

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke )  
Energy Ohio, Inc., for an Energy )  
Efficiency Cost Recovery Mechanism ) Case No. 11-4393-EL-RDR  
and for Approval of Additional Programs )  
for Inclusion in its Existing Portfolio. )

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

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The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of all of the residential electric utility consumers of Duke Energy Ohio, Inc. ("Duke" or the "Company"), moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in the above-captioned case where the PUCO will review the energy efficiency programs and cost recovery for those programs in rates charged Duke customers for their electric service.<sup>1</sup> OCC's Motion should be granted because OCC meets the legal standards for intervention on behalf of consumers, as explained in detail in the attached Memorandum in Support.

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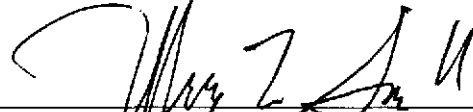
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<sup>1</sup> R.C. Chapter 4911, R.C. 4903.221, Ohio Adm. Code 4901-1-11 and 4901-1-12.

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Technician BJM Date 7/27/11

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

The Office of the Ohio Consumers' Counsel ("OCC") moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's motion to intervene on behalf of the approximately 612,000 residential electric customers of Duke Energy Ohio, Inc. ("Duke" or the "Company"). In this case, the Commission has been asked to rule upon Duke's application for approval of certain energy efficiency programs and cost recovery for Duke's energy efficiency programs in customer rates.

**II. INTERVENTION**

OCC moves to intervene under its legislative authority to represent residential utility consumers in Ohio, 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 these cases, especially if the consumers are unrepresented in a proceeding in which the Commission establishes Duke's electric rates in connection with the Company's proposed energy efficiency programs. 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 electric customers of Duke. 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 electric rates should be no more than what is reasonable and permissible under Ohio law, for service that is adequate under Ohio law. This advocacy includes the OCC's concern that the process for determining such rates should protect the interests of residential consumers and that the energy efficiency programs required under R.C. Chapter 4928 are carried out in an efficient and fair manner. OCC's position is therefore directly related to the merits of these cases that are pending before the PUCO.

Third, OCC's intervention will not unduly prolong or delay the proceeding. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of these cases 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 has been significantly involved in previous proceedings that established programs related to energy efficiency, both regarding Duke and other electric distribution utilities in Ohio, as well as cost recovery for such programs. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding these cases 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 real and substantial interest in these cases where programs affecting residential customers and the rates paid by residential customers are under review by the Commission.

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 has already 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 because OCC has been uniquely designated as the statutory representative of the interests of Ohio's residential utility consumers.<sup>2</sup> That interest is different from, and not represented by, any other entity in Ohio.

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<sup>2</sup> R.C. Chapter 4911.

Moreover, the Supreme Court of Ohio has 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.<sup>3</sup>

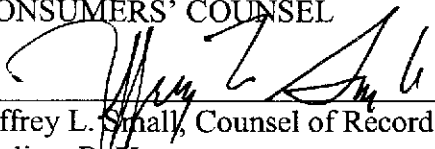
OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio's residential consumers, the Commission should grant OCC's Motion to Intervene.

### III. CONCLUSION

As set forth herein, OCC satisfies the criteria set forth in R.C. 4903.221 and the Commission's rules for intervention. Therefore, on behalf of the approximately 612,000 residential electric customers of Duke, OCC respectfully requests that the Commission grant OCC's Motion to Intervene. OCC's participation will contribute to a just resolution of the serious issues affecting consumers in this proceeding.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



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Jeffrey L. Small, Counsel of Record  
Melissa R. Yost

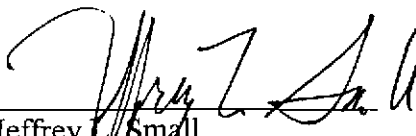
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<sup>3</sup> *Ohio Consumers' Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20 (2006).

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the *Motion to Intervene* has been served upon the below-stated counsel, by First Class U.S. Mail, this 25<sup>th</sup> day of July, 2011.

  
Jeffrey L. Small  
Assistant Consumers' Counsel

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