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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application for)
Recovery of Costs, Lost Margin, and)
Performance Incentive Associated with) Case No. 08-1227-EL-UNC
the Implementation of Electric Residential)
Demand Side Management Programs by)
Duke Energy Ohio)

In the Matter of the Application for)
Recovery of Costs, Lost Margin, and)
Performance Incentive Associated with) Case No. 08-1228-EL-UNC
the Implementation of Electric Non-)
Residential Demand Side Management)
Programs by Duke Energy Ohio)

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

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the approximately 580,000 residential utility consumers of Duke Energy Ohio ("Duke" or "Company"), moves¹ the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant the OCC's intervention in this case. The Company's application ("Application") seeks approval of the reconciliation and update of demand side management ("DSM") riders for the recovery of program costs, lost margins, and shared savings associated with the implementation of a set of DSM programs for residential and

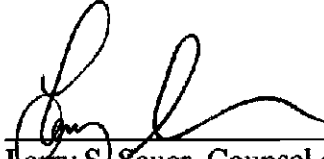
¹ R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

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small/medium size business consumers.² The reasons for granting the OCC's motion to intervene are further set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



Larry S. Sauer, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
614-466-8574 (Telephone)
614-466-9475 (Facsimile)
sauer@occ.state.oh.us

² Application at 1.

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On November 14, 2008, Duke filed an Application, seeking approval of the reconciliation and update of DSM riders for the recovery of program costs, lost margins, and shared savings associated with the implementation of a set of DSM programs for residential and small/medium size business consumers. The implementation of the DSM programs was approved in a prior Commission proceeding.³ The present Application is Duke's accounting of the DSM-related costs that it proposes to recover from customers through the DSM Riders. The OCC, as an advocate for conservation programs that can

³ *In the matter of the application of Cincinnati Gas & Electric Company for Recovery of Costs, Lost Margin, and Performance Incentive associated with the implementation of Electric Residential demand side of management programs*, Case No. 06-91-EL-UNC, et al., Finding and Order at 6 (July 11, 2007).

benefit residential consumers, supports conservation measures initiated by Duke to help their residential customers control energy costs.

II. INTERVENTION

Pursuant to R.C. Chapter 4911, the OCC moves to intervene under its legislative authority to represent the interests of the residential customers in Duke's service territory. Residential customers have an interest in the implementation of proper DSM programs to assist in controlling their energy usage (and energy bills). An improperly-structured DSM program would adversely affect these customers' interests. Residential customer interests would also be adversely affected if Duke overcharges customers for DSM program-related costs or includes non-program related costs in rates. These circumstances thus satisfy the intervention standard in R.C. 4903.221. The 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.

First, the nature and extent of OCC's interest includes that residential customers are affected by the affordability of their energy bills, especially during the winter heating season. Recovery of the DSM-related costs if improperly-structured would adversely affect these customers' interests. The General Assembly deemed the interests of residential customers worthy of protection through legislative authority, R.C. Chapter 4911. The OCC should be permitted to intervene to protect these interests.

Second, the legal positions advanced by the OCC regarding the reasonableness and lawfulness of the Application have an actual, and not just "probable," relation to the merits of the case. Third, OCC's participation will not unduly prolong or delay the proceeding. In fact, OCC's intervention will provide insights based upon expertise to assist the Commission in its treatment of the Application. Fourth, OCC's advocacy for consumers will significantly contribute to the full development and equitable resolution of the issues herein. Therefore, OCC's intervention is consistent with and supported by the statute.

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 very real and substantial interest in this case. The nature and extent of OCC's interest lies in assuring that the provision of utility services will effectively and efficiently serve the energy needs of Duke's residential consumers.

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 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 in that it uniquely has been designated as the state representative of the interests of Ohio’s residential utility consumers. That 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 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.⁴

For the reasons discussed above, the OCC satisfies the criteria set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11. Therefore, OCC’s Motion to Intervene should be granted.

III. CONCLUSION

For the reasons stated above, OCC’s Motion to Intervene should be granted.

⁴ *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶13-20 (2006).

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

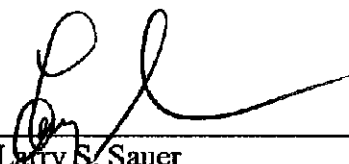
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Larry S. Sauer, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
614-466-8574 (Telephone)
614-466-9475 (Facsimile)
sauer@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's *Motion to Intervene* was provided to the persons listed below via first class U.S. Mail, postage prepaid, this 3rd day of December, 2008.



Larry S. Sauer
Assistant Consumers' Counsel

PARTIES SERVED

Duane Luckey, Esq.
Attorney General's Office
Public Utilities Section
180 East Broad Street, 9th Floor
Columbus, Ohio 43215

Paul Colbert
Elizabeth Watts
Duke Energy Ohio
139 East Fourth Street, 2500 AT. II
Cincinnati, OH 45202