interested parties to ensure that it complies with the letter and intent of the state's energy law and stated state energy policy.

**c. The intervention of the Ohio Environmental Council and Environmental Defense Fund will not cause undue delay to the Commission's review of Duke's Application regarding its Price Stabilization Rider.**

OEC and EDF have timely filed this Motion to Intervene with the intention to pursue a fair adjudication of the merits of the case. Both parties have no intention to cause undue delay to the Commission's review of the Application, and both parties' experience in matters before the Commission illustrate their ability to participate without causing undue delay in any type of proceeding. OEC has been consistently involved in the development and enactment of S.B. 221 and the associated rules, including as a party in numerous cases before the Commission, and EDF has litigated such cases in Ohio as well as in other Public Utility Commissions around the United States. Thus, intervention will not unduly prolong or delay these proceedings, but will add value to the development of this case.

Accordingly, OEC and EDF's intervention into the Commission's review of Duke's Application regarding its Price Stabilization Rider will not cause undue delay.

**d. The Ohio Environmental Council and Environmental Defense Fund can contribute to a just and expeditious resolution of the issues involved in the proceeding.**

Both OEC and EDF can contribute to a just and expeditious resolution of the issues involved in the proceeding, due to both parties' expertise in presenting relevant factors for the Commission's review of adjudicatory matters. OEC participated in previous proceedings on Duke's Price Stabilization Rider, and just as the Commission used the OEC's perspective then it can use its perspective in the present case. See *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 14-841-EL-SSO. In addition, EDF can provide a national perspective on Ohio's energy future, providing the Commission with valuable information it may not otherwise hear in its adjudicatory procedure. Accordingly, both parties' perspectives will assist in the just and expeditious resolution of the issues and will not detract or confuse that process.

**e. The Ohio Environmental Council and Environmental Defense Fund have different interests than those of the existing parties, and they can represent those interests more effectively than the existing parties.**

OEC and EDF intervene in these proceedings with a particular focus on the clean energy needs of Ohioans, and a desire to ensure Ohioans do not pay for coal facilities that they do not wish to subsidize. OEC and EDF represent different interests, and different constituents, than those already existing parties, and thus the interests of both the OEC and EDF are vital to the Commission's adjudication of this proceeding.

### III. Conclusion

The Commission should grant OEC and EDF's Motion to Intervene in the Commission's review of Duke Energy Ohio's Application for modification of its Price Stabilization Rider with regard to its interest in the OVEC generating facilities. OEC and EDF have a real and substantial interest in the Rider and the OVEC generating facilities effect on Ohio's clean energy future. OEC and EDF have an important legal perspective in this proceeding, and their intervention will not cause undue delay in the Commission's review. Both parties can contribute to a just and expeditious resolution of the issues involved, and they can represent their interests more effectively than already existing parties. And the Ohio Supreme Court has emphasized the liberal nature of the legal standard at play for intervention into Commission proceedings. See *Ohio Consumer's Council*, at ¶ 20. Therefore, for the reasons stated in this Memorandum to Support, OEC and EDF respectfully requests that the Commission grant its Motion to Intervene in Case No. 17-872-EL-RDR, Case No. 17-873-EL-ATA, and Case No. 17-874-EL-AAM.

Respectfully Submitted,

/s/Trent Dougherty  
Miranda Leppla (0086351)  
**Counsel of Record**  
Trent Dougherty (0079817)  
1145 Chesapeake Avenue, Suite I  
Columbus, OH 43212  
614-487-7506  
[mleppla@theoec.org](mailto:mleppla@theoec.org)  
[tdougherty@theOEC.org](mailto:tdougherty@theOEC.org)

*Counsel for the Ohio Environmental  
Council and Environmental Defense Fund*



## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the parties by electronic mail this 5th day of October, 2017.

/s/ Trent Dougherty  
Trent Dougherty

[amy.spiller@duke-energy.com](mailto:amy.spiller@duke-energy.com)  
[jeanne.kingery@duke-energy.com](mailto:jeanne.kingery@duke-energy.com)  
[elizabeth.watts@duke-energy.com](mailto:elizabeth.watts@duke-energy.com)  
[rocco.d'ascenzo@duke-energy.com](mailto:rocco.d'ascenzo@duke-energy.com)  
**Counsel for Duke Energy Ohio, Inc.**

[william.wright@ohioattorneygeneral.gov](mailto:william.wright@ohioattorneygeneral.gov)  
[steven.beeler@ohioattorneygeneral.gov](mailto:steven.beeler@ohioattorneygeneral.gov)  
**Counsel for the Staff of the Public  
Utilities Commission of Ohio**

[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)  
[mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com)  
**Counsel for Industrial Energy Users-Ohio**

[dborchers@bricker.com](mailto:dborchers@bricker.com)  
[dparram@bricker.com](mailto:dparram@bricker.com)  
[Rick.sites@ohiohospitals.org](mailto:Rick.sites@ohiohospitals.org)  
**Counsel for The Ohio Hospital  
Association**

[william.michael@occ.ohio.gov](mailto:william.michael@occ.ohio.gov)  
[kevin.moore@occ.ohio.gov](mailto:kevin.moore@occ.ohio.gov)  
**Counsel for Ohio Consumers' Counsel**

[paul@carpenterlipps.com](mailto:paul@carpenterlipps.com)  
**Counsel for The Kroger Co.**

[joliker@igsenergy.com](mailto:joliker@igsenergy.com)  
**Counsel for IGS Energy**

[kboehm@BKLawfirm.com](mailto:kboehm@BKLawfirm.com)  
**Counsel for the City of Cincinnati  
Co-Counsel for City Solicitor of the City  
of Cincinnati**

[rsahli@columbus.rr.com](mailto:rsahli@columbus.rr.com)  
**Counsel for the Sierra Club**

[cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org)  
**Counsel for Ohio Partners for  
Affordable Energy**

[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)  
[jkylercohn@BKLawfirm.com](mailto:jkylercohn@BKLawfirm.com)  
**Counsel for The Ohio Energy Group**

[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)  
[perko@carpenterlipps.com](mailto:perko@carpenterlipps.com)  
**Counsel for the Ohio Manufacturers'  
Association Energy Group**

[whitt@whitt-sturtevant.com](mailto:whitt@whitt-sturtevant.com)  
[campbell@whitt-sturtevant.com](mailto:campbell@whitt-sturtevant.com)  
[glover@whitt-sturtevant.com](mailto:glover@whitt-sturtevant.com)  
**Counsel for Retail Energy Supply  
Association**

[nicholas.walstra@puc.state.oh.us](mailto:nicholas.walstra@puc.state.oh.us)  
**Attorney Examiner**

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Summary: Motion Ohio Environmental Council and Environmental Defense Fund's Motion to Intervene and Memo in Support electronically filed by Mr. Trent A Dougherty on behalf of Ohio Environmental Council and Environmental Defense Fund