**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust and Set the Rate for Rider BTR. | )  )  ) | Case No. 24-658-EL-RDR |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene[[1]](#footnote-2) in this case where Duke Energy Ohio, Inc. (“Duke”) submitted an Application to Adjust and Set the Rates for its Base Transmission Rate Rider (“BTR”).[[2]](#footnote-3) Duke charges consumers for transmission-related charges through Rider BTR.[[3]](#footnote-4) In this filing, Duke represents that transmission charges to residential consumers will increase by more than $27 million beginning October 1, 2024.[[4]](#footnote-5) This represents a huge ***31.25% increase***in what residential consumers pay under current Rider BTR rates.[[5]](#footnote-6)

The 31.25% jump in residential consumer Rider BTR charges unfairly hits already burdened residential consumers. A 1,000 kwh per month residential user is currently paying $12 per month for Rider BTR. That will jump to $15.75 per month under the proposed Rider BTR.[[6]](#footnote-7) In addition, residential consumers currently pay 48.5% of Rider BTR charges.[[7]](#footnote-8) Duke’s new proposal would collect an even larger percentage of the transmission costs from residential consumers -- 55.9%. The PUCO recently approved a settlement which allowed Duke to increase its electric distribution rates by $23.1 million annually.[[8]](#footnote-9) In, addition, Duke has also been seeking to recover nearly $14 million from consumers over the last year, in its Distribution Capital Investment Rider annual audit, based upon its own accounting mistake. Finally, concurrent with this matter, Duke is seeking approval of a new Electric Security Plan which will ultimately increase consumers’ distribution service charges by an additional $11.27 per month.[[9]](#footnote-10) The combined burdens of these increased expenses are far too much to impose upon Ohio’s consumers.

OCC represents the interests of the 770,000 Ohio residential consumers of Duke who must pay under Rider BTR for transmission costs. The PUCO should grant OCC’s motion to intervene for the reasons set forth in the attached memorandum in support.

Respectfully submitted,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ Donald J. Kral*

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**MEMORANDUM IN SUPPORT**

Duke seeks to pass on enormous charges to financially over-burdened Ohioans by forcing residential consumers to pay more than $27 million in additional charges for transmission charges, beginning on October 1, 2024.[[10]](#footnote-11) According to Duke, this will be ***31.25% more*** than what residential consumers pay under current Rider BTR rates. A residential consumer using 1,000 kwh per month currently pays $12 per month under Duke’s BTR. That will jump to almost $15.75 per month under Duke’s updated Rider BTR.[[11]](#footnote-12)

What’s worse is that Duke’s residential consumers have no choice but to pay the Rider BTR charges. While substantially increasing what residential consumers will pay under Rider BTR, Duke also proposes to reduce Rider BTR charges to most business and industrial consumers. The large residential increase combined with decreased charges to business and industrial consumers results in an enormous cost shift between the classes of consumers, to the detriment of residential consumers. Under current rates residential consumers pay 48.5% of Rider BTR charges.[[12]](#footnote-13) Duke now proposes to charge 55.9% of the transmission charges to residential consumers, and reduce the amount paid by non-residential consumers, while providing no evidence to support shifting such an enormous increase in Rider BTR charges to residential consumers.[[13]](#footnote-14)

Rider BTR is a non-bypassable rider used by Duke to charge consumers for noncompetitive-based transmission charges, including charges approved by the Federal Energy Regulatory Commission (FERC).[[14]](#footnote-15) These charges include millions of dollars for Duke’s investments in Supplemental Transmission Projects. There is little to no regulatory oversight of the costs, necessity, or prudence of supplemental transmission project costs by the PUCO, federal regulators, or any other entity.[[15]](#footnote-16)

OCC has authority under law to represent the interests of all the 770,000 residential electric 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.[[16]](#footnote-17)

The interests of Duke’s residential consumers may be “adversely affected” by this case, especially so if the consumers were unrepresented in a proceeding that substantially increases how much residential consumers must pay under Rider BTR. 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 involving substantial increases in the amount consumers will pay for transmission costs. This interest includes evaluating whether the costs included in the transmission rider are just and reasonable and fairly allocated to residential consumers. OCC’s 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 Duke should charge consumers no more than what is just and reasonable under Ohio law, for service that is necessary and prudent under 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’ retail rates (including transmission 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 Application to add more than $27 million in transmission charges to residential consumers was filed on July 15, 2024. Under O.A.C. 4901:1-36-03(E), “affected parties” may file a motion to intervene and comments within 40 days of the Application’s filing. The case has not progressed beyond the filing of the Application. The PUCO Staff has not filed its Review and Recommendation regarding this proposed increase in Duke’s Rider BTR. No comments have yet been filed by any parties and the PUCO has not issued any dispositive rulings.

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 the proposed transmission charges fairly represent those “imposed on or charged to the utility” and whether they were “prudently” incurred.[[17]](#footnote-18) 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 regularly intervenes and participates in cases regarding annual updates to the transmission riders of electric distribution utilities.[[18]](#footnote-19) There will be no prejudice to the PUCO Staff and Duke in granting OCC intervention.

Fourth, OCC’s intervention and participation will significantly contribute to 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 and file comments regarding Duke’s proposed increase in charges as well as the burdensome cost shifting to 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 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 has proposed to substantially increase charges to residential consumers through the Rider BTR charge. 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.[[19]](#footnote-20)

OCC meets the criteria set forth in R.C. 4903.221, O.A.C. 4901-1-11,O.A.C. 4901:1-36-03(E), 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/ Donald J. Kral*

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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 24th day of July 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-2)
2. *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust and Set the Rate for Rider BTR,* Case No. 24-658-EL-RDR, Application of Duke Energy Ohio, Inc. to Adjust and Set the Rates for Rider BTR (July 15, 2024) (“Application”). [↑](#footnote-ref-3)
3. *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of the Establishment of Rider BTR and Associated Tariff Approval,* Case No. 11-2461-EL-RDR, Opinion and Order (May 25, 2011) at p. 7 (Rider BTR shall be created as an unavoidable rider to allow for recovery of MTEP and RTEP charges, NITS charges that will be paid by Duke for all shopping and non-shopping load, and other nonmarket-based charges, including but not limited to Commission audits). [↑](#footnote-ref-4)
4. Application at Schedule B-2. [↑](#footnote-ref-5)
5. *Id.* [↑](#footnote-ref-6)
6. Application*.* at Schedule B-4. [↑](#footnote-ref-7)
7. *Id.* [↑](#footnote-ref-8)
8. *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 21-887-EL-AIR, et al., Opinion and Order (Dec. 14, 2022). [↑](#footnote-ref-9)
9. *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Establish a Standard Service Offer Pursuant to Ohio Revised Code Section 4928.143 in the Form of an Electric Security Plan*, Case No. 24-278-EL-SSO, Direct Testimony of James E. Ziolkowski on Behalf of Duke Energy Ohio, Inc. (April 1, 2024), Attachment JEZ-2 at 2. [↑](#footnote-ref-10)
10. Application at Schedule B-2. [↑](#footnote-ref-11)
11. *Id.* at Schedule B-4. [↑](#footnote-ref-12)
12. Application at Schedule B-2. [↑](#footnote-ref-13)
13. *Id.* [↑](#footnote-ref-14)
14. *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of the Establishment of Rider BTR and Associated Tariff Approval,* Case No. 11-2641-EL-RDR, et al., Opinion and Order (May 25, 2011) at 7(“Rider BTR shall be created as an unavoidable rider to allow for recovery of MTEP [Midwest Transmission Expansion Planning] and RTEP [Regional Transmission Expansion Plan] charges, NITS [Network Integration Transmission Services] charges that will be paid by Duke for all shopping and nonshopping load, and other nonmarket-based charges, including but not limited to Commission audits.”) [↑](#footnote-ref-15)
15. *See, e.g*., *The Office of the Ohio Consumers’ Counsel v. PJM Interconnection, L.L.C., et al*., Docket No. EL23-105-000, Complaint (Sept. 28, 2023). [↑](#footnote-ref-16)
16. *See also**,* O.A.C. 4901:1-36-03(E) governing applications for transmission cost recovery riders states: “(a)ffected parties may file a motion to intervene and detailed comments on any issues concerning any application filed under this rule within forty days of the date of the filing of the application.” [↑](#footnote-ref-17)
17. *See* O.A.C. 4901:1-36-02(A) (stating that the rider is used to recover transmission and transmission-related costs “imposed on or charged to the utility”); O.A.C. 4901:1-36-03(B) (stating that PUCO may conduct “prudence and/or financial reviews of the costs incurred and recovered through the transmission cost recovery rider.”) [↑](#footnote-ref-18)
18. *See, e.g., In the Matter of the Application of the Ohio Power Company to Update Its Basic Transmission Cost Rider,* Case No. 23-57-EL-RDR, Motion to Intervene by Office of the Ohio Consumers’ Counsel (Feb. 2, 2023), Consumer Protection Comments by Office of the Ohio Consumers’ Counsel (Feb. 27, 2023). [↑](#footnote-ref-19)
19. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-20)