

FILE

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Application of Duke
Energy Ohio, Inc. to Adjust and Set its
2008 System Reliability Tracker.

)
) Case No. 07-975-EL-UNC
)

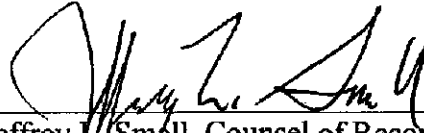
PUCO

**MOTIONS 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 the OCC's intervention in the above-captioned case. The reasons for granting the OCC's motion are further set forth in the attached Memorandum in Support.

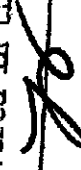
Respectfully submitted,

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**BEFORE THE
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In the Matter of the Application of Duke)
Energy Ohio, Inc. to Adjust and Set its) Case No. 07-975-EL-UNC
2008 System Reliability Tracker.)

MEMORANDUM IN SUPPORT

I. INTRODUCTION

On September 4, 2007, Duke Energy filed (among its related filings) an Application that initiated the above-captioned case. The Application addresses the system reliability tracker ("SRT") of Duke Energy's 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 SRT for the following year. The OCC was significantly involved in those consolidated cases that were decided in 2004, as well as in numerous subsequent, related proceedings.¹

II. INTERVENTION

The 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

¹ See, e.g., *In re Review of FPP and SRT Components*, Case No. 07-723-EL-UNC and *In re Duke Energy Post-MDS Remand Case*, Case No. 03-93-EL-ATA, et al., on remand from the Supreme Court of Ohio, *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789.

may be “adversely affected” by this case, especially if the consumers are unrepresented in a proceeding regarding Duke Energy’s rates that reflect SRT 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 the 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, the 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. The OCC’s position is therefore directly related to the merits of this case that is pending before the PUCO.

Third, the OCC’s intervention will not unduly prolong or delay the proceeding. The 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, the OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. As stated in the introduction, the OCC was significantly involved in the proceeding in which the SRT was initiated, as well as the later "rider" cases that reviewed quarterly levels for these charges. The OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

The OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that the 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, the 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, the 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 the OCC has already addressed, and that the 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 the OCC does not concede the lawfulness of this criterion, the OCC satisfies this criterion because the OCC has been uniquely designated as the statutory representative of the interests of Ohio's residential utility consumers.² That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio recently confirmed the OCC's right to intervene in PUCO proceedings, in ruling on an appeal in which the OCC claimed the

² R.C. Chapter 4911.

PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying the OCC's intervention and that the OCC should have been granted intervention.³

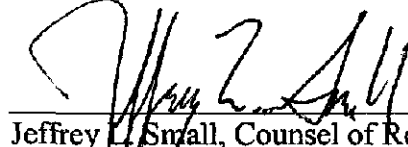
The OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio's residential consumers, the Commission should grant the OCC's Motion to Intervene.

III. CONCLUSION

As set forth herein, the 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, the OCC respectfully requests that the Commission grant the OCC's Motion to Intervene in the above-captioned proceeding. The 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



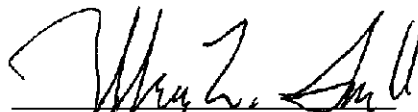
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³ *Ohio Consumers' Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20 (2006).

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 18th day of September, 2007.


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