

FILE

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Duke)
Energy Ohio Inc., to Adjust and Set the)
Annually Adjusted Component of its)
Market Based Standard Service Offer.)

Case No. 10-1268-ELRUCO

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

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential utility customers, moves in this amended Motion for the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in this case where issues include what customers will be asked to pay for the costs of incremental environmental compliance, tax changes, homeland security costs and fuel flexibility. The application ("Application") by Duke Energy Ohio, Inc. ("Duke Energy" or "Company") for approval of rate changes for 2011 could result in charges that are unreasonable for residential customers.¹ This OCC Amended Motion (amending OCC's Motion to Intervene filed on September 9, 2010) should be granted because OCC meets the legal standards for intervention, as explained in detail in the attached Memorandum in Support.

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

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Respectfully submitted,

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio Inc., to Adjust and Set the)	Case No. 10-1268-EL-UNC
Annually Adjusted Component of its)	
Market Based Standard Service Offer.)	

MEMORANDUM IN SUPPORT OF AMENDED MOTION TO INTERVENE

I. INTRODUCTION

On September 1, 2010, Duke Energy filed its Application for the approval of an Annually Adjusted Component ("AAC") for the period of January 2011 through December 2011, in order to collect from customers the costs of incremental environmental compliance, tax changes, homeland security costs and fuel flexibility. The approval of the Application could permit the Companies, under certain circumstances, to collect more money from the Companies' approximately 612,000 residential customers than is reasonable.

The OCC is the state agency that represents Ohio's residential utility consumers. OCC filed a Motion to Intervene on September 9, 2010, and amends that Motion with this pleading. The Commission should grant the OCC's Amended Motion to Intervene in this proceeding so that it can fully participate in the proceeding and protect the interests of the Companies' residential consumers.

II. ARGUMENT

A. Motion to Intervene

Pursuant to R.C. Chapter 4911, the OCC moves to intervene under its legislative authority to represent Ohio residential utility customers. The OCC meets the standards for intervention found in Ohio's statutes and the PUCO's rules.

The interests of residential electric customers in areas served by the Company are "adversely affected" by this case, pursuant to the intervention standard in R.C. 4903.221. 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 proceeding, especially if the customers are unrepresented in a proceeding where the Company seeks to increase rates paid by residential customers. Thus, the OCC satisfies the intervention standard in R.C. 4903.221.

The OCC also meets the criteria for intervention in R.C. 4903.221(B), which requires the PUCO, in ruling on motions to intervene, to consider the following:

- (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 the OCC's interest is to represent the residential customers of the Company regarding rates paid by 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 its stockholders.

Second, the OCC's legal positions include, without limitation, that the rates paid by residential customers should be reasonable and lawful.

Third, the OCC's intervention will not unduly prolong or delay the proceeding, but should provide insights that will expedite the PUCO's effective treatment of the Application. The OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the proceeding with consideration of the public interest.

Fourth, the OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. This case significantly relates to the results of the last Duke AAC case, Case No. 10-518-EL-RDR with which the OCC has extensive experience. Furthermore, this case has important implications for the proper application of law as recently enacted in Sub. S.B. 221, about which the OCC has extensive knowledge. The OCC will present information that the PUCO should consider for equitably and lawfully deciding this case in the public interest.

The OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that the 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 for the State of

Ohio, the OCC has a real and substantial interest in this proceeding where the outcome will have an effect on the service rates paid by residential consumers.

In addition, the OCC meets the criteria of Ohio Adm. Ode 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that the OCC already has addressed and that the 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 the OCC does not concede the lawfulness of this criterion, the 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 the OCC’s right to intervene in PUCO proceedings, in ruling on an appeal in which the OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying the OCC’s intervention and that OCC should have been granted intervention.²

The 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’s residential consumers, the Commission should grant the OCC’s Amended Motion to Intervene.

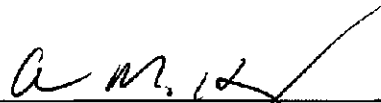
² *Ohio Consumers’ Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶13-20 (2006).

III. CONCLUSION

For the above-stated reasons, the OCC's Amended Motion to Intervene should be granted.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

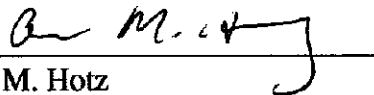


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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Amended Motion to Intervene by the Office of the Ohio Consumers' Counsel* was served on the persons stated below, via First Class U.S. Mail, postage prepaid, this 16th day of September, 2010.



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