

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the)	
Significantly Excessive Earnings Test)	
under Section 4928.143(F), Ohio Revised)	Case No. 19-0460-EL-UNC
Code, and Rule 4901:1-35-03(C)(10),)	
Ohio Administrative Code for Duke)	
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 Public Utilities Commission of Ohio ("PUCO") will determine whether Duke Energy Ohio, Inc. ("Duke") had significantly excessive earnings in 2018 from its electric security plan and whether customers are therefore entitled to a refund.¹ OCC is filing on behalf of the approximately 642,000 residential utility customers of Duke. The reasons 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,

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Ohio Consumers' Counsel

/s/ Ambrosia E. Logsdon

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The law (R.C. 4928.143(F)) requires a utility to provide a refund to customers if the utility's profits from its electric security plan in any one year were too great ("significantly excessive" when compared to comparable companies). *See* R.C. 4928.143(F). Duke's application states that it had earnings of 9.58%, but its certified return on common equity for 2018, based on public filings (made to the Securities and Exchange Commission, Form 10-K, and the Federal Energy Regulatory Commission, Form 1), was 5.30%.² The earnings authorized for similar utilities on a nationwide basis in 2018 was 9.59%.³ Although both the 5.30% and the 9.58% stated in its application are within the 9.84% earnings authorized by the PUCO in Duke's most recent base distribution rate case, the gap in the numbers is high and warrants further investigation to determine if Duke's residential utility customers are due a refund.⁴

⁴ PUCO Case No. 14-841-EL-SSO et al., Opinion and Order (April 2, 2015) at 72.

OCC has authority under law to represent the interests of all of the approximately 642,000 residential utility customers of Duke under 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 where the PUCO will determine whether Duke had significantly excessive earnings in 2018 and, therefore, that customers get a refund. 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 proceedings;
- (4) Whether the prospective intervenor will significantly contribute to 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 involving evaluating Duke’s 2018 earnings and the potential for customer refunds. This interest is different than that of any other party and especially different than that of Duke, whose advocacy includes the financial interest of stockholders.

Second, OCC’s advocacy for residential customers will include, among other things, advancing the position that Duke’s customers should receive a refund in this case

if 2018 earnings were significantly excessive. OCC's position is therefore directly related to the merits of this case, which is pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality 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 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 customers may deserve a refund as a result of Duke's earnings in 2018.

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), which OCC already has addressed and which 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 (“Court”) 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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⁵ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

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 13th day of June 2019.

/s/ Ambrosia E. Logsdon
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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/13/2019 12:16:49 PM

in

Case No(s). 19-0460-EL-UNC

Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Patricia J Mallarnee on behalf of Office of the Ohio Consumers' Counsel and Logsdon, Ambrosia