**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 Establish a Standard Service Offer Pursuant to Ohio Revised Code Section 4928.143 in the Form of an Electric Security Plan.  In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Amend Tariffs, including its Certified Supplier Tariff, P.U.C.O. No. 20 and to Implement New Tariffs.  In the Matter of the Application of Duke Energy Ohio, Inc., for Accounting Authority, including any Necessary Deferrals. | )  )  )  )  )  )  )  )  )  )  )  )  ) | Case No. 24-278-EL-SSO  Case No. 24-279-EL-ATA  Case No. 24-280-EL-AAM |

**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 approval of a proposed electric security plan that will increase charges consumers pay for distribution service by an additional $11.27 per month by the end of Duke’s plan.

OCC is filing on behalf of the 910,000 residential utility consumers of Duke. The reasons the Public Utilities Commission of Ohio (“PUCO”) should grant OCC’s Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

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*/s/ John Finnigan*

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**MEMORANDUM IN SUPPORT**

Duke’s proposed ESP starts out slow with a 1.7% increase to consumers in the first year. Subsequent yearly rate increases add up so that by the end of Duke’s electric security plan consumers are paying anywhere from 6.19% to 7.87% more, depending on their usage and time of year.[[1]](#footnote-3) A typical consumer using 1,000 kWh per month could see a monthly bill increase of $11.27.[[2]](#footnote-4) In total, Duke projects its plan will cost consumers $75,439,567 over three years.[[3]](#footnote-5)

Duke seeks to collect this rate increase through add-on charges known as riders. The amount consumers pay under these riders is in addition to the amounts they already pay to Duke as part of the base distribution rates. The riders fund Duke’s programs and initiatives, which may not directly benefit residential consumers.

For example, Duke proposes to collect costs for two electric vehicle programs through the Infrastructure Modernization Rider.[[4]](#footnote-6) Most residential utility consumers do not even own or drive an electric vehicle. Consumers who cannot afford electric vehicles should not be required to subsidize consumers who can. Duke also has included add on charges for energy efficiency programs even though such programs are no longer statutorily required and are available in the competitive market.

OCC has authority to represent the interests of Duke’s 910,000 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 Duke’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 rates residential consumers pay. 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 in this case regarding Duke’s proposal (through its electric security plan) to charge consumers more for electric distribution service through add on charges (riders). OCC’s interest is different than that of any other party and especially different than that of Duke, 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 just and reasonable and lawful, for service that is adequate under Ohio law. As noted above, Duke proposes to increase charges to consumers for initiatives which may have limited benefit to them. 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 Duke’s rates and service quality.

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 Duke having filed its Application on April 1, 2024. There have been no rulings by the PUCO and no procedural schedule has been set. OCC’s Motion to Intervene is timely, and OCC’s intervention will not prolong or delay the proceedings.

OCC will attempt to avoid duplicative discovery in the proceeding. The issues OCC will raise will relate to the scope of the proceeding, where Duke seeks approval to charge consumers increased rates under its proposed ESP. 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 electric security plans.[[5]](#footnote-7) There will be no prejudice to the PUCO Staff and Duke in granting OCC intervention.

Fourth, OCC’s intervention will significantly contribute to full development and equitable resolution of the factual issues. In this case, OCC will conduct a thorough review of Duke’s proposed electric security plan. OCC’s interest in protecting residential consumers will lead it to fully and carefully examine issues regarding the effect and impact of the electric security plan and its associated riders on 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 O.A.C. 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 is seeking approval to charge consumers rate increases under a new electric security plan. 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.[[6]](#footnote-8)

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*

John Finnigan (0018689)

Counsel of Record

John R. Varanese (0044176)

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(willing to accept service by e-mail)

**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 April 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. *Id.*, Attachment JEZ-3 at 2. This may understate the actual amount of the increase because it appears that Duke included the commodity cost in its calculation. [↑](#footnote-ref-3)
2. *Id.,* Attachment JEZ-2 at 2. [↑](#footnote-ref-4)
3. *Id.,* Attachment JEZ-5 at 1. [↑](#footnote-ref-5)
4. *Id.,* Application at 21 (April 1, 2024). [↑](#footnote-ref-6)
5. *See e.g. In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 23-301-EL-SSO, Entry (Oct. 11, 2023) at ¶ 8; *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 23-23-EL-SSO, et al., Entry (April 17, 2023) at ¶ 7; *In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Approval of Its Electric Security Plan*, Case No. 22-900-EL-SSO, et al., Entry (Jan. 20, 2023) at ¶ 5; and *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Establish a Standard Service Offer Pursuant to R.C. 4923.143 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 17-1263-EL-SSO, Entry (Sept. 28, 2017) at ¶ 3. [↑](#footnote-ref-7)
6. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-8)