

FILE

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

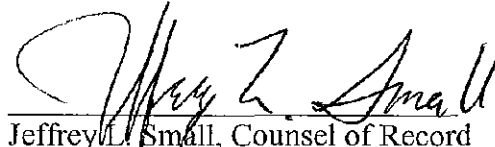
In the Matter of the Commission's Review and)
Adjustment of the Fuel and Purchased Power) Case No. 07-723-EL-UNC
and the System Reliability Tracker Components)
of Duke Energy Ohio, Inc., and Related Matters.)

**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 all of the residential utility consumers of Duke Energy Ohio, Inc. ("Duke Energy"), moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in the above-captioned case. The reasons for granting OCC's motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



Jeffrey L. Small, Counsel of Record
Ann M. Hotz
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: 614-466-8574
E-mail small@occ.state.oh.us
hotz@occ.state.oh.us

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 And Date Processed 7/11/07

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review and)	
Adjustment of the Fuel and Purchased Power)	Case No. 07-723-EL-UNC
and the System Reliability Tracker Components)	
of Duke Energy Ohio, Inc., and Related Matters.)	

MEMORANDUM IN SUPPORT

I. INTRODUCTION

In its June 27, 2007 Finding and Order in the above-captioned case, the Commission found that "necessary audits should be conducted by a qualified auditing firm." The audits relate to the fuel and economy purchased power ("FPP") and the system reliability tracker ("SRT") components of Duke Energy's market-based standard service offer.

Pursuant to the Commission's November 23, 2004 Entry on Rehearing in *In re CG&E Post-MDP Service Plan*, Case Nos. 03-93-EL-ATA, et al., Duke Energy is required to file by September 1 of each year an Application to establish the FPP and SRT for the following year. In its December 8, 2004 Entry Nunc Pro Tunc in those cases, the Commission clarified its November 23, 2004 Entry on Rehearing when it stated that Duke Energy shall "make quarterly submissions to the Commission staff, at least 30 days before the start of each quarter, such that staff may review Duke's proposed FPP charge for the upcoming quarter." In its most recent action in the above-captioned case, the Commission directed its Staff to issue a request for proposals to perform audits of the FPP and SRT for the July 1, 2006 through June 30, 2007 as well as the July 1, 2007

through December 31, 2008 time periods in order to assist in its annual review of the FPP and SRT.

II. INTERVENTION

OCC moves to intervene under its legislative authority to represent residential utility consumers in Ohio, 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 are unrepresented in a proceeding regarding Duke Energy’s rates that reflect fuel, purchased power, and capacity charges. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission 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.

First, the nature and extent of OCC’s interest is representing the residential customers of Duke Energy. This 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 consumers will include advancing the position that electric rates should be no more than what is reasonable and permissible under Ohio law, for service that is adequate under Ohio law. This advocacy includes the OCC's concern that the process for determining such rates should protect the interests of residential consumers. OCC's position is therefore directly related to the merits of this case that is pending before the PUCO.

Third, OCC's intervention will not unduly prolong or delay the proceeding. 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 the full development and equitable resolution of the factual issues. OCC was significantly involved in the proceeding in which the FPP and SRT were initiated, as well as the later "rider" cases that reviewed quarterly levels for these charges. 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 residential utility consumer advocate, OCC has a real and substantial interest in this case where the generation rates paid by residential customers are under review by the Commission.

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 has already addressed, and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission 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 because OCC has been uniquely designated as the statutory representative of the interests of Ohio’s residential utility consumers.¹ That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio recently confirmed OCC’s right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC’s intervention and that OCC should have been granted intervention.²

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

III. CONCLUSION

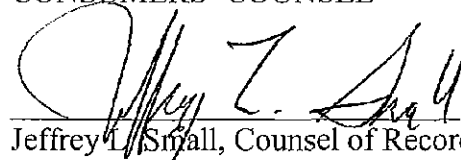
As set forth herein, OCC satisfies the criteria set forth in R.C. 4903.221 and the Commission’s rules, for intervention. Therefore, on behalf of the over 600,000 residential electric customers of Duke Energy, OCC respectfully requests that the Commission grant OCC’s Motion to Intervene. OCC’s participation will contribute to a just resolution of the serious issues involved in this proceeding and will not cause undue delay.

¹ R.C. Chapter 4911.

² *Ohio Consumers’ Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20 (2006).

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Jeffrey L. Small", is written over a horizontal line.

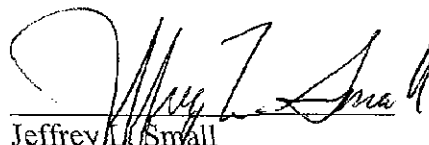
Jeffrey L. Small, Counsel of Record
Ann M. Hotz

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: 614-466-8574
Fax: 614-466-9475

E-mail small@occ.state.oh.us
hotz@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 11th day of July, 2007.


Jeffrey L. Small
Assistant Consumers' Counsel

SERVICE LIST

Paul A. Colbert
Duke Energy Ohio, Inc.
139 East Fourth Street
P.O. Box 960
Cincinnati, OH 45201-0960

David F. Boehm
Michael L. Kurtz
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

Samuel C. Randazzo
Lisa G. McAlister
Daniel J. Neilsen
Joseph M. Clark
McNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228

Duane Luckey
Attorney General's Office
Public Utilities Commission of Ohio
180 East Broad Street, 9th Floor
Columbus, OH 43215