**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 Adjust Its Power Future Initiatives Rider. | )  )  ) | Case No. 24-39-EL-RDR |

**MOTION TO INTERVENE**

**BY**

**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”) seeks authority to adjust its power future initiatives rider (“Rider”) and recoup “specific categories of costs” that are eligible for inclusion in the Rider. Those “specific categories” include millions of dollars in capital and operation and maintenance costs across various programs and initiatives, as well as seeking a pre-tax return of 8.24% on the Rider.[[1]](#footnote-3) Per the testimony of Duke witness Jay P. Brown, the result for the average consumer would be a $1.40 fixed monthly charge, a $1.00 increase compared to the current fixed monthly charge under the Rider.[[2]](#footnote-4)

Duke argues that the proposed increase to charges are “incremental.”[[3]](#footnote-5) However, the result of Duke collecting those costs from consumers and that rate of return is that residential consumers will once again be asked to shoulder the burden for Duke’s investment in its own infrastructure. That burden will hit hardest the most vulnerable and

at-risk residential customers of Duke, those for whom every dollar in the household budget counts.

OCC is filing on behalf of the approximately 640,000 residential utility consumers of Duke. 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,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ John Finnigan*

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**MEMORANDUM IN SUPPORT**

Duke seeks here to increase charges to its residential customers under its Rider in order to recoup costs associated with operating, maintaining, and upgrading Duke’s electric infrastructure, otherwise known as Duke’s Power Futures Initiative. These charges are over and above base distribution rates and other charges that Duke’s residential customers currently pay, with Duke Witness Jay P. Brown stating in testimony that the average residential consumer will pay a $1.40 fixed monthly charge under the proposed Rider, a $1.00 increase over the current fixed charge under the rider of $0.40.[[4]](#footnote-6) Duke alleges in its application and in the testimony of Duke Witness Brown that these cost increases are “incremental.”[[5]](#footnote-7) However, the key concern for residential consumers is not how “incremental” an increase appears to be. Rather, the key concern for residential consumers is that there is an increase in billing charges *-- at all*.

Duke’s application identifies the stipulated provisions from the Rider under in case 19-1750-El-UNC that are related to recovering deferred costs not recovered under that prior proceeding.[[6]](#footnote-8) Notably, the identified provisions state, “. . . Signatory parties are not agreeing to the collection of those deferrals from consumers. Deferred amounts cannot be collected from consumers unless such collection is approved by the Commission . . .[.][[7]](#footnote-9)

OCC has authority under law to represent the interests of all the 640,000 residential utility consumers of Duke, under R.C. Chapter 4911.

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 Ohio’s residential consumers may be “adversely affected” by this case, especially if the consumers were unrepresented in a proceeding where Duke seeks to increase the Rider charges above and beyond what is already paid by those consumers. To that point: Duke is seeking a return increase of 8.24% pre-tax through additional charges to residential consumers in this case.[[8]](#footnote-10) The amounts sought for recovery include $100,000 in capital costs related to Phase IV of Duke’s CEUD program, $4.7 million of O&M expenses related to the AMI program, $37.3 million in capital costs and $29.1 million in O&M costs toward implementing Duke’s new CIS program.[[9]](#footnote-11) Ultimately, Duke Witness Brown stated, “. . . [A] residential consumer will pay a monthly fixed charge of $1.40 per month and their bill would increase $1.00 per month *as compared to the current rate*” (emphasis added).[[10]](#footnote-12) Witness Brown further indicated that Duke will continue to update the Rider until the costs are recovered or incorporated into base rate increases.[[11]](#footnote-13) Effectively, Duke admits to being unwilling to stop increasing rates on residential consumers, instead explaining it away as being “incremental,” while at the same time stating that it will recoup these costs from its residential consumers one way or the other. 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 the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC’s interest is representing the residential consumers of Duke in this case of Duke seeking authorization from the PUCO to raise the Rider rates If OCC intervention is denied, those residential consumers will be left without a voice or representation in this proceeding which seeks to increase the charges those consumers pay. OCC’s interest in this matter is solely to protect residential consumers. 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 consumers will include, among other things, advancing the position that rates should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. Duke must demonstrate to the PUCO that the Rider increases and expenditures are prudent and in full compliance with Ohio law. 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. This case is still in its early stages, with the application being filed recently on February 9, 2024. Additionally, Staff has yet to comment on the case filings, and the PUCO has yet to file any entries or orders related to this case. OCC’s intervention is timely and will cause no delay in the proceedings, undo or otherwise.

OCC will attempt to avoid duplicative discovery in the proceeding. The issues OCC will raise fall clearly within the scope of the proceeding insofar as the proceeding is concerned with the cost-recovery through the Rider as it applies to residential consumers. 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 regularly intervened and participated in cases involving Duke and its Power Future Initiatives Rider.[[12]](#footnote-14) There will be no prejudice to the PUCO Staff and Duke in granting OCC intervention here.

Fourth, OCC’s intervention will significantly contribute to full development and equitable resolution of the factual issues. OCC will review and analyze the filings made by Duke regarding its increased Rider charge with a focus on how the Rider affects residential consumers. OCC’s interest in protecting residential consumers will lead it to fully and carefully examine issues regarding the prudence and effectiveness of Duke’s Rider charge, and balance those against the challenges and concerns which burden all residential consumers. 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 O.A.C. 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 seeks to increase its Rider charge, which will fall upon all residential customers of Duke. 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 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.[[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 consumers, the PUCO should grant OCC’s Motion to Intervene.

Respectfully submitted,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ John Finnigan*

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Intervene has been served electronically upon those persons listed below this 6th day of February 2024.

*/s/ John Finnigan*

John Finnigan

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. *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Adjust Its Power Future Initiatives Rider*, 24-39-EL-RDR, Direct Testimony of Jay P. Brown on Behalf of Duke Energy Ohio, Inc. (Feb. 9, 2024) at 5-7. [↑](#footnote-ref-3)
2. *Id.* [↑](#footnote-ref-4)
3. *Id.* at 7; *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Adjust Its Power Future Initiatives Rider,* 24-39-EL-RDR, Duke’s Application (Feb. 9, 2024) at ¶¶ 19-20. [↑](#footnote-ref-5)
4. Direct Testimony of Jay P. Brown at 7. [↑](#footnote-ref-6)
5. Duke’s Application at ¶¶ 19-20. [↑](#footnote-ref-7)
6. *Id.*; *see also* *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Adjust Its Power Forward Rider*, 19-1750-EL-UNC, et al., Stipulation and Recommendation (Aug. 2, 2023) at 5-7. [↑](#footnote-ref-8)
7. *Id.* at ¶ 15. [↑](#footnote-ref-9)
8. Direct Testimony of Jay P. Brown at 5. [↑](#footnote-ref-10)
9. *Id.* at 6-7. [↑](#footnote-ref-11)
10. *Id.* [↑](#footnote-ref-12)
11. *Id.* at 7-8. [↑](#footnote-ref-13)
12. *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Adjust Its Power Future Initiatives Rider*, 22-163-EL-RDR, Finding and Order (Jan. 24, 2024) at ¶ 7 (OCC intervention granted); *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Adjust Its Power Future Initiatives Rider*, 21-12-EL-RDR, Attorney Examiner Entry (March 10, 2022) at ¶ 5 (OCC intervention granted); *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Adjust Its Power Future Initiatives Rider*, 20-666-EL-RDR, Attorney Examiner Entry (Feb. 3, 2021) at ¶ 5 (OCC intervention granted); *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Adjust Its Power Future Initiatives Rider*, 19-1750-EL-UNC, et al., Attorney Examiner Entry (Aug. 21, 2023) at ¶ 5 (OCC intervention found reasonable and granted). [↑](#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)