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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy )  
Ohio, Inc., for a Waiver from Certain Provisions ) Case No. 10-596-GA-WVR  
of the Ohio Administrative Code. )

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S  
MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT,  
COMMENTS ON THE APPLICATION,  
REQUEST THAT DUKE ENERGY OHIO, INC. CORRECT,  
SUPPLEMENT AND RE-SUBMIT ITS APPLICATION,  
AND MOTION TO PRACTICE PRO HAC VICE  
BEFORE THE COMMISSION**

Ohio Partners for Affordable Energy ("OPAE") hereby respectfully moves the Public Utilities Commission of Ohio ("Commission" or "PUCO") for leave to intervene in the above-captioned application pursuant to R.C. §4903.221 and Section 4901-1-11 of the Commission's Code of Rules and Regulations, with full powers and rights granted by the Commission specifically, by statute or by the provisions of the Commission's Code of Rules and Regulations to intervening parties. The reasons for granting this motion to intervene are contained in the memorandum attached hereto and incorporated herein. OPAE also submits comments on the application herein. Finally, OPAE also requests that the Commission order Duke to correct, supplement, and re-submit the application in this docket for the reasons set forth below.

Respectfully submitted,



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DOCKETING DIVISION  
Public Utilities Commission of Ohio

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**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE**

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**I. Memorandum in Support of the Motion to Intervene**

Ohio Partners for Affordable Energy ("OPAE") should be permitted to intervene in this matter pursuant to Section 4903.22.1, Revised Code, and the Commission's Rules and Regulations contained in Rule 4901-01-11 of the Ohio Administrative Code. The above-referenced application concerns the request of Duke Energy Ohio, Inc., ("Duke") for waivers from certain sections of the Ohio Administrative Code relevant to the Percentage of Income Payment Plan ("PIPP"). In its application, Duke states that the Ohio Department of Development ("ODOD") promulgated new rules for electric PIPP customers on December 2009 and that the PUCO has rules for natural gas PIPP customers that do not coincide with the ODOD electric rules. In an application to ODOD on April 12, 2010, Duke asked for a waiver from certain of the ODOD rules, because, in those instances, Duke intends to comply with the PUCO rules rather than the ODOD rules. In this application before the PUCO, Duke requests waivers of several of the PUCO's PIPP rules and describes instances in which it will not comply with the PUCO's rules but will comply with the ODOD rules instead.

In determining whether to permit intervention, the following criteria are to be considered: the nature of the person's interest; the extent to which that interest is represented by existing parties; the person's potential contribution to a just and expeditious resolution of the proceeding; and, whether granting the intervention will

unduly delay or unjustly prejudice any existing party. OPAE meets all four criteria for intervention in this application.

OPAE is an Ohio corporation with a stated purpose of advocating for affordable energy policies for low and moderate income Ohioans; as such, OPAE has a real and substantial interest in this matter, which will address Duke's request for waivers of certain sections of the Ohio Administrative Code that pertain to the PIPP program. Additionally, OPAE includes as members non-profit organizations located in the service area that will be affected by this application.<sup>1</sup> Moreover, many of OPAE's members are community action agencies. Under the federal legislation authorizing the creation and funding of these agencies, originally known as the Economic Opportunity Act of 1964, community action is charged with advocating for low-income residents of their communities.<sup>2</sup>

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<sup>1</sup> A list of OPAE members can be found on the website: [www.ohiopartners.org](http://www.ohiopartners.org).

<sup>2</sup> See 42 U.S.C. 672:

The purposes of this subtitle are--

(1) to provide assistance to States and local communities, working through a network of community action agencies and other neighborhood-based organizations, for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient (particularly families who are attempting to transition off a State program carried out under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)); and

(2) to accomplish the goals described in paragraph (1) through--

(A) the strengthening of community capabilities for planning and coordinating the use of a broad range of Federal, State, local, and other assistance (including private resources) related to the elimination of poverty, so that this assistance can be used in a manner responsive to local needs and conditions;

(B) the organization of a range of services related to the needs of low-income families and individuals, so that these services may have a measurable and potentially major impact on the causes of poverty in the community and may help the families and individuals to achieve self-sufficiency;

(C) the greater use of innovative and effective community-based approaches to attacking the causes and effects of poverty and of community breakdown;

(D) the maximum participation of residents of the low-income communities and members of the groups served by programs assisted through the block grants made under this subtitle to empower such residents and members to respond to the unique problems and needs within their communities; and

(E) the broadening of the resource base of programs directed to the elimination of poverty so as to secure a more active role in the provision of services for--

(i) private, religious, charitable, and neighborhood-based organizations; and

(ii) individual citizens, and business, labor, and professional groups, who are able to influence the quantity and quality of opportunities and services for the poor.

OPAE also provides essential services in the form of bill payment assistance programs, and weatherization and energy efficiency services to low income customers of Duke. OPAE members also directly interact with PIPP customers, determining eligibility, enrolling customers, and providing case management for clients on PIPP. OPAE members are also ratepayers of Duke.

OPAE's primary interest in this case is to protect the interests of low and moderate income Ohioans whose provision of electric service may be affected by this application. (OPAE's concerns about this application are discussed in the comments section of this motion.) Further, OPAE has been recognized by the Commission in the past as an advocate for consumers and particularly low-income consumers, who may be affected by the outcome of this case.

For the above reasons, OPAE has a direct, real and substantial interest in this matter. The disposition of this matter may impair or impede OPAE's ability to protect its interests. No other party to the matter will adequately represent the interests of OPAE. OPAE is a rare organization that serves as an advocate, service provider and nonprofit customer group. No other party represents this group of interests. OPAE's participation in this matter will not cause undue delay, will not unjustly prejudice any existing party, and will contribute to the just and expeditious resolution of the issues raised by this docket.

Therefore, OPAE is entitled to intervene in this application with the full powers and rights granted by statute and by the provisions of the Commission's Codes of Rules and Regulations to intervening parties.

## **II. Comments on the Application**

### **A. Rule 4901:1-18-13**

ODOD Rule 122:5-3-04(A)(2) allows a zero-income PIPP participant to request a waiver of the \$10 minimum payment for up to 180 days once every five years. The

PUCO rules include no comparable provision. The PUCO rule cited for waiver by Duke, Rule 4901:1-18-13, provides the payment requirements for PIPP customers. Rule 4901:1-18-13(A)(1) simply requires PIPP participants to make at least the \$10 minimum payment every month. Duke proposes to allow zero-income natural gas PIPP participants in its service area to request a waiver of the \$10 minimum payment for up to 180 days once every five years as provided in ODOD rule 122:5-3-04(A)(2). Thus, PIPP customers of Duke could request the waiver of the \$10 minimum payment for the natural gas service as well as the electric service.

Duke believes that in order to offer the 180-day waiver of the minimum bill to zero-income natural gas PIPP participants, it must have its own waiver, i.e., a waiver of PUCO Rule 4901:1-18-13(A)(1), which states that each PIPP customer shall be billed at least \$10 per month. The PUCO rule is silent on the 180-day waiver of the minimum bill for zero-income PIPP participants; therefore there is no actual rule language to waive. Duke's proposal is essentially to enhance the PUCO's rule by adding the 180-day waiver. However, it is not apparent that Rule 4901:1-18-13(A)(1) prevents Duke from offering the 180-day waiver of the minimum bill.

It is obvious that the entirety of Rule 4901:1-18-13 will not be waived; therefore, the Commission should find that nothing in its rule prevents Duke from offering the \$10 minimum payment waiver. The Commission should find that its rule is not violated by Duke when it extends the 180-day waiver of the minimum payment to its natural gas zero-income PIPP participants. If eventually the PIPP rules are standardized by ODOD and the PUCO, the PUCO should follow the ODOD rule and explicitly provide for a 180-day waiver of the minimum payment for zero-income natural gas PIPP customers.

**B. Rule 4901:1-18-12(D)(2)**

The PUCO Rule 4901:1-18-12(D)(2) concerns dropping participants from the PIPP program for non-payment of the PIPP installments. The rule provides that PIPP participants, including those disconnected for non-payment, will be dropped from the PIPP program if missed PIPP payments are not paid by one billing cycle after the customer's anniversary date, i.e., the PIPP re-verification date. This includes any PIPP payments that would have been due for any months during which the customer was disconnected; however the amount of PIPP payments to be paid to restore service if disconnected and to re-enter the PIPP program will not exceed the amount of the customer's arrearage.

ODOD rule 122:5-3-02(H)(1)(b) states that if a customer fails to pay two consecutive PIPP monthly installments, the customer will receive a written notice and will have 30 days to pay the past due monthly PIPP installments. If the past due monthly PIPP installments are not paid, the customer will be dropped from the PIPP program.

Duke proposes to comply with the ODOD rule and requests that the PUCO waive the language in (D)(2) stating that the customer will be dropped from the PIPP program if the customer does not pay all missed PIPP installments, including those that would have been due during disconnection, by one billing cycle after the anniversary, i.e., re-verification date. However, the rules are not addressing the same situation. The ODOD rule cited by Duke is relevant if the PIPP customer misses two consecutive PIPP installment payments. The PUCO rule cited by Duke is relevant for missed PIPP payments during the year at the time of re-verification.

It is not obvious that the rules can be substituted for each other as Duke implies. The two rules are discussing two different situations. The waiver request appears unnecessary.

**C. Rule 4901-1-18-13(A)(1)**

The Commission rule requires that PIPP customers have natural gas as the primary heat source. ODOD, of course, has no such requirement. Duke states that its customers are on PIPP by account and not by service. A Duke customer is either on PIPP for both gas and electric services or is an all electric account. Duke proposes to offer the PIPP program to its gas customers regardless of heat source. This would allow a gas cooking and/or hot water account to participate in the PIPP program. In order to have gas cooking and/or water heating customers participate in the PIPP program even if natural gas is not their primary heating source, Duke believes it needs a waiver of PUCO Rule 4901-1-18-13(A)(i) that requires that natural gas be the participant's primary heating source.

An obvious question here is how many natural gas customers in Duke's service area actually have natural gas water heaters and natural gas cooking but not natural gas as their source of heat? Duke should provide this information to the Commission so it may determine how many natural gas customers of Duke would benefit from this proposed rule waiver. In the event that there are natural gas customers in Duke's service area that will benefit from this proposal, the Commission should find that Duke may offer the PIPP program to those natural gas customers of Duke who do not have natural gas as their primary heating source.

**D. Post-PIPP Arrearage Crediting**

Duke states that the PUCO's rules do not allow for any arrearage crediting for former PIPP customers who are no longer customers of a utility. The ODOD rule, 122:5-3-04(B)(5)(c), provides that for every payment the former PIPP customer makes that equals at least one sixtieth of the total arrearage amount, the customer's arrearage balance will be credited for one-twelfth of the arrearage balance. The

PUCO's rules do not provide for this post-PIPP, post-utility service arrearage crediting program, so that Duke proposes to follow the ODOD rule for its natural gas post-PIPP, post-utility customer accounts and allow this arrearage crediting as provided for under the ODOD rule.

Duke requests a waiver, but cites no PUCO rule that requires a waiver. Of course, there is no PUCO rule to waive because the PUCO does not even have this program. There appears to be no reason why Duke cannot offer post-PIPP, post-utility service arrearage crediting to its natural gas customers.

**E. ODOD Rule 122:5-3-01 On-Time payment for arrearage crediting**

This ODOD rule specifies when payment must be received in order to be deemed timely for purposes of calculating arrearage credits. The PUCO Rule 4901:1-18-14(A)(1) and (2) provides that the customer must pay his bill by the due date on the bill in order to receive credit for payment for arrearage crediting purposes. The ODOD rule defines "on-time payment" as a payment received before the next month's bill is issued. Duke proposes to comply with the PUCO rule so that customers will be required to make payment prior to the due date of the bill. Therefore, Duke requested a waiver of the ODOD rule before ODOD and not a waiver of the PUCO rule.

If Duke's purpose is to have only one of these rules apply, it is inappropriate to allow Duke to select the rule that is most stringent on customers. Why would Duke not should seek to waive the PUCO rule here regarding timely payment and allow the due date for both gas and electric service for purposes of arrearage crediting to remain the more lenient ODOD rule that allows for payment before the next month's bill is issued to be considered timely for arrearage crediting purposes. Given that Duke is seeking to



avoid an ODOD rule that was adopted with considerable comment and was a victory for PIPP customers seeking to achieve arrearage crediting, it is not reasonable to allow Duke to avoid this ODOD rule simply because it is a combination utility. Arrearage crediting is one of the most significant advances in the new PIPP rules adopted by ODOD and the PUCO. The ODOD rule will further the purpose of arrearage crediting by making it slightly easier for customers to obtain the crediting. OPAE opposes this waiver request before ODOD; instead, the Commission should consider allowing Duke to have an on-time payment for arrearage crediting purposes to be a payment received before the next bill is issued, as in the ODOD rule.

#### **Conclusion to Comments**

The Commission should be concerned when any public utility seeks a waiver of the rules. Duke has provided no reasons why its proposed waivers are necessary or proper. The Commission has been presented with no basis to waive any of its rules and therefore should not do so.

#### **Request for Duke to Correct, Supplement and Re-submit its Waiver Request**

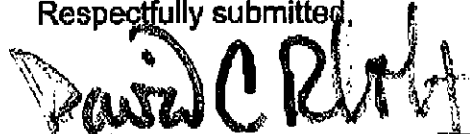
Duke's waiver request is not well made. As stated above, in several instances there are no rules to waive and in other instances the rule that Duke proposes to substitute for the Commission rule is not relevant to the situation addressed by the rules. OPAE has had similar problems trying to decipher Duke's request for a waiver at ODOD. On May 11, 2010, ODOD submitted a request to ODOD that ODOD require Duke to re-file its application. OPAE asked that Duke be required, for each rule for which Duke seeks a waiver, first to state the entire rule. Duke should then state what

part of the rule it seeks to have waived. If Duke is proposing to follow a PUCO rule instead of the ODOD rule, Duke should also state the entire PUCO rule. Duke should also state what part of the PUCO rule is relevant to the waiver it seeks at ODOD of the ODOD rule. Duke should also explain in detail why it is seeking the waiver, i.e., why the PUCO rule is preferable to the ODOD rule for the specific relevant situation of the waiver request. Duke should explain how the ODOD rule would have worked and then how the PUCO rule will work so that the consequences of the waiver are clear. This should include the impact of the waiver on the PIPP participant who will be affected by the waiver. In response to OPAE's request, ODOD has suspended the date comments on the waiver request and is taking up OPAE's request.

OPAE also believes that the Commission should require the same re-submission. For each PUCO rule that Duke is proposing to waive, Duke should first state the entire rule. Duke should then state what part of the rule it seeks to have waived. If Duke is proposing to follow an ODOD rule instead of the PUCO rule, Duke should also state the entire ODOD rule. Duke should also state what part of the ODOD rule is relevant to the waiver it seeks at the PUCO of the PUCO rule. Duke should also explain in detail why it is seeking the waiver, i.e., why the ODOD rule is preferable to the PUCO rule for the specific relevant situation of the waiver request. Duke should explain how the PUCO rule would have worked and then how the ODOD rule will work so that the consequences of the waiver are clear. This should include the impact on the PIPP participant who will be affected by the waiver.

Finally, given that OPAE has filed these comments with the PUCO today, OPAE would also herein request the opportunity to submit comments again in response to Duke's re-filing of its waiver request.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "David C. Rinebolt", written over a horizontal line.

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**MOTION TO ADMIT DAVID C. RINEBOLT TO PRACTICE  
PRO HAC VICE BEFORE THE COMMISSION**

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Pursuant to Rule 4901-1-08(B) of the Ohio Administrative Code, Colleen L. Mooney (0015668), an attorney licensed to practice in the State of Ohio, respectfully petitions the Commission to permit David C. Rinebolt to practice *pro hac vice* before the Commission in the above-referenced case. Mr. Rinebolt represents Ohio Partners for Affordable Energy, which is an Ohio corporation engaged in advocating for affordable energy policies.

Mr. Rinebolt graduated from the Columbus School of Law of the Catholic University of America in May 1981. As an active member of the District of Columbia Bar, Bar No. 367210, Mr. Rinebolt is licensed to practice before the federal courts of the District of Columbia. Furthermore, Mr. Rinebolt has practiced law continuously since being admitted to the District of Columbia bar in October 1982. He has been granted permission to practice *pro hac vice* before this Commission on numerous occasions.

WHEREFORE, Colleen L. Mooney respectfully requests that David C. Rinebolt be permitted to practice before the Commission in the aforementioned docket.

Respectfully submitted,

Colleen L. Mooney

Colleen L. Mooney

David C. Rinebolt

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Intervene and Memorandum of Support, Comments and Request, and Motion to Practice Pro Hac Vice was served by regular U.S. Mail upon the following parties identified below in this case on this 12th day of May 2010.

  
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