

In the Matter of the Review of Duke Energy )  
Ohio, Inc.'s Distribution Capital Investment ) Case No. 19-1287-EL-RDR  
Rider. )

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene where the Public Utilities Commission of Ohio ("PUCO") will conduct the annual audit of the amount Duke Energy Ohio, Inc. ("Duke" or the "Utility") charges customers under Duke's distribution capital investment rider. The distribution capital investment rider ("Rider DCI") is a charge to customers so that Duke can spend that money on expanding its electric distribution infrastructure.<sup>1</sup> The PUCO has required that Duke's Rider DCI be audited annually for accounting accuracy, prudence, and compliance with PUCO orders. The audit of Rider DCI for year 2018 is particularly important because in July of 2018 the PUCO authorized Duke to continue charging Rider DCI to customers after Duke's electric security plan ended (against OCC's objections) at a newly established \$5 million per month cap.<sup>2</sup> Thereafter, on December 19, 2019, the PUCO approved a settlement that, among other things, established a new electric security plan and allowed Duke to continue charging Rider DCI to customers.<sup>3</sup> OCC is filing on behalf of the nearly 630,000

<sup>3</sup> *In re Duke Energy Ohio, Inc.*, 17-1263-EL-SSO, et al., Opinion and Order (Dec. 19, 2018).

residential electric utility customers of Duke. The reasons the PUCO should grant OCC's motion are further set forth in the attached memorandum in support.

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

/s/ Bryce A. McKenney  
Bryce A. McKenney (0088203)  
Counsel of Record  
Ambrosia Logsdon (0096598)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
65 East State Street, 7<sup>th</sup> Floor  
Columbus, Ohio 43215-4213  
Telephone [McKenney]: (614) 466-9585  
Telephone [Logsdon]: (614) 466-1292  
[bryce.mckenney@occ.ohio.gov](mailto:bryce.mckenney@occ.ohio.gov)  
[ambrosia.logsdon@occ.ohio.gov](mailto:ambrosia.logsdon@occ.ohio.gov)  
(will accept service via email)

In the Matter of the Review of Duke Energy )  
Ohio, Inc.'s Distribution Capital Investment ) Case No. 19-1287-EL-RDR  
Rider. )

Duke charges customers under Rider DCI to expand its electric distribution infrastructure. Rider DCI is subject to annual audits for accounting accuracy, prudence, and compliance with PUCO orders. The audit of Rider DCI for year 2018 is particularly important because in July of 2018 the PUCO authorized Duke to continue charging Rider DCI to customers after its electric security plan ended (against OCC's objections) at a newly established \$5 million per month cap.<sup>4</sup> Thereafter, on December 19, 2019, the PUCO approved a settlement that, among other things, established a new electric security plan and allowed Duke to continue charging Rider DCI to customers.<sup>5</sup> OCC has authority under law to represent the interests of all of Duke's nearly 630,000 residential electric utility customers 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 consumers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding regarding the charges consumers pay for Duke’s capital spending on electric distribution system infrastructure expansion. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

<sup>5</sup> *In re Duke Energy Ohio, Inc.*, 17-1263-EL-SSO, et al., Opinion and Order (Dec. 19, 2018).

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; and
- (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 capital spending charges to consumers. This interest is different from that of any other party and especially different than that of Duke, whose advocacy includes the financial interest of stockholders.

Second, OCC's legal position will include, without limitation, advancing the position that utility rates charged to consumers should be just and reasonable.<sup>6</sup> OCC will work to determine whether the proposed charges for Duke's capital spending on infrastructure expansion is just and reasonable.

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

---

<sup>6</sup> See R.C. 4905.22 ("All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission . . .").

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 consumers, OCC has a very real and substantial interest in this case where the PUCO will review the charges that customers pay for Duke’s capital spending on electric distribution system infrastructure expansion.

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 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 consumers. 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.<sup>7</sup>

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 consumers, the PUCO should grant OCC's motion to intervene.

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

/s/ Bryce A. McKenney  
Bryce A. McKenney (0088203)  
Counsel of Record  
Ambrosia Logsdon (0096598)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
65 East State Street, 7<sup>th</sup> Floor  
Columbus, Ohio 43215-4213  
Telephone [McKenney]: (614) 466-9585  
Telephone [Logsdon]: (614) 466-1292  
[bryce.mckenney@occ.ohio.gov](mailto:bryce.mckenney@occ.ohio.gov)  
[ambrosia.logsdon@occ.ohio.gov](mailto:ambrosia.logsdon@occ.ohio.gov)  
(will accept service via email)

---

<sup>7</sup> See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 13-20 (2006).

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below via electric transmission this 25th day of July 2019.

/s/ Bryce A. McKenney

Bryce A. McKenney  
Counsel of Record

## **SERVICE LIST**

[John.jones@ohioattorneygeneral.gov](mailto:John.jones@ohioattorneygeneral.gov)

Attorney Examiner:

[Stacie.cathcart@puco.ohio.gov](mailto:Stacie.cathcart@puco.ohio.gov)

[Elizabeth.watts@duke-energy.com](mailto:Elizabeth.watts@duke-energy.com)

[Jeanne.kingery@duke-energy.com](mailto:Jeanne.kingery@duke-energy.com)

[Rocco.dascenzo@duke-energy.com](mailto:Rocco.dascenzo@duke-energy.com)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**7/25/2019 2:45:53 PM**

**in**

**Case No(s). 19-1287-EL-RDR**

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