**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Duke Energy Ohio, Inc. to Amend its Tariffs. | )  ) | Case No. 16-862-GA-ATA |

**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 Ohio, Inc. (“Duke” or “Utility”) seeks to modify its reconnection practices to allow it to impose a fixed delivery charge on customers even in months during which customers do not have gas being delivered to them. OCC is filing on behalf of all 400,000 residential gas customers of Duke. [[1]](#footnote-1) 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,

BRUCE J. WESTON (0016973)

OHIO CONSUMERS’ COUNSEL

*/s/ Jodi J. Bair*

Jodi J. Bair, Counsel of Record

(Reg. No. 0062921)

# Office of the Ohio Consumers’ Counsel

# 10 West Broad Street, Suite 1800

# Columbus, Ohio 43215-3485

Telephone: Bair (614) 466-9559

[Jodi.bair@occ.ohio.gov](mailto:Jodi.bair@occ.ohio.gov)

(will accept service via email)

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## MEMORANDUM IN SUPPORT

On May 2, 2016, Duke filed an application to modify its reconnection practices to allow it to charge customers a reconnection fee plus a fixed delivery charge for gas even in months during which customers are disconnected from Duke. For instance, when customers discontinue service, and seek to reconnect service within an eight month period, Duke proposes to charge them an avoided monthly fixed delivery service charge and a reconnection fee. This could result in customers having to pay up to $264.24 for an eight month period during which they received no service from Duke. OCC has authority under law to represent the interests of all the 400,000 residential gas customers of Duke, pursuant to 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 which sets the reconnection practices and determines how much customers will pay to be reconnected to Duke. 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 proceeding; 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 the residential customers of Duke in this case involving a new reconnection practice of charging customers an avoided fixed delivery service charge during months which they could be disconnected from gas service. This could cause customers to pay up to $264.24 to reconnect gas service when under current rates they pay $17.00. The Utility seeks authority to change its reconnection practices (and the reconnection fees) through this 11-page tariff filing when the only legal method to do so is through a R.C. 4909.18 application for a change in rates.

Second, OCC’s advocacy for residential customers will include advancing the position that rates charged to consumers should be just and reasonable under Ohio law, for service that is adequate. 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. 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 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 the ultimate rates paid by residential customers may be significantly impacted by the proposed application to increase reconnection fees.

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) that OCC already has addressed and that 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 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.[[2]](#footnote-2)

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,

BRUCE J. WESTON (0016973)

OHIO CONSUMERS’ COUNSEL

*/s/ Jodi J. Bair*

Jodi J. Bair, Counsel of Record

(Reg. No. 0062921)

Assistant Consumers’ Counsel

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# 10 West Broad Street, Suite 1800

# Columbus, Ohio 43215-3485

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[Jodi.bair@occ.ohio.gov](mailto:Jodi.bair@occ.ohio.gov)

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**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 8th day of June 2016.

*/s/ Jodi J. Bair*

Jodi J. Bair

Assistant Consumers’ Counsel

**SERVICE LIST**

|  |  |
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| William Wright  Chief, Public Utilities Section  Public Utilities Commission of Ohio  30 East Broad Street, 16th Floor  Columbus, Ohio 43215  [william.wright](mailto:William.wright@puc.state.oh.us)@ohioattorneygeneral.gov | Amy B. Spiller  Jeanne W. Kingery  Duke Energy Business Services  139 East Fourth Street  1303-Main  Cincinnati, Ohio 45202  [Amy.spiller@duke-energy.com](mailto:Amy.spiller@duke-energy.com)  [Jeanne.kingery@duke-energy.com](mailto:Jeanne.kingery@duke-energy.com)  *Attorneys for Duke Energy* |
| Colleen L. Mooney  Ohio Partners for Affordable Energy  P.O. Box 12451  Columbus, Ohio 43212-2451  [cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org)  *Attorney for Ohio Partners for Affordable Energy* |  |

1. *See* R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11. [↑](#footnote-ref-1)
2. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-2)