**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Change Accounting Methods. | )  )  ) | Case No. 19-1873-GE-AAM |

**MOTION TO INTERVENE**

**BY**

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

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene where Duke Energy Ohio is setting the stage to collect more money from customers, this time for certain pension expenses. In this regard, Duke is seeking to defer, for an unknown period of time, the potentially significant gains and losses to its pension accounts that it will ultimately seek to collect from customers through base rates established in its next rate case.

OCC is filing on behalf of the 640,000 residential electric and 394,000 residential gas utility customers of Duke Energy to protect 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,

Bruce Weston (0016973)

Ohio Consumers’ Counsel

*/s/ Ambrosia E. Logsdon*

Ambrosia E. Logsdon (0096598)

Counsel of Record

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 E. State Street, 7th Floor

Columbus, Ohio 43215-3485

Telephone: 614-466-1292 [Direct]

[Ambrosia.Logsdon@occ.ohio.gov](mailto:Ambrosia.Logsdon@occ.ohio.gov)

(willing to accept service by e-mail)

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Change Accounting Methods. | )  )  ) | Case No. 19-1873-GE-AAM |

## MEMORANDUM IN SUPPORT

Duke Energy Ohio, Inc. (“Duke”) is seeking PUCO authority to establish a new regulatory asset or liability account for the impacts arising from its Pension Settlement Accounting.

In 2018, parent company Duke Energy Corporation and its subsidiaries, including Duke Energy Ohio, reduced its workforce by a significant number.[[1]](#footnote-2) Many of those employees have chosen to take lump sum payments from the pension plan in 2019.[[2]](#footnote-3) As a result, Duke determined it is probable that, in the second quarter of 2019, the lump sum payments to employees would exceed what Duke had planned for.[[3]](#footnote-4) As a result, Duke was required to use Pension Settlement Accounting for the first time.[[4]](#footnote-5) Settlement charges for 2019 are *estimated* at $1.3 million for electric and $539,000 for gas.[[5]](#footnote-6) Absent PUCO authority to defer these costs, Duke would have to write off the expenses.

And while these charges may seem relatively modest, Duke also anticipates treating *future* settlement shortfalls in the same way in subsequent years.[[6]](#footnote-7) And Duke expects that charges to the pension account could well exceed the levels it planned for.[[7]](#footnote-8)

Duke is now requesting approval to charge consumers in a future rate case for these *unknown* pension charges to be incurred over *unknown* timeframes. Under Duke’s proposal in this proceeding the losses or gains would be moved from the balance sheet to a deferral account and would be amortized over the average remaining service period of the pension plan participants.[[8]](#footnote-9) Duke is requesting PUCO approval of this deferral treatment for both the Pension Settlement Accounting in 2019 and *any future* Pension Settlement Accounting that it undertakes.[[9]](#footnote-10) The PUCO should deny Duke’s request. The PUCO has standards[[10]](#footnote-11) for deferral accounting and Duke’s request in this application does not appear to meet those standards.

OCC has authority under law to represent the interests of all the 640,000 residential electric and 394,000 residential gas utility customers of Duke under 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 will serve as the prelude to seeking increased rates for customers in the future. 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 proceedings;

(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 the residential customers of Duke in this case where consumers will be asked to pay for increased pension expenses in future proceedings. 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 customers will include, among other things, advancing the position that consumers are entitled to rates that are just and reasonable under the law. And Duke has already admitted that the charges it wants to pass to consumers are “uneven, volatile, and misaligned with current rates.”[[11]](#footnote-12) Duke’s customers should not be required to shoulder this risk and pay higher than necessary rates. 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. 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 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 PUCO’s rules 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 is seeking to increase the rates that its customers pay by an unknown amount and for an unknown time.

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), which OCC already has addressed, and which 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 (“Court”) 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.[[12]](#footnote-13)

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 Weston (0016973)

Ohio Consumers’ Counsel

*/s/ Ambrosia E. Logsdon*

Ambrosia E. Logsdon (0096598)

Counsel of Record

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 E. State Street, 7th Floor

Columbus, Ohio 43215-3485

Telephone: 614-466-1292 [Direct]

[Ambrosia.Logsdon@occ.ohio.gov](mailto:Ambrosia.Logsdon@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 2nd day of December 2019.

*/s/ Ambrosia E. Logsdon*

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**

|  |  |
| --- | --- |
| John.jones@ohioattorneygeneral.gov  Attorney Examiner:  Lauren.augostini@puc.state.oh.us | Rocco.dascenzo@duke-energy.com  Jeanne.kingery@duke-energy.com  Larisa.vaysman@duke-energy.com |

1. Application at 4*.* [↑](#footnote-ref-2)
2. *Id.* [↑](#footnote-ref-3)
3. *Id.* [↑](#footnote-ref-4)
4. *Id.* at 4-5. [↑](#footnote-ref-5)
5. *Id.* at 5. [↑](#footnote-ref-6)
6. *Id.* [↑](#footnote-ref-7)
7. *Id.* [↑](#footnote-ref-8)
8. *Id.* at 5-6. [↑](#footnote-ref-9)
9. *Id.* at 6. [↑](#footnote-ref-10)
10. *See, e.g., In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of a Grid Modernization Opt-Out Tariff and for a Change in Accounting Procedures Including a Cost Recovery Mechanism*, Case No. 14-1160-ELUNC, et al., Pre-filed Testimony of David M. Lipthratt, pp. 5-6 (October 2, 2015). [↑](#footnote-ref-11)
11. *Id.* at 5. [↑](#footnote-ref-12)
12. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20. [↑](#footnote-ref-13)