**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of its 2024 – 2026 Energy Efficiency and Demand Side Management Portfolio of Programs and Cost Recovery Mechanism.In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of Tariff Amendments. | ))))))))) | Case No. 24-45-EL-PORCase No. 24-46-EL-ATA |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene[[1]](#footnote-2) because Duke Energy Ohio, Inc., (“Duke”) seeks approval to charge residential consumers up to $74 million for energy efficiency (“EE”) and distribution side management (“DSM”) programs. Duke seeks reinstatement of its Rider DSM[[2]](#footnote-3) over the next three years, including an estimated $8.25 million in “Joint Benefit Recognition Mechanism[[3]](#footnote-4)” charges (a code name for utility profits on services it did not provide).

OCC represents the interests of Duke’s 640,000 residential utility consumers, who will be charged for Duke’s energy efficiency and distribution management programs. The PUCO should grant OCC’s motion to intervene for the reasons set forth in the attached memorandum in support.

Respectfully submitted,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ William J. Michael*

William J. Michael (0070921)
Counsel of Record
Donald J. Kral (0042091)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers' Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone: [Michael]: (614) 466-1291

Telephone: [Kral]: (614) 466-9571

william.michael@occ.ohio.gov

donald.kral@occ.ohio.gov

(willing to accept service by e-mail)

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## MEMORANDUM IN SUPPORT

Duke Energy Ohio, Inc. (“Duke”) is proposing to charge consumers $74 million for energy efficiency (“EE”) and distribution side management (“DSM”) programs.[[4]](#footnote-5) The recovery mechanism, in the form of a reinstatement of Duke’s previous Rider DSM, is designed to permit Duke to collect $28 million annually from consumers.[[5]](#footnote-6)

OCC has statutory authority, under R.C. Chapter 4911, to represent the interests of the 640,000 residential electric utility consumers of Duke, all of whom would be charged millions of dollars under Duke’s proposed Rider DSM.

R.C. 4903.221 provides the standard for permissive intervention – where the PUCO may exercise discretion in ruling upon a party’s motion to intervene. That law 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 consumers may be “adversely affected” by this case. That is especially so if they were unrepresented in a proceeding to determine millions of dollars of charges they will be charged under Duke’s Rider DSM. Thus, this element of the permissive 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 permissive 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 proceeding; 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 Duke’s residential consumers in this case, where Duke is proposing to charge consumers $74 million through reinstatement of Rider DSM. The proposed rider includes $28 million in annual charges to consumers for EE and DSM programs, including approximately $2.75 million dollars through a “Joint Benefit Recognition Mechanism.”[[6]](#footnote-7) This “mechanism” is an increased version of the shared savings program that the PUCO struck on its own motion[[7]](#footnote-8) from Duke’s 2020 application[[8]](#footnote-9) for the same types of EE and DSM cost recovery. As a representative of the residential consumers who will be affected by the outcome of this case, OCC is an affected party. OCC’s interest is different than that of any other party and especially different than that of Duke whose advocacy includes the financial interest of shareholders.

Second, OCC’s advocacy for residential consumers will include advancing the position that Duke should charge consumers no more than what is just and reasonable under Ohio law, for service that is necessary and prudent under Ohio law. OCC’s position is therefore directly related to the merits of this case that 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. Delay in and of itself does not mean that intervention should be denied. The key consideration is whether the intervention will cause “undue delay.” Here OCC’s intervention will not cause undue delay.

OCC promptly seeks leave to intervene. The case has not progressed beyond the January 22, 2024 filing of Duke’s application and accompanying testimony. The PUCO has not yet set a procedural schedule for review of the application. No hearing has been scheduled such that granting intervention would delay the hearing. The PUCO has not issued any dispositive rulings.

OCC will attempt to avoid duplicative discovery in the proceeding. In addition, OCC will also use its best efforts to comply with the procedural schedule that the PUCO adopts for this proceeding.

Given the amount of money that Duke seeks from its consumers, the PUCO should not consider the normal discovery that parties are entitled to under R.C. 4903.082 as contributing to “undue” delay. Rather the expectation is and should be that when such a significantly large sum of money is sought from utility consumers, the utility must expect some delay while parties explore whether the utility’s request is reasonable.

Further, OCC, with its longstanding expertise and experience in PUCO proceedings and consumer protection advocacy, will duly allow for the efficient processing of the case with consideration of the public interest. OCC regularly intervenes and participates in cases regarding energy efficiency and demand side management.[[9]](#footnote-10) There will be no prejudice to the PUCO Staff, Duke, or any other party in granting OCC intervention.

Fourth, OCC’s intervention will significantly contribute to full development and equitable resolution of the factual issues. OCC’s interest in protecting residential consumers will lead it to fully and carefully examine issues. No other party is solely focused on the needs of residential consumers and thus, there can be no equitable resolution of the factual issues in this case absent OCC’s participation. 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 Ohio Administrative Code Rule 4901-1-11(A), which sets the standard for *intervention as of right*, mirroring Ohio Civil Rule 24(A). Under 4901:1-11(A)(2) a person shall be granted intervention as of right if it has a real and substantial interest in a proceeding and is “so situated that disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person’s interest is adequately represented by existing parties.”

As the statutory advocate for residential utility consumers, OCC has a very real and substantial interest in this case where Duke has proposed to substantially increase charges to consumers through the proposed reinstatement of Rider DSM. Disposition of this proceeding may, as a practical matter, impair or impede OCC’s ability to protect that interest where the interest is not adequately represented by existing parties - the PUCO Staff and the utility. OCC should be granted intervention as of right under O.A.C. 4901-1-11(A)(2).

In addition, OCC meets the permissive intervention criteria of O.A.C. 4901-1-11(B)(1)-(4). These criteria mirror the permissive intervention criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

O.A.C. 4901-1-11(B)(5) states that the PUCO shall consider “[t]he 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 has been uniquely designated as the state representative of the interests of Ohio’s residential utility consumers. OCC’s interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio 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.[[10]](#footnote-11)

OCC meets the criteria set forth in R.C. 4903.221 and O.A.C. 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,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ William J. Michael*

William J. Michael (0070921)
Counsel of Record
Donald J. Kral (0042091)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers' Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone: [Michael]: (614) 466-1291

Telephone: [Kral]: (614) 466-9571

william.michael@occ.ohio.gov

donald.kral@occ.ohio.gov

(willing to accept service by e-mail)

**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 February 2024.

*/s/ William J. Michael*

 William J. Michael

 Assistant Consumers’ Counsel

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

**SERVICE LIST**

|  |  |
| --- | --- |
| Ambrosia.wilson@ohioAGO.govJanet.gregory@ohioAGO.govAttorney Examiners:Matthew.sandor@puco.ohio.govNicholas.walstra@puco.ohio.gov | mkurtz@BKLlawfirm.comkboehm@BKLlawfirm.comjkylercohn@BKLlawfirm.comrocco.dascenzo@duke-energy.comjeanne.kingery@duke-energy.comlarisa.vaysman@duke-energy.comelyse.akhbari@duke-energy.com |

1. *See* R.C. Chapter 4911, R.C. 4903.221, and O.A.C. 4901-1-11. [↑](#footnote-ref-2)
2. *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of its 2024 – 2026 Energy Efficiency and Demand Side Management Portfolio of Programs and Cost Recovery Mechanism*, Case No. 24-45-EL-POR, Duke Energy Ohio, Inc.’s Application for Approval of its 2024 – 2026 Energy Efficiency and Demand Side Management (January 22, 2024) at pp.1-2. [↑](#footnote-ref-3)
3. *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of its 2024 – 2026 Energy Efficiency and Demand Side Management Portfolio of Programs and Cost Recovery Mechanism*, Case No. 24-45-EL-POR, Direct Testimony of Trisha A. Haemmerle on Behalf of Duke Energy Ohio, Inc. (January 22, 2024) at p.8:10-17. [↑](#footnote-ref-4)
4. *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of its 2024 – 2026 Energy Efficiency and Demand Side Management Portfolio of Programs and Cost Recovery Mechanism*, Case No. 24-45-EL-POR, Duke Energy Ohio, Inc.’s Application for Approval of its 2024 – 2026 Energy Efficiency and Demand Side Management (January 22, 2024) at pp.1-2. [↑](#footnote-ref-5)
5. *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of its 2024 – 2026 Energy Efficiency and Demand Side Management Portfolio of Programs and Cost Recovery Mechanism*, Case No. 24-45-EL-POR, Direct Testimony of Trisha A. Haemmerle on Behalf of Duke Energy Ohio, Inc. (January 22, 2024) at p.8:10-17. [↑](#footnote-ref-6)
6. *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of its 2024 – 2026 Energy Efficiency and Demand Side Management Portfolio of Programs and Cost Recovery Mechanism*, Case No. 24-0045-EL-POR, Direct Testimony of Trisha A. Haemmerle on Behalf of Duke Energy Ohio, Inc. (January 22, 2024) at p.8:10-17. [↑](#footnote-ref-7)
7. *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of its 2021 Energy Efficiency and Demand Side Management Portfolio of Programs and Cost Recovery Mechanism*, Entry (June 17, 2020) at ¶ 6. [↑](#footnote-ref-8)
8. *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of its 2021 Energy Efficiency and Demand Side Management Portfolio of Programs and Cost Recovery Mechanism*, Duke Energy Ohio, Inc.’s Application for Approval of Energy Efficiency and Demand Side Management Portfolio of Programs and a Cost Recovery Mechanism (June 8, 2020) at p.7. [↑](#footnote-ref-9)
9. *See, e.g., In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its 2021 Energy Efficiency and Demand Side Management Portfolio of Programs and Cost Recovery Mechanism*, Case No. 20-1444-EL-POR, Motion to Intervene (November 9, 2020); *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans*, Case No. 16-743-EL-POR, Motion to Intervene (April 29, 2016). [↑](#footnote-ref-10)
10. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-11)