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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Application of)
Duke Energy Ohio for an Adjustment to) Case No. 10-2788-GA-RDR
Rider AMRP Rates.)

In the Matter of the Application of)
Duke Energy Ohio for Tariff Approval.) Case No. 10-2789-GA-ATA

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

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential utility consumers of Duke Energy Ohio ("Duke" or "Company"), moves¹ the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant the OCC's intervention in these cases wherein Duke filed an application ("Application") to seek an annual adjustment in the Accelerated Main Replacement Program ("AMRP") Rider rates that it charges to customers. The Company seeks an increase (in the amount of \$1.13 per month) to the AMRP Rider Rate in 2010 over the Rider rate effective May 1, 2010, to be charged to Duke's 383,000 residential customers.² The reasons the PUCO should grant this Motion are more fully explained in the attached Memorandum in Support.

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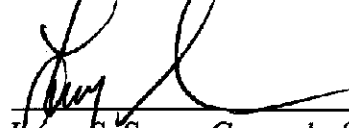
¹ R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

² PFN at Tab 5 (The current AMRP Rider Rate is \$3.65 and will increase to \$4.78 under Duke's Application.).

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Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



Larry S. Sauer, Counsel of Record
Joseph P. Serio
Kyle L. Verrett
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
614-466-8574 (Telephone)
614-466-9475 (Facsimile)
sauer@occ.state.oh.us
serio@occ.state.oh.us
verrett@occ.state.oh.us

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On November 30, 2010, Duke Energy Ohio filed a pre-filing notice ("PFN") pursuant to R.C. 4909.43(B) to notify the mayors and legislative authorities of the municipalities within Duke's service territory of the proposed AMRP Rider Rate increase. Under the AMRP Duke is installing plastic mains and service lines to replace the cast iron and bare steel mains and metallic service lines throughout its service territory in an accelerated time period.³ The procedure for requiring the annual filing of the PFN in November was agreed to in the recent Duke rate case ("Duke Rate Case") proceeding, Case No. 07-589-GA-AIR.⁴ Duke's PFN filing which includes nine months actual and three months estimated data will be updated with twelve months of actual 2010 data in February, 2011.⁵

II. INTERVENTION

Pursuant to R.C. Chapter 4911, the OCC moves to intervene under its legislative authority to represent the interests of the natural gas residential utility customers in Duke's

³ PFN at Tab 5.

⁴ *In the Matter of the Application of Duke Energy Ohio for an Increase in Rates*, Case No. 07-589-GA-AIR, et al., Stipulation and Recommendation at 8 (February 28, 2008).

⁵ *Id.*

service territory. The procedure for requesting the annual increases to Duke's AMRP Rider rates was agreed to in the Duke Rate Case; however, the amount of the increase and Duke's evidence in support of the increase are open to investigation and challenge.

The interests of Duke's residential natural gas customers in Ohio may be "adversely affected" by these cases, depending on, among other things, the amount of the increase to the AMRP Rider rate that is ultimately approved, thus satisfying the intervention standard in R.C. 4903.221. The OCC also meets the Commission's required showing for a party that has a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2), and should therefore be permitted to intervene in these cases.

R.C. 4903.221(B) requires the PUCO 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 includes that residential customers are affected by the affordability of their energy bills, especially during the winter heating season. An unjust and unreasonable increase to Duke's AMRP Rider rate would adversely affect these customers' interests. The General Assembly deemed the interests of residential customers worthy of protection through legislative authority in R.C. Chapter 4911. The OCC should be permitted to intervene to protect these interests.

Second, the legal positions advanced by the OCC regarding the reasonableness and lawfulness of the Application have an actual, and not just “probable,” relation to the merits of these cases. Third, OCC’s participation will not unduly prolong or delay the proceeding. In fact, OCC’s intervention will provide insights based upon expertise to assist the Commission in its treatment of the Application. Fourth, OCC’s advocacy for consumers will significantly contribute to the full development and equitable resolution of the issues herein. Therefore, OCC’s intervention is consistent with and supported by the statute.

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 these cases. The nature and extent of OCC’s interest lies in assuring that the provision of natural gas services will effectively and efficiently serve the energy needs of Duke’s residential consumers.

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.⁶

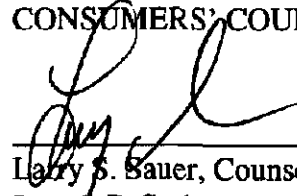
For the reasons discussed above, the OCC satisfies the criteria set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11. Therefore, OCC's Motion to Intervene should be granted.

III. CONCLUSION

Therefore, for all the reasons stated above, the PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



Larry S. Bauer, Counsel of Record
Joseph P. Serio
Kyle L. Verrett

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
614-466-8574 (Telephone)
614-466-9475 (Facsimile)
sauer@occ.state.oh.us
serio@occ.state.oh.us
verrett@occ.state.oh.us

⁶ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶13-20 (2006).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's *Motion to Intervene by the Office of the Ohio Consumers' Counsel* was provided to the persons listed below via first class U.S. Mail, postage prepaid, this 20th day of December 2010.



Larry S. Sauer
Assistant Consumers' Counsel

SERVICE

William Wright, Esq.
Attorney General's Office
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
william.wright@puc.state.oh.us

Amy B. Spiller
Associate General Counsel
Elizabeth H. Watts
Assistant General Counsel
Duke Energy Ohio.
139 East Fourth Street
P.O. Box 960
Cincinnati, Ohio 45201
amy.spiller@duke-energy.com
elizabeth.watts@duke-energy.com

Attorney for Duke Energy Ohio, Inc.