**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Abandon Electric Service Lines, Pursuant to Ohio Revised Code  Sections 4905.20 and 4905.21. | )  )  )  )  ) | Case No. 24-61-EL-ABN |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene[[1]](#footnote-3) in this case where Duke Energy Ohio, Inc. (“Duke”) seeks authority to abandon its electric service lines serving residential consumers living at the Emery Apartments (“Emery”) located in Cincinnati, Ohio.[[2]](#footnote-4) Duke proposes to abandon the electric service lines to consumers at Emery because the Landlord[[3]](#footnote-5) plans to install master-metered service and submetering equipment to resell electric service to the Emery residents.[[4]](#footnote-6) If Duke abandons its electric service lines at Emery, *all Duke consumers* could be forced to pay higher rates,[[5]](#footnote-7) which would be unreasonable and contrary to “the welfare of the public” under R.C. 4905.21.

Duke’s abandonment of electric service lines at Emery is not “reasonable” nor is it consistent with “the welfare of the public.”[[6]](#footnote-8) OCC is filing on behalf of Duke’s 770,000 residential electric utility consumers. The 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,

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Ohio Consumers’ Counsel

*/s/ Donald J. Kral*

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## MEMORANDUM IN SUPPORT

Duke has requested authority from the PUCO to abandon electric service lines serving residential utility consumers living at Emery. Duke seeks authority to abandon its electric service lines because the Landlord plans to establish master-metered service to submeter (*i.e.,* resell) electric utility service to the Emery residents.[[7]](#footnote-9)

Duke’s abandonment of electric service lines will unquestionably harm the residents at Emery, who will lose the statutory protections under Ohio law they would otherwise receive from being served by a PUCO-regulated utility (Duke).[[8]](#footnote-10) But the harm is not limited to just Emery residents. Duke’s abandonment of electric service lines at Emery would adversely affect other Duke electric utility consumers, who could be forced to pay higher rates for service due to reduced utility revenues and possible abandoned/stranded utility assets at Emery.[[9]](#footnote-11)

OCC has statutory authority, under R.C. Chapter 4911, to represent the interests of the 770,000 residential electric utility consumers of Duke, all of whom may be adversely affected if the Duke facilities are abandoned.

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 where Duke’s abandonment of electric service lines to Emery could cause increases in electric utility rates due to stranded assets and reduced utility revenues. In addition, the Emery residents themselves will lose important protections under Ohio law that they normally receive when their essential electric utility service is provided through the PUCO-regulated utility, Duke. 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 proceedings; and

(4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC’s interest is representing Duke’s residential consumers where Duke’s abandonment of electric service lines could result in higher rates for essential electric utility service. Duke’s residential utility consumers have already been subjected to recent rate increases by Duke and they don’t deserve more.[[10]](#footnote-12) 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 stockholders.

Second, OCC’s advocacy for residential consumers will include advancing the position that under R.C. 4905.21 Duke’s abandonment would not be “reasonable” nor would it serve “the welfare of the public.” OCC’s advocacy will further include that Duke’s residential utility consumers should not be forced to pay unreasonable rates for essential electric utility service while giving up rights and protections under Ohio law that they receive from Duke, the PUCO-regulated utility. 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. 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 23, 2024 filing of Duke’s application. The PUCO has not issued any rulings or set a procedural schedule for its review of the application. No testimony has been filed in the case. Nor has any hearing been scheduled such that granting OCC’s intervention would delay the hearing.

OCC will attempt to avoid duplicative discovery in the proceeding. The issues OCC will raise fall clearly within the scope of the proceeding – including whether Duke’s abandonment is “reasonable” and in “the welfare of the public” consistent with the statutory mandate of R.C. 4901.21. In addition, OCC will also use its best efforts to comply with any procedural schedule that the PUCO may adopt for this proceeding.

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 has already intervened and filed comments in a recent case before the PUCO regarding another utility’s proposed abandonment of electric service lines in a similar situation regarding submetering.[[11]](#footnote-13) There will be no prejudice to the PUCO Staff and Duke in granting OCC intervention.

Fourth, OCC’s intervention will significantly contribute to the 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 regarding the impact of Duke’s proposed electric service line abandonment as a result of submetering conversions including the potential of cost shifting to all residential utility consumers if abandonment is approved. 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 the 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 proposes to abandon electric service lines to Emery consumers, which could impose additional costs on all consumers and harm “the welfare of the public.”[[12]](#footnote-14) 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 it has been uniquely 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 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.[[13]](#footnote-15)

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

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ Donald J. Kral*

Donald J. Kral (0042091)

Counsel of Record

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(willing to accept service by e-mail)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Intervene was served via electronic transmission upon the parties this 16th day of February 2024.

*/s/ Donald J. Kral*

Donald J. Kral

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**

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1. *See* R.C. Chapter 4911, R.C. 4903.221 and O.A.C. 4901-1-11. [↑](#footnote-ref-3)
2. Duke does not desire to permanently abandon its infrastructure and residential consumers at Emery but says that it is filing this Application to seek the PUCO’s ruling under the Miller Act (R.C. 4905.20 and 4905.21) pursuant to the PUCO’s September 6, 2023 Opinion and Order in Case No. 21-990-EL-CSS (“AEP/NEP Order”). [↑](#footnote-ref-4)
3. Duke has defined these to be 100 Central Parkway, LLC (“100 Central Parkway”) and City Center Properties, LLC (“City Center”). [↑](#footnote-ref-5)
4. Duke Application, at ¶ 8. [↑](#footnote-ref-6)
5. Duke Application at ¶¶ 16-17. [↑](#footnote-ref-7)
6. R.C. 4905.21. [↑](#footnote-ref-8)
7. Duke Application at ¶ 8. [↑](#footnote-ref-9)
8. Duke Application at ¶ 15; *see also, In the Matter of the Complaint of Ohio Power Company vs. Nationwide Energy Partners,* Case No. 21-990-EL-CSS, Opinion and Order (September 6, 2023) at ¶ 224. [↑](#footnote-ref-10)
9. *Id.* at ¶¶ 16-17. [↑](#footnote-ref-11)
10. *See, e.g., In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Approval of Its Electric Security Plan,* Case No. 22-900-EL-SSO, et al., Opinion and Order (August 9, 2023). [↑](#footnote-ref-12)
11. *See, e.g., In the Matter of the Application of Ohio Power Company for Authority to Abandon Electric Service Lines, Pursuant to Ohio Revised Code Sections 4905.20 and 4905.21*, Case No. 22-693, Motion to Intervene and Memorandum in Support by Office of the Ohio Consumers’ Counsel (September 9, 2022), Consumer Protection Comments by Office of the Ohio Consumers’ Counsel (December 4, 2023), and Consumer Protection Reply Comments by Office of the Ohio Consumers’ Counsel (December 19, 2023). [↑](#footnote-ref-13)
12. R.C. 4905.21. [↑](#footnote-ref-14)
13. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-15)