

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for Approval of its)	
Energy Efficiency and Peak Demand)	Case No. 16-576-EL-POR
Reduction Portfolio of Programs.)	

**REPLY TO
OHIO CONSUMERS' COUNSEL MEMORANDUM CONTRA TO
GENERAL ELECTRIC AVIATION'S MOTION TO INTERVENE**

General Electric Aviation ("GEA") respectfully submits this reply to the Public Utilities Commission of Ohio ("PUCO" or "Commission") in response to the Ohio Consumers' Counsel's Memorandum Contra to GEA's motion to intervene. As presented in the original motion, GEA submitted the motion to intervene out of time and its comments in order to provide updated information that is important for the Commission to consider prior to ruling on the pending applications for rehearing. In summary, the Ohio Consumers' Counsel's ("OCC") comments do not address the substance of GEA's motion or comments and should be disregarded.

As stated in the original motion, GEA paid and continues to pay the Duke Energy Ohio (Duke) energy efficiency rider in order to participate in Duke's energy efficiency and peak demand reduction portfolio of programs. GEA therefore reasonably expects to be able to participate in Duke's programs. GEA was denied the ability to participate, due to the cap placed on Duke's portfolio of programs by the Commission. The case is still pending. Therefore, GEA respectfully urges the Commission to reject OCC's assertions and grant GEA's motion to intervene, and accept the information provided by General Electric Aviation in its Comments.

I. Introduction

On May 15, 2018, General Electric Aviation submitted its motion to intervene and comments for the Commission's consideration. GEA explained that it discovered that Duke's announcement in February – of this year. OCC filed a memorandum contra on May 30, 2018. None of the other several parties filed a memo contra. OCC is a residential advocate, so it is unclear why OCC would object to GEA's intervention, which seeks in part to introduce a modification that would allow additional industrial customer participation in Duke's programs. OCC's comments appear to focus on the extended procedural schedule of the past, without acknowledging: 1. That the case is still pending; 2. The cap is still under consideration via Duke's application for rehearing, and; 3. New information became available in 2018 – which was a direct result of the Commission's September 27, 2017 ruling. Thus, GEA's request to intervene and provide new information of an issue that is still under consideration by the Commission is reasonable

II. Reply

Commission rules allow the PUCO to obtain new evidence after the record has been closed.¹ GEA, through its motion to intervene and comments, is providing the Commission with new information that was not, to GEA's knowledge, available until sometime in 2018. Thus, GEA is reasonably providing the Commission with additional, relevant information while it considers these Applications for Rehearing generally, and the issue of the cap specifically.

¹ Ohio Administrative Code Rule 4901-1-34 states in part that: (A) "The commission, the legal director, the deputy legal director, or an attorney examiner may, upon their own motion or upon motion of any person for good cause shown, reopen a proceeding at any time prior to the issuance of a final order." On November 21, 2017, the Commission granted applications for rehearing for, *inter alia*, Duke and Environmental Intervenors. These Applications for Rehearing focus on the legality and reasonableness of the imposed cap and its potential effects on Duke's customers. Thus, the cap is still a pending issue in this case, no final order on this issue has been made, and the Commission should be allowed to consider the effects of the initial order on Duke's customers paying the rider.

The Ohio Supreme Court also encourages the PUCO to foster broad participation in its proceedings. *In Ohio Consumers' Counsel v. Public Utilities Commission of Ohio* (2006), the Ohio Supreme Court held that intervention in Commission proceedings “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].”² GEA certainly has a real and substantial interest in this proceeding, as presented in its motion to intervene. GEA merely seeks to provide relevant information - that has only recently become available - on the impact of arbitrarily limiting successful programs at a time when customers seek to employ them in a way that aligns with the statutory policy for creating them in the first place.

OCC's objects to GEA's intervention using a made-up standard of “beyond late.” OCC's assertion regarding timing is not only contrary to Ohio Supreme Court precedent above, but also to PUCO precedent. PUCO cases may take several months or years to complete. OCC's use of the calendar and its counsel's ability to count may be impressive, but it is not persuasive. The Commission has consistently maintained a policy to “encourage the broadest possible participation” in its proceedings, even under extenuating circumstances.³ It is unclear why any party that regularly participates in PUCO proceedings would assert that the Commission “routinely denies” late interventions. OCC's anecdotal case examples are presented without explanation, are not similar to or representative of the circumstances of this case, and should therefore be disregarded. The Commission, as it always does, should make the determination for this intervention on the specifics of the case circumstances, rather than based on an unsupported, ignorant assertion.

² *Ohio Consumers' Counsel v. Pub. Util Comm'n of Ohio* (2006), 111 Ohio St. 3d 384, 388, 2006 Ohio 5853, 856 N.E.2d 940.

OCC spends a lot of time attempting to define the pleading in a way that allows OCC to declare it a “violation” and a “mockery” of the law under which OCC has wrongly decided this application fits. OCC’s final, unsupported assertion that the Commission has “no jurisdiction” to consider these comments or the interests of GEA is ridiculous. The motion and comments speak for themselves and the Commission may properly decide the appropriate weight and consideration to give the pleading and its content. In addition, if the Commission would like additional information on how the cap is affecting GEA or other Duke customers, it may re-open the proceeding and obtain additional evidence as allowed via the process described in the Ohio Administrative Code.

III. Conclusion

The Commission is in the midst of re-evaluating its initial decision about the imposed cap on Duke’s energy efficiency programs, based on granted applications for rehearing. GEA is simply requesting that the Commission consider, as a part of its re-evaluation, subsequent and relevant information available only *after* its original order. OCC’s recitation of the rules provides no basis for denial. The rules allow the Commission to seek and obtain additional evidence relevant to its decision-making process, no matter how long a proceeding may last.

The rules allow for a party’s intervention out-of-time for “extraordinary circumstances.” It is reasonable to assert that paying for an energy efficiency rider for years, and then being denied the opportunity to participate in commission-approved programs funded by that rider constitute “extraordinary circumstances.” GEA chose to intervene in part because no other party, trade association or other entity is currently representing its interests in this case. Ohio Supreme Court and Commission precedent support broad intervention in PUCO proceedings. GEA is not

³ See e.g. In the Matter of the Application of The Dayton Power and Light Company, 2009 WL 322883 at 1, Ohio PUC February 5, 2009 (Commission granted motion to intervene in light of policy to encourage participation,

delaying the proceeding; it is merely supplementing it. OCC's memorandum contra is unpersuasive and should be disregarded. GEA has provided sufficient support upon which it based its comments. It now respectfully requests the Commission approve its intervention and consider its comments prior to ruling on the pending Applications for Rehearing.

Respectfully submitted,

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despite party's failure to file within the deadline).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply was served via electronic mail, this 6th day of June, 2018, upon the following parties, or their counsel of record to this action:

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Summary: Reply to Ohio Consumers' Counsel's Memorandum Contra to GEA's Motion to Intervene electronically filed by Mr. Christopher J. Allwein on behalf of General Electric Aviation