

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Authority to Adjust) Case No. 19-1750-EL-UNC
its Power Forward Rider.)

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Approval to Change) Case No. 19-1751-GE-AAM
Accounting Methods.)

**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 Duke Energy seeks to charge its customers more than \$111 million for four new grid modernization projects. Duke describes three of the projects as being "inspired by the Public Utilities Commission of Ohio's [] PowerForward Initiative."¹ These projects—and the \$111 million in charges to consumers—are in addition to the \$486 million² that Duke is already charging customers to replace its current smart grid with a new smart grid. Duke is also asking to defer at least \$8.8 million costs³ it has already incurred—reaching back to January 1, 2018—to eventually be charged to customers. OCC is filing on behalf of the 639,000 residential electric customers and 394,000 residential natural gas customers of Duke.⁴ The

¹ Application at 2; Direct Testimony of Amy B. Spiller at 20 (Sept. 24, 2019).

² See Case No. 17-1263-EL-SSO, Testimony of Paul Alvarez at 24 (June 25, 2018).

³ See Testimony of Jay P. Brown at 3-4 (explaining that Duke seeks to defer O&M costs incurred since January 1, 2018 for its Customer Connect Program); Testimony of Retha Hunsicker, Attachment RH-1 (\$3.915 in O&M costs for 2018 and projected \$4.936 for 2019).

⁴ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

reasons the Public Utilities Commission of Ohio (“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/ Christopher Healey

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MEMORANDUM IN SUPPORT

Duke Energy’s grid modernization saga continues. From 2008 to 2018, Duke spent about \$400 million building a smart grid.⁵ When that smart grid didn’t work—and it never did—Duke started building another one, and the PUCO authorized Duke to build its new smart grid at a cost of \$469 million to customers.⁶ Now, purportedly to support the goals of the PUCO’s PowerForward initiative, Duke wants to implement an additional four new grid modernization projects at an additional cost to customers of at least \$111 million.⁷ Duke also claims that it should be allowed to defer more than \$8.8 million already spent since January 1, 2018 on these projects, to eventually be charged to customers.

OCC has authority under law to represent the interests of all the 639,000 residential electric customers and 394,000 residential natural gas customers of Duke under R.C. Chapter 4911.

⁵ Case No. 17-1263-EL-SSO, Direct Testimony of Paul Alvarez at Exhibit PJA-6 (June 25, 2018).

⁶ *Id.* at 13.

⁷ Direct Testimony of Amy B. Spiller at 20 (Sept. 24, 2019).

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 Duke’s residential customers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding where the Utility wants to spend \$111 million more on grid modernization and to charge customers for that amount under its Power Forward rider. 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 \$111 million in charges to customers for four Power Forward grid modernization projects. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC’s advocacy for residential customers will include, among other things, advancing the position that customers have paid more than enough for Duke’s smart grid over the past ten years and should not be burdened further by Duke’s proposed

Power Forward charges. 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 could be required to pay millions for Duke's Power Forward grid modernization proposals.

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.⁸

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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Ohio Consumers’ Counsel

/s/ Christopher Healey

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⁸ 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 5th day of November 2019.

/s/ Christopher Healey
Christopher Healey
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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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.