

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV

2007 APR 10 PM 4:09

PUCO

In the Matter of the Complaint of James Byerly,	)	Case No. 07-196-EL-CSS
Jr., Benjamin Wissel, Shirley Newman, Jeffrey	)	Case No. 07-197-EL-CSS
Reichard, Daniel Ledford, Patricia Ingram, James	)	Case No. 07-198-EL-CSS
Wellinghoff, Al Roane, Bruce Aronow and	)	Case No. 07-253-EL-CSS
Brian Beachkofski,	)	Case No. 07-263-EL-CSS
	)	Case No. 07-265-EL-CSS
Complainants,	)	Case No. 07-271-EL-CSS
v.	)	Case No. 07-281-EL-CSS
	)	Case No. 07-300-EL-CSS
Duke Energy Ohio, Inc.,	)	Case No. 07-322-EL-CSS
	)	
Respondent.	)	

---

MOTION TO INTERVENE  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

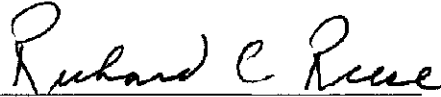
---

Pursuant to R.C. Chapter 4911, R.C. 4903.221, Ohio Adm. Code 4901-1-11 and 4901-1-12, the Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential utility consumers, moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in the above-captioned cases regarding numerous formal complaints filed by residential customers of Cincinnati Gas and Electric Company d/b/a Duke Energy Ohio ("Duke" or "Company"). The attorney examiner has consolidated the complaints for purposes of holding a prehearing conference on April 19, 2007, at the offices of the Commission. The reasons for granting OCC's motions are further set forth in the attached Memorandum in Support.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business  
Technician DB Date Processed 4-11-07

Respectfully submitted,

Janine L. Migden-Ostrander  
Consumers' Counsel

A handwritten signature in black ink that reads "Richard C. Reese". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

Richard C. Reese, Trial Attorney  
Joseph P. Serio  
Assistant Consumers' Counsel  
The Office of the Ohio Consumer's Counsel  
Columbus, Ohio 43215-3485  
Telephone: 614-466-8574  
Fax: 614-466-9475  
E-mail [reese@occ.state.oh.us](mailto:reese@occ.state.oh.us)  
[serio@occ.state.oh.us](mailto:serio@occ.state.oh.us)

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of James Byerly,	)	
Jr., Benjamin Wissel, Shirley Newman, Jeffrey	)	Case No. 07-196-EL-CSS
Reichard, Daniel Ledford, Patricia Ingram, James	)	Case No. 07-197-EL-CSS
Wellinghoff, Al Roane, Bruce Aronow and	)	Case No. 07-198-EL-CSS
Brian Beachkofski,	)	Case No. 07-253-EL-CSS
	)	Case No. 07-263-EL-CSS
Complainants,	)	Case No. 07-265-EL-CSS
v.	)	Case No. 07-271-EL-CSS
	)	Case No. 07-281-EL-CSS
Duke Energy Ohio, Inc.,	)	Case No. 07-300-EL-CSS
	)	Case No. 07-322-EL-CSS
Respondent.	)	

---

**MEMORANDUM IN SUPPORT**

---

**I. INTRODUCTION**

Pursuant to R.C. Chapter 4911, OCC moves to intervene in the above-captioned docket in order to represent the interests of the more than 602,000 residential electric customers of Duke. The formal complaints listed above have been consolidated for purposes of a prehearing conference to be held at the Commission on April 19, 2007. The initial complaint was filed on February 27, 2007, while the most recent formal complaint was filed on March 26, 2007.<sup>1</sup> Duke has filed Answers to each of the complaints that admit, in part, and deny, in part, the allegations contained in the complaints.

The complainants each reside in private residential condominiums located in the "American Building" in downtown Cincinnati, a former office building that has been

---

<sup>1</sup> The most recently filed complaint has not been consolidated as yet.

modified for residential use. The complainants allege that Duke is charging them commercial rates and contend such rates are unjust and unreasonable because each is a residential customer.<sup>2</sup> The complainants note that the condominium building is served by three-phase power. Three-phase electric service is the backbone of the electric distribution system. All three phases can be used simultaneously to serve larger loads or can be configured electrically into three single phase circuits for serving multiple loads.

The complainants contend that they should be charged residential rates under the Company's residential tariff<sup>3</sup> or that the Company should file a tariff that provides for three-phase residential service. Several of the complainants note, however, that there is no three-phase *usage* in any unit.<sup>4</sup>

Finally, several of the complainants allege they were initially charged residential rates under Duke's residential tariff until recently being switched, without notice, to Duke's commercial rate schedule.<sup>5</sup> The complainants generally seek the application of residential rates to their condominiums on a prospective basis as well as adjustments to their bills that retroactively apply residential rates back to the time the condominiums were originally purchased by their owners.

## **II. INTERVENTION**

Pursuant to R.C. Chapter 4911, OCC moves to intervene in the above-captioned

---

<sup>2</sup>The complainants are being charged either a "DS" or "DM" rate based on demand. The DS rate is termed "Service at Secondary Distribution Voltage." P.U.C.O. Electric No. 19, Sheet No. 40.10. The DM rate is termed "Secondary Distribution Service – Small." P.U.C.O. Electric No. 19, Sheet No. 43.10

<sup>3</sup> P.U.C.O. Electric No. 19, Sheet No. 30.9.

<sup>4</sup> See Case No. 07-198-EL-CSS at 1, Case No. 07-265-EL-CSS at 1.

<sup>5</sup> Case No. 07-271-EL-CSS at 1.

case under its legislative authority to represent the interests of the more than 600 thousand residential electric distribution customers of Duke. The OCC meets the criteria set forth in R.C. 4903.221, precedent of the Ohio Supreme Court<sup>6</sup>, as well as Commission rules and recent Commission precedent.<sup>7</sup> Additionally, the interests of residential electric customers in Ohio are potentially “adversely affected” by these cases, thus satisfying the intervention standard in R.C. 4903.221. OCC also meets the Commission’s required showing for a party that has a “real and substantial interest” according to Ohio Adm. Code 4901-1-11(A)(2), and should therefore be permitted to intervene in this case.

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 proceeding; and,
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

The nature and extent of OCC’s interest lies in ensuring that Duke’s residential customers are charged the appropriate rates for their electric service. In addition, OCC has an interest in ensuring that appropriate consumer protections related to residential service are being applied across Dukes service territory. The complainants are residential customers of Duke and are currently being charged commercial rates despite the fact that

---

<sup>6</sup> *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853 at ¶18-23.

<sup>7</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust Each Company’s Transmission Cost Recovery Rider*, Case No. 06-1294-EL-UNC, Entry (December 8, 2006) at 2-3.

their electric usage is domestic in nature. Based on an analysis of bills provided by complainants, the commercial rates are significantly higher than residential rates.

OCC's legal position is that residential customers should have available to them a residential tariff, regardless of the number of phases. Three-phase service may be the most readily available and cost-effective method for providing service to certain residential ratepayers.

Similarly situated residential customers of Duke may also be affected by the lack of an appropriate and reasonable residential tariff. OCC believes that residential customers should not be charged commercial rates for electric usage. OCC is also concerned with the manner in which Duke Energy allegedly switched customers from the residential to commercial tariff. There is no indication that Duke attempted to work with these customers to find an amenable resolution to this issue. OCC's position, therefore, directly relates to the merits of the case.

OCC's intervention will not unduly prolong or delay the proceedings, but should provide insights that will expedite the Commission's effective treatment of this unusual proceeding. OCC will significantly contribute to the full development and equitable resolution of the issues herein, based on its expertise in regulatory and energy matters. OCC will significantly contribute to the full development and equitable resolution of the factual issues. OCC has a demonstrated history of concern over the rates charged to residential ratepayers. The Commission should now grant OCC's Motion to Intervene that will permit the full participation of the OCC in a determination as to the reasonableness of Duke's electric service tariffs regarding residential electric service.

For the reasons expressed above regarding the criteria contained in R.C. 4903.221, the OCC also meets the similar criteria of Ohio Adm. Code 4901-1-11(B) which states that the Commission may consider (1) the “nature of the person’s interest,” (2) the “extent to which the person’s interest is represented,” (3) whether the intervention “would unduly delay the proceeding,” and (4) the person’s “contribution to a just and expeditious resolution of the issues.”

In particular, OCC brings its statewide, residential consumer perspective to this case that is different than and not represented by any other entity in Ohio. OCC is representing the interests of all Duke Energy residential customers in this proceeding and not just the interests of residential customers in the “American Building”. OCC’s interest in this case is consistent with its statutory role as the representative of residential consumers of public utility service. In addition, OCC has the power and authority pursuant to R.C. 4911.02(B)(2)(b). to take appropriate action with respect to residential consumer complaints concerning quality of service, service charges, and the operation of the public utilities commission.

OCC meets the criteria set forth in R.C. 4903.221 and the Commission’s rules. On behalf of Duke’s approximate 602,000 residential electric customers, the Commission should grant OCC’s Motion to Intervene.

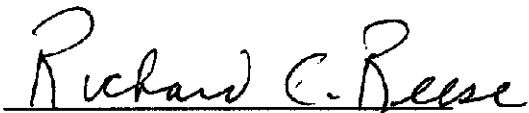
### **III. CONCLUSION**

OCC’s Motion to Intervene should be granted. As set forth herein, OCC satisfies the criteria set forth in R.C. 4903.221 and the Commission’s rules, for intervention. Therefore, on behalf of Duke’s approximately 602,000 residential gas customers, who clearly have an interest in the outcome of this case, OCC respectfully requests that the

Commission grant OCC's Motion to Intervene. OCC's participation will contribute to a just resolution of the serious issues involved in this proceeding and will not cause undue delay.

Respectfully submitted,

Janine L. Migden-Ostrander  
Consumers' Counsel

A handwritten signature in cursive script that reads "Richard C. Reese". The signature is written in dark ink and is positioned above the printed name and title.

Richard C. Reese, Trial Attorney

Joseph P. Serio

Assistant Consumers' Counsel

The Office of the Ohio Consumer's Counsel

Columbus, Ohio 43215-3485

Telephone: 614-466-8574

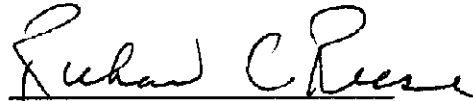
Fax: 614-466-9475

E-mail: [reese@occ.state.oh.us](mailto:reese@occ.state.oh.us)  
[serio@occ.state.oh.us](mailto:serio@occ.state.oh.us)



### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing The Office of the Ohio Consumers' Counsel's *Motion to Intervene* has been served upon the below-stated counsel, via regular U.S. Mail, postage prepaid, this 10th day of April, 2007.



Richard C. Reese  
Assistant Consumers' Counsel

### **SERVICE LIST**

Paul Colbert  
Duke Energy Ohio  
139 East Fourth Street  
P.O. Box 960  
Cincinnati, OH 45205

James Byerly, Jr.  
30 E. Central Parkway #1003  
Cincinnati, OH 45205

Shirley J. Newman  
30 E. Central Parkway #1002  
Cincinnati, OH 45205

Daniel J. Ledford  
30 E. Central Parkway #903  
Cincinnati, OH 45205

James L. Wellingshoff  
30 E. Central Parkway #1202  
Cincinnati, OH 45205

Bruce J. Aronow  
30 E. Central Parkway #1203  
Cincinnati, OH 45205

Duane Luckey, Esq.  
Attorney General's Office  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43216

Benjamin F. Wissel  
30 E. Central Parkway, #501  
Cincinnati, OH 45205

Jeffrey D. Reichard  
30 E. Central Parkway, #1102  
Cincinnati, OH 45205

Patricia B. Ingram  
30 E. Central Parkway #1001  
Cincinnati, OH 45205

Al Roane  
30 E. Central Parkway #901  
Cincinnati, OH 45205

Brian Beachkofski  
30 E. Central Parkway #502  
Cincinnati, OH 45205