**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 Certain Accounting Authority. | ))) | Case No. 15-0855-EL-AAM |

**MOTION TO INTERVENE**

**AND**

**INITIAL COMMENTS**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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June 10, 2015 (will accept service via email)

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The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene[[1]](#footnote-1) in this case where Duke Energy of Ohio, Inc. (“Duke” or “the Utility”) filed seeking authority to defer expenses that its approximately 615,000 residential utility customers may have to pay.

Duke proposes to defer bill modification expenses of $922,848.[[2]](#footnote-2) The Utility states that it must make bill format changes including provisions for the placement of supplier logos, include price-to-compare messages referencing the “Energy Choice Ohio” website, and refer to charges as “delivery” of “supply” as required by the Public Utilities Commission of Ohio (“PUCO”).[[3]](#footnote-3)

The deferral, as proposed by the Utility, may result in increased costs to all customers. The reasons the PUCO should grant OCC’s Motion are further set forth in the attached Memorandum in Support, which includes initial comments on Duke’s Application.

Respectfully submitted,

 BRUCE J. WESTON

 OHIO CONSUMERS’ COUNSEL

 */s/ Jodi Bair*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE**

**AND**

**INITIAL COMMENTS**

# I. BACKGROUND

On December 12, 2012, the Public Utilities Commission of Ohio (“PUCO”) opened an investigation into the vitality of Ohio’s competitive retail electric service market. The PUCO presented a series of questions to stakeholders about market design and corporate separation and requested comment on their impact on the competitive market.[[4]](#footnote-4) On March 26, 2014, the PUCO adopted, in part, the recommendations in the Staff’s Market Development Work Plan. The PUCO issued its final Entry on Rehearing on May 21, 2014. There it directed electric distribution utilities to file applications, within six months, to revise their consolidated bill formats to conform with the law (R.C. 4928.02, 4928.07, 4928.10), and the PUCO’s findings in the PUCO Investigation Case.[[5]](#footnote-5)

On November 21, 2014, Duke filed an Application requesting approval of proposed changes to its customer bills. It advised that costs to implement the billing

changes would be approximately $1.1 million.[[6]](#footnote-6) Duke also filed an Amended Application on January 20, 2015. OCC filed a motion to intervene, a memorandum in support, and comments regarding Duke’s Application. Duke subsequently filed a memorandum contra OCC’s motion to intervene and reply comments, noting that it withdrew its request for cost recovery or deferral authority when it filed an Amended Application.[[7]](#footnote-7) On February 25, 2015, the PUCO granted OCC’s motion to intervene and approved the Utility’s revised bill format. Duke initiated this case, requesting authority to defer approximately $922,848. These proposed changes may impose more costs on Duke’s approximately 615,000 residential customers -- costs that are more appropriately borne by competitive retail electric suppliers.

The OCC respectfully requests that the PUCO grant it intervention and deny Duke’s request for authority to defer any additional charges. In the alternative, if the PUCO wishes to review the costs associated with Duke’s proposed bill format changes, the PUCO must require that the Utility provide supporting documents that show what makes up the $922,848 in expenses and demonstrate that these billing costs are just and reasonable and not collected under current rates.[[8]](#footnote-8)

The Application that Duke filed requesting nearly a million dollar deferral consists of a little more than three pages with no breakdown or detail of any numbers. If the PUCO chooses to further investigate the costs that Duke wishes to defer, OCC requests that it establish a procedural schedule that allows for parties to intervene, conduct discovery, file testimony, and proceed to an evidentiary hearing.

# ii. MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

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[[9]](#footnote-9) may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding where the Utility has requested approval for a deferral of expenses related to the way it bills customers for electric service. The proposal to defer $922,848 could adversely affect customers who have to decipher and pay electric utility bills. 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 the Utility in this case involving Duke’s request for a deferral that may be charged to Duke’s approximately 615,000 residential customers. This interest is different than that of any other party and particularly different than that of the Utility whose advocacy includes the financial interest of stockholders.

Second, OCC’s advocacy for residential customers will include advancing the position that customers’ should not be at risk for paying a deferral that is not substantiated and shown to be just and reasonable and incremental to what billing expenses are presently included in base rates. 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 Duke has requested a deferral that may be paid by its residential customers.

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.[[10]](#footnote-10)

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.

# iii. INITIAL COMMENTS

## Duke’s request for deferral authority is unsupported and untimely.

Though the Utility requests that the PUCO approve the deferral of approximately $922,848 to make changes to its billing system, Duke has provided no record to substantiate the alleged costs. And Duke’s request is untimely.

The pleading itself consists of only three pages. There are no workpapers, spreadsheets, testimony, or descriptions of the costs that make up the $922,848. Duke failed to demonstrate that the costs it alleges will occur and are just and reasonable as required by R.C. 4909.15. Duke’s electric base rates were decided by the PUCO in 2013.[[11]](#footnote-11) Duke must demonstrate how the bill changes required by the PUCO cause its operating and maintenance expenses to increase beyond those expenses that are already paid for in customers’ base rates.

The Utility provides no legal basis upon which the PUCO can allow these deferrals. In the PUCO’s 2012 case investigating Ohio’s retail electric service market, the PUCO determined that Electric Distribution Utilities (“EDU”) could file applications for authority to defer expenses related to the bill format changes. However, the PUCO determined that it would “then evaluate the applications for deferral authority to determine whether the deferred costs are reasonable, appropriately incurred, clearly and directly related to the circumstances for which they were authorized, and in excess of expense amounts already included in rates at the time of approval.”[[12]](#footnote-12) The PUCO also asserted that the cost recovery for bill format changes were most appropriately addressed by EDUs in distribution rate cases.

The Dayton Power and Light Company (“DP&L”) recently made the same billing expense deferral request and filed no cost support. The PUCO stated that DP&L failed to provide support for how it arrives at its estimate and the Utility should file a supplemental application that supports the cost estimate required to make the bill format changes.[[13]](#footnote-13) The PUCO must do the same in the present case and require Duke to provide support showing the costs that make up the $922,848. It must also demonstrate that these costs are incremental to what billing expenses are already included in base rates.

All EDUs are under the same obligation to make the necessary bill format changes. The PUCO’s Order required electric companies to make bill format changes, stating that “the EDUs may file applications for authority to defer expenses related to the bill format changes *when* they file applications to amend their bill formats. The Commission will then evaluate the applications for deferral authority to determine whether the deferred costs are reasonable, appropriately incurred, clearly and directly related to the circumstances for which they were authorized, and in excess of amounts already included in rates at the time of approval.”[[14]](#footnote-14) In order to comply with the PUCO’s

directive, Duke must have requested deferral authority *when* it filed to amend its bill format. But it did not.[[15]](#footnote-15)

The importance of making the formatting and deferral requests at the same time, as ordered by the PUCO, is that it allows the PUCO to weigh the two -- examination of the costs and benefits of the new format at the same time. If the PUCO allows this late-filed deferral request, then Duke may apply again in a few months for an additional cost associated with bill format changes. This late-filed deferral request is not what the PUCO intended in its order.

Duke stated in its bill format case that the Utility estimated that it would cost approximately $1.1 million to comply. However, the Utility never requested a deferral and did not file the case under an “AAM” purpose code, which would have indicated that the Utility was requesting authority for a change of accounting methods. In fact, Duke withdrew its request for cost recovery or deferral authority when it filed an amended application.[[16]](#footnote-16)

Duke made an untimely and unsupported request for deferral authority and the PUCO should reject the Application.

# IV. CONCLUSION

OCC meets the standards for intervention in this proceeding. The PUCO should grant OCC’s Motion to Intervene.

OCC recommends that the PUCO deny Duke’s request to defer $922,848 in expenses. If the PUCO chooses to consider the deferrals proposed by Duke, further review is appropriate at this time. In that event, the PUCO must establish a procedural schedule that allows for parties to intervene, conduct discovery, file testimony, and have a hearing.

Respectfully submitted,

 BRUCE J. WESTON

 OHIO CONSUMERS’ COUNSEL

 */s/ Jodi Bair*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of this *Motion to Intervene and Initial Comments* were served on the persons stated below via electronic transmission this 10th day of June 2015.

 */s/ Jodi Bair*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Jodi Bair

 Assistant Consumers’ Counsel

**SERVICE LIST**

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1. *See* R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11. [↑](#footnote-ref-1)
2. Application at 2 (April 28, 2014). [↑](#footnote-ref-2)
3. Application at 2 (April 28, 2015). [↑](#footnote-ref-3)
4. *In the Matter of the Commission’s Investigation of Ohio’s Retail Electric Service Market*, Case No. 12-3151-EL-COI, Entry on Rehearing at 1 (May 21, 2014). [↑](#footnote-ref-4)
5. *In the Matter of the Commission’s Investigation of Ohio’s Retail Electric Service Market*, Case No. 12-3151-EL-COI, Order at 26 (March 26, 2014). [↑](#footnote-ref-5)
6. *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of Changes to Bill Format*, Case No. 14-2128-EL-UNC, Application at 3 (Nov. 21, 2014). [↑](#footnote-ref-6)
7. *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of Changes to Bill Format*, Case No. 14-2128-EL-UNC, Order at 2 (Feb. 25, 2015). [↑](#footnote-ref-7)
8. R.C. 4905.22. [↑](#footnote-ref-8)
9. OCC has authority under law to represent the interests of all the approximately 615,000 Duke residential utility customers pursuant to R.C. Chapter 4911. [↑](#footnote-ref-9)
10. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006). [↑](#footnote-ref-10)
11. *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates*, Case No. 12-1682-EL-AIR, Opinion and Order (May 1, 2013). [↑](#footnote-ref-11)
12. *In the Matter of the Commission’s Investigation of Ohio’s Retail Electric Service Market*, Case No. 12-3151-EL-COI, Entry at 10-11 (May 21, 2014). [↑](#footnote-ref-12)
13. *In the Matter of the Application of The Dayton Power and Light Company for Approval of a Revised Bill Format for Electric Service*, Case No. 14-2043-EL-UNC, Entry on Rehearing at 3 (June 3, 2015). [↑](#footnote-ref-13)
14. *In the Matter of the Commission’s Investigation of Ohio’s Retail Electric Service Market*, Case No. 12-3151-EL-COI, Finding and Order at 10 (March 26, 2014) (emphasis added). [↑](#footnote-ref-14)
15. Both DP&L and AEP addressed bill format deferral when they filed their bill format application cases. AEP stated that “AEP Ohio’s projected costs associated with this new regulatory requirement are not significant enough to be discretely collected in a separate charge.” AEP’s costs were so insignificant or non-existent that the Utility made no deferral request. *In the Matter of the Application of Ohio Power Company for Approval of a Change in Bill Format*, Case No. 14-2119-EL-UNC, Application at 2 (Nov. 21, 2014). [↑](#footnote-ref-15)
16. *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of Changes to Bill Format*, Case No. 14-2128-EL-UNC, Finding and Order at 2 (Feb. 25, 2015). [↑](#footnote-ref-16)