**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 Change Accounting Methods. | ))) | Case No. 20-1011-GE-AAM |

**MOTION TO INTERVENE**

**AND**

**COMMENTS FOR CONSUMER PROTECTION**

**BY**

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

Ohio consumers are facing perilous times – a health crisis and an ensuing personal-finance crisis. The harm to Ohioans from these crises will persist for some time, potentially years, after the formal health emergency ends. In the city of Cincinnati, even before the crisis, residents already were at risk with poverty at 28.7% of the population. In Hamilton County, before the crisis, residents were at risk with food-insecurity at 17.2%. These already dire circumstances are now greatly magnified for people. Unemployment in the country is now considered the worst since the Great Depression.

Against this backdrop of human suffering, the Public Utilities Commission of Ohio (“PUCO”) rightfully ordered public utilities to file plans for the protection of their customers. Duke filed proposals on March 19, April 16, and May 4 for assisting its 718,000 electric customers and 432,000 natural gas customers during the health emergency.

Now Duke is seeking authority to defer for later collection from consumers costs related to its emergency plan. The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene and file comments to protect the interest of 639,000 residential electric and

394,000 residential gas utility customers who will be impacted by, and will likely be asked to pay for, Duke’s proposal.[[1]](#footnote-3)

The PUCO should grant OCC’s motion to intervene for the reasons set forth in the attached memorandum in support.

Respectfully submitted,

Bruce Weston (0016973)

Ohio Consumers’ Counsel

*/s/ Ambrosia E. Wilson*

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## MEMORANDUM IN SUPPORT

## AND

## COMMENTS FOR CONSUMER PROTECTION

In the coming months and potentially years, many Ohioans will struggle to pay their utility bills. Those Ohioans with financial challenges will include customers who have historically paid their bills in full and on time but who may be unable to continue doing so following the economic fallout of the coronavirus pandemic. Ohio businesses and families will face financial burdens that were unforeseeable just a few months ago.

Here Duke is seeking to defer costs associated with its emergency plan that it has or will incur since the date of the declared state of emergency. It proposes to later charge consumers through its electric and natural gas distribution uncollectible recovery mechanisms, Rider UE-ED and Rider UE-G.[[2]](#footnote-4)But any costs avoided as result of activities being suspended through the crisis should be used to offset any future costs that Duke attempts to collect. As a result of lost wages, unemployment, and other financial hardships resulting from the coronavirus, the need to make sure that customers pay only fair, just, and reasonable rates is especially heightened.

The PUCO typically evaluates deferral requests based on six criteria. But due to the unique circumstances facing Duke in responding to the coronavirus emergency, Staff modified these criteria to accommodate uncertainties associated with the implementation of Duke’s emergency plan.[[3]](#footnote-5) As modified, the criteria are:

1. Whether the current level of costs included in the last rate case is insufficient;
2. Whether the costs Duke requested to be deferred are material in nature;
3. Whether the problem was outside of Duke’s control;

1. Whether the expenditures are atypical and infrequent;
2. Whether the costs would result in financial harm to Duke; and
3. Whether the PUCO could encourage the utility to do something it would not otherwise do through the granting of the deferral authority.

These criteria should be adopted in this case.

 The Office of the Ohio Consumers’ Counsel (“OCC”) has statutory authority to represent the interests of Duke’s residential electric and gas utility customers under R.C. Chapter 4911. R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a Public Utilities Commission (“PUCO”) proceeding is entitled to seek intervention in that proceeding. The interests of Duke’s residential customers may be “adversely affected” by this case, especially if the customers are unrepresented in a proceeding that will examine Duke’s request to defer charges associated with its emergency plan for later collection from residential customers. 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 Duke has proposed to defer emergency plan expenses for later collection from customers. Deferrals are a prelude to rate increases,[[4]](#footnote-6) and the granting of deferral authority needs to be looked at closely. This interest is different from that of any other party, and especially different from that of Duke whose advocacy includes the financial interest of its shareholders.

Second, OCC’s advocacy for residential customers will include advancing the position that customers should not later be billed unjust and unreasonable charges as a result of Duke’s emergency plan and its deferral request. OCC’s position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control over utilities’ rates and service quality in Ohio.[[5]](#footnote-7)

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 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 the PUCO will determine how much customers will later pay for Duke’s emergency plan.

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) that OCC already has addressed and that 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.

Further, 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.[[6]](#footnote-8)

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Court for intervention. On behalf of Ohio residential customers, the PUCO should grant OCC’s Motion to Intervene.

**COMMENTS**

 Duke asserts in its application that as a result of the emergency, and in order to meet its obligation to maintain electric and natural gas services, it has been necessary to implement changes to its operations.[[7]](#footnote-9) To mitigate the risk of spreading the coronavirus, Duke states that these changes include providing personal protective equipment to employees when it is necessary to enter a customer’s home and information technology changes necessary to implement remote work for its employees.[[8]](#footnote-10) Duke also asserts that it has experienced financial losses from maintaining service continuity for consumers, waiving fees, and suspending disconnections.[[9]](#footnote-11)

Although Duke’s initial emergency plan application did not include any requests for deferral of its emergency plan costs, Duke now seeks approval to defer all current and future costs that are incremental to its base electric and natural gas rates.[[10]](#footnote-12) Duke proposes to charge consumers for these incremental costs through its electric and natural gas distribution uncollectible expense collection mechanisms, Rider UE-ED and Rider UE-G, respectively. It proposes including these costs in an application to adjust these riders at a future date, once the scope of costs is fully known and the state of emergency has been lifted.[[11]](#footnote-13)

To protect consumers, the PUCO should hold Duke to the same consumer protections it recently placed on AEP and DP&L regarding deferring costs for later collection from consumers.[[12]](#footnote-14) In both cases, Staff explained that cost collection is not guaranteed until the deferred amounts have been reviewed and addressed in an appropriate future proceeding.[[13]](#footnote-15) As described above, Staff also modified the criteria under which deferral requests are evaluated in light of the coronavirus emergency. The PUCO also clarified that in a future proceeding, the deferred amounts will be reviewed for prudence, proper computation, proper recording, reasonableness, and any potential double-recovery.[[14]](#footnote-16) During this time where making sure that consumers pay no more than fair, just, and reasonable rates is even more heightened due to the coronavirus emergency, these consumer protections are especially important.

Here, Staff reviewed Duke’s deferral application and applied its six factor evaluation criteria to the deferral request.[[15]](#footnote-17) And similar to its recommendations involving AEP and DP&L, Staff recommended approving Duke’s request for deferral authority for expenses and revenues, without carrying charges (interest).[[16]](#footnote-18) Staff also recommended that the PUCO direct Duke’s external auditors to work with Staff during the annual audits of the UE-ED and UE-G.[[17]](#footnote-19) Finally, Staff emphasized that the PUCO should clearly communicate in its order that Duke’s collection of costs and revenues from consumers is not guaranteed until the deferred amount has been reviewed and addressed in the appropriate future proceeding before the PUCO.[[18]](#footnote-20) The future proceeding should address the question of collection of the deferred amount, including the issues of prudence, proper computation (including the inclusion of pandemic-related savings, *e.g*., labor, travel, etc.), proper recording, reasonableness, and any potential double-collection.[[19]](#footnote-21) OCC fully supports Staff’s recommendations. Such consumer protections are necessary to make sure that consumers pay not more than fair, just, and reasonable rates.

To protect consumers from overpaying for electric and gas utility service, the PUCO should adopt its Staff’s recommendations, as it recently did in AEP’s and DP&L’s emergency cases, to require a thorough review of deferred amounts before approving collection from consumers.

Respectfully submitted,

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Ohio Consumers’ Counsel

*/s/ Ambrosia E. Wilson*

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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 and Comments were served on the persons stated below via electronic transmission, this 27th day of May 2020.

 */s/ Ambrosia E. Wilson*

 Ambrosia E. Wilson

 Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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1. *See* R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11. [↑](#footnote-ref-3)
2. *See* Duke’s Application at 5, 12. [↑](#footnote-ref-4)
3. *See* Staff Review and Recommendation at 2. [↑](#footnote-ref-5)
4. [*Ohio Consumers' Counsel v. PUC*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940, ¶ 38](https://advance.lexis.com/api/document/collection/cases/id/4MFT-J0X0-TVW7-J31S-00000-00?page=392&reporter=3352&cite=111%20Ohio%20St.%203d%20384&context=1000516) (“In our view, that statutory provision therefore certainly gave the PUCO the authority to take the smaller step of authorizing the kind of accounting changes sought by FirstEnergy and Dayton Power and Light in these cases, even if those deferrals are a prelude to possible rate increases for the companies' customers after the market-development period has ended.”) [↑](#footnote-ref-6)
5. *See* R.C. 4905.13. [↑](#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)
7. *See* Application at 4. [↑](#footnote-ref-9)
8. *See* *id*. [↑](#footnote-ref-10)
9. *See* *id*. [↑](#footnote-ref-11)
10. *See* *id*. at 5. [↑](#footnote-ref-12)
11. *See id*. at 12. [↑](#footnote-ref-13)
12. *See* Case No. 20-602-EL-AEP-UNC et al., May 6, 2020 Order at ¶54; Case No. 20-651-EL-UNC et al., May 20, 2020 Order at ¶44. [↑](#footnote-ref-14)
13. *See id.* [↑](#footnote-ref-15)
14. *See id.* [↑](#footnote-ref-16)
15. *See* Staff Review and Recommendation at 2. [↑](#footnote-ref-17)
16. *See* *id.* at 3. [↑](#footnote-ref-18)
17. *See* *id.* [↑](#footnote-ref-19)
18. *See id.* [↑](#footnote-ref-20)
19. *See id.* [↑](#footnote-ref-21)