

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio, Inc., to Establish its Fuel)	Case No. 11-974-EL-FAC
and Economy Purchased Power)	
Component of its Market-Based Standard)	
Service Offer for 2011.)	

In the Matter of the Application of Duke)	
Energy Ohio, Inc., to Establish its System)	Case No. 11-975-EL-RDR
Reliability Tracker of its Market-Based)	
Standard Service Offer for 2011.)	

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where the PUCO will review components of rates that residential and other customers pay for their generation service.¹ The OCC files on behalf of all the more than 600,000 residential electric utility customers of Duke Energy Ohio, Inc. ("Duke Energy" or the "Company"). The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant the OCC's Motion are further set forth in the attached Memorandum in Support.

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

Respectfully submitted,

BRUCE J. WESTON
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MEMORANDUM IN SUPPORT

In an Opinion and Order (“Order”) dated December 17, 2008² in the standard service offer (“SSO”) case filed by Duke Energy, the Commission provided for quarterly reports and audits regarding economy purchased power (“FPP”) and system reliability tracker (“SRT”) components of the price-to-compare riders (referred to as “PTC-FPP” and “PTC-SRT”) of Duke Energy’s SSO that residential and other customers pay. The Commission provided for the examination of the auditor’s work “by any participant to the proceedings for which the audit report was generated.”³ An audit report is due in the above-captioned proceedings by May 10, 2012.⁴ The OCC has authority under law to represent the interests of all the more than 600,000 residential electric utility customers of Duke Energy, pursuant to R.C. Chapter 4911.

² *In re Duke Energy 2008 ESP Case*, Case Nos. 08-920-EL-SSO, et al., Order (December 17, 2008).

³ *In re Duke Energy FPP and SRT Audits*, Case Nos. 11-974-EL-FAC, et al., Entry at 2, ¶(5) (January 19, 2011).

⁴ *Id.* at 2, ¶(6).

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 customers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding regarding Duke Energy’s rates that include fuel and related charges that are included in the FPP and SRT riders that residential customers pay. 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 the OCC’s interest is representing the residential customers of Duke Energy in this case involving matters that determine 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 stockholders.

Second, the OCC’s advocacy for residential customers will include advancing the position that rates should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. The 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, the OCC's intervention will not unduly prolong or delay the proceedings. The 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, the OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. The OCC has actively participated in earlier proceedings regarding the FPP and SRT components of Duke Energy's rates. The OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the 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 advocate for residential utility customers, the OCC has a very real and substantial interest in this case where components of rates charged to residential customers will be considered.

In addition, the 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 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 since it uniquely has been designated as the state representative of the interests of Ohio's

residential utility customers. 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 deciding two appeals in which the OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying the OCC's interventions and that the OCC should have been granted intervention in both proceedings.⁵

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 residential customers, the Commission should grant the OCC's Motion to Intervene.

Respectfully submitted,

BRUCE J. WESTON
INTERIM CONSUMERS' COUNSEL

/s/ Jeffrey L. Small

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⁵ See *Ohio Consumers' Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below via regular U.S. Mail, postage prepaid, this 26th day of January 2012.

/s/ Jeffrey L. Small
Jeffrey L. Small
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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Small, Jeffrey L. Mr.