

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Long-Term Forecast)
Report of Duke Energy Ohio and Related) Case No. 09-118-GA-FOR
Matters.)

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

OCC moves to intervene in this Long Term Forecasting ("LTFR") case for Duke Energy Ohio, Inc. ("Duke" or "Company"), in which Duke's projected loads and energy requirements to serve customers for each year of the period, and the estimated installed capacity and supplies to meet the projected load requirements to serve customers, will be considered.¹ OCC files on behalf of all the approximately 380,000 residential natural gas utility consumers of Duke. The Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant the OCC's intervention in the above-captioned LTFR proceeding where OCC has a statutory right to intervene, pursuant to R.C. 4935.04(E)(1), R.C. Chapter 4911, and Ohio Adm. Code 4901-1-11(A)(1).

The reasons for granting the OCC's Motion is further set forth in the attached Memorandum in Support.

PUCO

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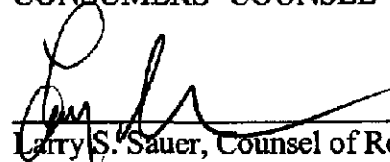
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¹ R.C. 4935.04 (E)(2)(a) and (b).

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Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Larry S. Sauer", is written over a horizontal line.

Larry S. Sauer, Counsel of Record

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MEMORANDUM IN SUPPORT

The OCC moves to intervene in the above-captioned LTFR proceeding where OCC has a statutory right to represent the interests of all the approximately 380,000 residential natural gas utility customers of Duke. R.C. 4935.04(E)(1) states:

The scope of the hearing held under division (D)(3) of this section shall be limited to issues relating to forecasting. The power siting board, *the office of consumers' counsel*, and all other persons having an interest in the proceedings *shall* be afforded the opportunity to be heard and to be represented by counsel. (Emphasis added).

Therefore, the General Assembly determined that OCC shall have the opportunity to be heard and to be represented by counsel in this forecasting case.

The right conferred by R.C. 4935.04(E)(1) is a right that is recognized in Ohio Adm. Code 4901-1-11:

Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:

(1) A statute of this state or the United States confers a right to intervene.

This statutory right for OCC to intervene in forecasting cases has previously been recognized by

the Commission.² Based on R.C. 4935.04(E)(1), OCC should be granted intervention pursuant to this statutory right.³

In conclusion, OCC has a statutory right to intervene, per R.C. 4935.04(E)(1). And the PUCO's rule, Ohio Adm. Code 4901-1-11(A)(1), recognizes that a statutory right to intervene

² See, e.g., *In re FirstEnergy LRFR Case*, Case No. 03-504-EL-FOR, Entry at 1 (August 27, 2003).

³ While it therefore is not necessary to consider the elements of R.C. 4903.221, nevertheless, OCC may be "adversely affected" by this case, as is the standard for intervention in that statute. As such, the interests of residential natural gas customers in areas served by the Company may be "adversely affected" by this LRFR case, pursuant to the intervention standard in R.C. 4903.221. This element of the intervention standard in R.C. 4903.221 is satisfied with regard to, among other things, the fact that consumers may be adversely affected by any PUCO determinations related to *inter alia* the load requirements are based on substantially accurate historical information and adequate methodology, the forecasting methods consider the relationships between price and energy consumption, and all assumptions made in the forecast are reasonable and adequately documented. 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 lies in assuring that the Company's projected energy requirements for each year of the period, and the estimated capacity and supplies to meet the projected energy requirements are reasonable such that Duke will effectively and efficiently provide natural gas services to its residential customers. 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 Duke's provision of natural gas commodity service is adequate under Ohio law. 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 public utilities' rates and service quality in Ohio.

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 this case with consideration of the public interest.

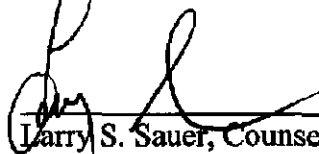
Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding this case in the public interest.

will result in the granting of intervention. On behalf of Duke's residential consumers, the Commission should grant OCC's Motion to Intervene.

For all the above reasons, OCC's Motion to Intervene should be granted.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

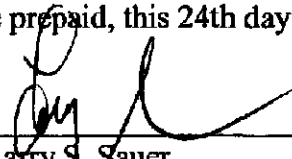


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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below, via first class U.S. Mail, postage prepaid, this 24th day of November 2009.



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