

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Approval of Tariff) Case No. 10-455-EL-ATA
for Rate PTR)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene and files comments in this case in which the Commission must address a new peak time rebate program that would be offered to residential customers.¹ The peak time rebate provides customers with an opportunity to earn credit on their bill by reducing usage at peak times. OCC is filing on behalf of all the approximately 612,000 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 are further set forth in the attached Memorandum in Support.

Respectfully submitted,

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CONSUMERS' COUNSEL

/s/ Ann M. Hotz

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

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MEMORANDUM IN SUPPORT

I. MOTION TO INTERVENE

This case involves the review of the reasonableness and lawfulness of the peak time rebate program that Duke proposes to offer its customers. OCC has authority under law to represent the interests of all the approximately 612,000 residential utility customers of Duke, 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 may be “adversely affected” by this case, especially if the consumers were unrepresented in a proceeding in which Duke is offering a new program that could have a significant impact on the adequacy of service provided to them and the rates charged to them. 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 this case where Duke is proposing a peak time rebate program provides adequate services for the rates charged. 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 peak time rebate program should provide adequate service at reasonable rates -- such as rates should be no more than what is reasonable and lawful under Ohio law, for service that 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 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 will obtain and develop 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 in which Duke is offering a new peak time rebate program that will provide an opportunity to customers to reduce its bill by reducing use during peak times.

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.²

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.

² See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

II. COMMENTS

A. Duke Improperly Characterize The Peak Time Rebate Rate In Its Application.

As Duke stated in its application, the SmartGrid Collaborative did design a Peak Time Rebate (“PTR”) rate. But Duke erred in its application when it claimed that “customers who do not take proper advantage of the rate may see a bill increase.”³ The PTR rate only provides a credit to customers’ bills who reduce their usage during up to 10 Duke called peak times. The PTR rate will in no circumstances increase customers’ bills.

In fact, the Rider PTR tariff that was attached to the application confirms that there will not be a bill increase for customers:

Participating customers may choose to maintain their electric usage levels at previous levels during an event. Customers who do not reduce usage levels during the event will not incur any penalties, and they will be billed for the electricity consumers during the event at the normal tariff rates. **No customer’s bill will increase as a result of this tariff.**⁴

Moreover, in the application Duke concludes from its wrong statement that customers “may see a bill increase” that “It is precisely due to the lack of experience with customer reaction * * * that the first pilot is limited in number and scope.”⁵ Because no customers will see a bill increase, the Commission should disregard Duke’s conclusion that it is necessary for Duke to limit the first pilot as a customer benefit. In fact, once the company has more experience in implementing the program and proper billing, consideration should be given to making the PTR tariff the default rate for residential

³ Application at 2.

⁴ Application, Exhibit 1 at 1. (Emphasis added).

⁵ Application at 3.

customers over a designated kWh usage threshold. As customers become more comfortable with the “hold harmless” PTR tariff, they may want to consider taking on more risk in other Company dynamic rate offerings in order to attain greater bill savings. It is a win-win rate for both the customers and Duke. Not only can the PTR rate lower customer bills and never increase them but it can also reduce Duke’s peak demand and its costs, which is a goal of S.B. 221.

B. Not All of the Rule Waivers Duke Has Requested Are Necessary To Implement The Peak Time Rebate Program.

1. Waiver of Budget Billing Or Extended Payment Plans

Duke has stated that the current billing system they will rely on for SmartGrid pilot program billing will not allow for budget bill or extended payment plans. But ultimately Duke intends to make budget billing and extended payment plans available for SmartGrid program customers. OCC believes Duke should make an effort to accommodate those budget billing or extended payment plan customers (who opt for the new rate designs) now.

Budget billing is a right under Ohio Adm. Code 4901:1-18-04(C) and an important convenience for many residential customers. During these pilot programs, Duke should gather information about how customers using SmartGrid pricing programs in the future will respond to the pricing programs. Without allowing for conveniences that customers will be permitted in the planned future final program, Duke will not be gathering useful information through these pilot programs.

The availability of budget billing is an important economic option for customers who are on fixed incomes. Excluding budget billing will inhibit a large portion of the

population from accepting any of the SmartGrid pilot pricing programs, even though they are very likely to benefit from such programs such as this PTR program. Without budget billing and extended payment plans Duke cannot obtain a valid measure of success of the Smart Grid pricing programs. The SmartGrid pilot programs should include a cross-section of all groups that make up the residential class and Duke will be unable to do that without the availability of budget billing and extended payment plans.

2. The PTR Pilot Rate Should Be Available To All Residential Customers With A Certified Advanced Meter And Who Are Not Participating In The Company's Power Manager Program.

In proposed Rider PTR, attached to the Company's application, the following restrictive language is found. "[t]his rider is not available to customers on ... HEAP, or any other assistance plan." There is no reason to exclude these customers if they want to participate since they can only benefit from the rate as indicated earlier. OCC is interested in the behavior of all customers who choose to participate in these pilot programs to help inform future decisions when and if, the tariffs become available on a voluntary basis to all customers.

III. CONCLUSION

The OCC respectfully requests that the Commission grant its Motion to Intervene. Additionally, the Commission should require Duke to provide budget billing and payment plans to customers who participate in the PTR program and other SmartGrid pricing programs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Intervene and Comments* by the Office of the Ohio Consumers' Counsel was served on the persons stated below via regular mail, this 9th day of June 2010.

/s/ Ann M. Hotz
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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/9/2010 4:44:50 PM

in

Case No(s). 10-0455-EL-ATA

Summary: Motion Motion to Intervene and Comments by the Office of the Ohio Consumers' Counsel electronically filed by Mrs. Mary V. Edwards on behalf of Hotz, Ann M. Ms. and Office of the Ohio Consumers' Counsel