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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

2009 JUL 17 PM 3: 50

In the Matter of the Application of Duke )  
Energy Ohio for Approval of the Second )  
Amended Corporate Separation Plan ) Case No. 09-495-EL-UNC  
Under Section 4928.17, Revised Code and )  
4901:1-37 Ohio Administrative Code. )

PUCO

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

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The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene<sup>1</sup> in this case in which compliance with provisions in the Stipulation and Recommendation ("Stipulation") in Case Nos. 08-920-EL-SSO, et al., and related matters may be at issue.<sup>2</sup> OCC files on behalf of all the approximately 610,000 residential utility consumers of Duke Energy Ohio, Inc. ("Duke" or "Company"). The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion to Intervene ("Motion") are further set forth in the attached Memorandum in Support.

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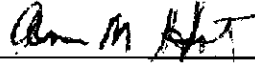
<sup>1</sup> See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

<sup>2</sup> In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan et.al., Case No. 08-920-EL-SSO, Stipulation and Recommendation (October 27, 2009) Joint Exhibit 1 at ¶26, pg 34.

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Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke  
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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

This case involves the review of Duke's corporate separation plan with regard to whether it complies with the Stipulation approved by the Commission.<sup>3</sup> OCC has authority under law to represent the interests of all the approximately 610,000 residential utility customers of Duke, pursuant to R.C. Chapter 4911.

**II. INTERVENTION**

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 were unrepresented in a proceeding that involves Duke's corporate separation plans. To the extent that Duke collects both fully regulated rates for its distribution service and competitive rates for its generation service, residential customers could be adversely affected if Duke's corporate separation plan allows Duke to incorporate costs associated with competitive generation service through regulated distribution rates.

In addition, Duke's residential customers could be adversely affected if Duke's

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<sup>3</sup> Id.

corporate separation plan allows anti-competitive exchanges of information from Duke's distribution and transmission providers and Duke's competitive generation providers by interfering in a level playing field for competitive generation providers and eventually increasing the price of generation in Duke's service territory. 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 consumers of Duke in order to help assure that the generation and distribution services are provided at reasonable prices and upon reasonable terms and conditions. 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 the corporate separation plan undertaken by the Company should provide for a level playing field for generation providers<sup>4</sup> and prevent subsidization of competitive services

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<sup>4</sup> Required under R.C. 4928.03.

through regulated distribution service.<sup>5</sup> OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of the terms under which public utilities provide their services.

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 the full development and equitable resolution of the factual issues. OCC was significantly involved in the case that resulted in execution of the Stipulation (including discussion and execution of the Stipulation itself). From this experience, the OCC has information and will develop additional 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 very real and substantial interest in this case where potential service to residential customers is at issue.

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

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<sup>5</sup> Required under R.C. 4928.07 and R.C. 4928.17(A)(1)-(3).

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.<sup>6</sup>

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 residential consumers, the Commission should grant OCC's Motion to Intervene.

### **III. CONCLUSION**

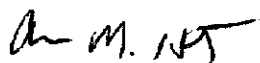
OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of residential consumers, the Commission should grant OCC's Motion to Intervene.

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<sup>6</sup> See *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



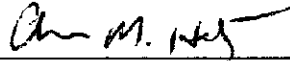
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below by regular U.S. Mail, postage prepaid, on this 17<sup>th</sup> day of July 2009.



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