**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Duke Energy Ohio, Inc. for a Waiver. | )) | Case No. 23-823-EL-WVR |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene in this case to protect the rights of Ohioans whose electric service may be disconnected for nonpayment.[[1]](#footnote-2) Duke Energy Ohio, Inc. (“Duke”) seeks to continue a waiver from the PUCO’s rule that requires electric utilities to provide residential consumers with in-person notice of electric service disconnections for nonpayment.[[2]](#footnote-3) Waiver of this rule allows Duke to remotely disconnect a consumer’s electric utility service through an advanced meter without notifying the consumer in-person.[[3]](#footnote-4) In these times of high inflation and increases in utility rates, the PUCO should err on the side of providing consumers with full protection under the PUCO’s rules.

OCC is filing on behalf of the more than 800,000 residential electric 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/ Donald J. Kral*

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**MEMORANDUM IN SUPPORT**

The PUCO’s rules require electric companies to provide in-person notice to residential consumers when their electric service is disconnected for nonpayment.[[4]](#footnote-5) The PUCO has previously allowed Duke to avoid the rule requiring in-person notice of disconnections for residential consumers whose homes are equipped with advanced meters.[[5]](#footnote-6) The use of advanced meters allows Duke to disconnect a consumer’s essential utility service remotely without making a visit to the consumer’s premises.

Instead of in-person notice, Duke’s residential electric consumers will receive a text and/or phone message the day of disconnection, a text and/or phone message two business days before disconnection, a mailed ten-day disconnection notice, and a 14-day disconnection notice.[[6]](#footnote-7) While the PUCO initially authorized a waiver of the in-person notice rule on a pilot basis, Duke has been allowed to continue avoiding the in-person notice requirement. In 2019, the PUCO granted Duke’s request for a waiver from the rule for an additional five years, subject to certain conditions recommended by the PUCO Staff for consumer protection.[[7]](#footnote-8)

In this case, Duke has again asked for authority to continue the waiver for another five years through May 1, 2029. Duke also wants to do away with the PUCO Staff’s previous condition that Duke notify consumers that they will not receive in-person notice if their electric utility service is disconnected.[[8]](#footnote-9)

OCC has authority under law to represent the interests of the more than 800,000 Duke residential electric utility consumers, 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 consumers may be “adversely affected” by this case, especially if the consumers were unrepresented in a proceeding where Duke is seeking to avoid a PUCO consumer protection rule that requires in-person notification to consumers when their electric utility service is disconnected. 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; and

(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 Duke’s residential consumers in this case involving Duke’s request to avoid a PUCO rule that protects consumers from termination of electric service without in-person notice. This interest is different from that of any other party and especially different from that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC’s advocacy for residential consumers will include advancing the position that in-person notice of disconnection on the day utility service is to be shut off is an important consumer protection that should be restored. In addition, if the waiver continues (it should not), Duke should still be required to notify consumers that they will not receive in-person notification if they are disconnected for nonpayment. 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’ service quality in Ohio.

Third, OCC’s intervention will not unduly prolong or delay the proceedings. Duke only recently filed its Application and no procedural schedule has yet been issued. 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’s advocacy for residential consumers will include advancing the position that in-person notice of disconnection on the day utility service is to be shut off is an important consumer protection that should be restored. In addition, if the waiver continues (it should not), Duke should still be required to notify consumers that they will not receive in-person notification if they are disconnected for nonpayment. In advancing these positions 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 O.A.C.4901-1-11(A)(2). As the advocate for residential utility consumers, OCC has a very real and substantial interest in this case where Duke is seeking a waiver of a PUCO consumer protection that requires Duke to provide in-person notice when it disconnects a consumer’s electric utility service for nonpayment. In-person notice is particularly important when a utility can remotely disconnect a consumer’s service through an advanced meter.

In addition, OCC meets the criteria of O.A.C. 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.

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 uniquely has been designated as the state representative of the interests of Ohio’s residential utility consumers. 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.[[9]](#footnote-10)

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/ Donald J. Kral*

Donald J. Kral (0042091)

Counsel of Record

Thomas J. Brodbeck (0093920)

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(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 8th day of December 2023.

 */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. O.A.C. 4901:1-18-06(A)(2). [↑](#footnote-ref-3)
3. Duke Application (Nov. 17, 2023), at 3. [↑](#footnote-ref-4)
4. O.A.C. 4901:1-18-06(A)(2). [↑](#footnote-ref-5)
5. *In the Matter of the Application of Duke Energy Ohio, Inc. for a Waiver,* Case No. 16-1096-EL-WVR, Finding and Order (March 8, 2017). [↑](#footnote-ref-6)
6. *Id.* at ¶ 22. [↑](#footnote-ref-7)
7. *In the Matter of the Application of Duke Energy Ohio, Inc. for a Waiver*, Case No. 19-187-EL-WVR, Finding and Order (Sept. 26, 2019) at 7. [↑](#footnote-ref-8)
8. Application at 2-3. [↑](#footnote-ref-9)
9. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-10)