

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Report of Duke)
Energy Ohio, Inc. Concerning Its) Case No. 11-2515-EL-ACP
Advanced and Renewable Energy)
Baseline and Benchmarks.)

In the Matter of the Report of Duke)
Energy Ohio, Inc. Concerning its Ten) Case No. 11-2516-EL-ACP
Year Advanced Energy and Renewable)
Energy Benchmark Compliance Plan.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in these cases involving the intent of Ohio's energy law that electricity be provided to Ohio consumers through alternative sources located in Ohio. In these proceedings, Duke Energy Ohio ("Duke" or "Company") is reporting to the Public Utilities Commission of Ohio ("Commission" or "PUCO") on all activities undertaken in calendar year 2010 to meet the applicable alternative energy portfolio benchmarks and explains how those benchmarks will be met in the future.¹ OCC is filing on behalf of all of Duke's approximately 612,000 residential electricity consumers.² The reasons the Commission should grant OCC's Motion are further set forth in the attached Memorandum in Support.

¹ Duke Energy Ohio, Inc.'s 2010 Alternative Energy Portfolio Status Report and Ten Year Advanced Energy and Renewable Energy Benchmark Compliance Plan (April 15, 2010) at 1.

² See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

Respectfully submitted,

BRUCE J. WESTON
INTERIM CONSUMERS' COUNSEL

/s/ Terry L. Etter

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MEMORANDUM IN SUPPORT

These cases involve the review of Duke’s advanced energy portfolio and its ten-year advanced energy and renewable energy benchmark compliance plan. OCC has authority under law to represent the interests of all the approximately 612,000 residential electricity 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 these cases, especially if the consumers were unrepresented in a proceeding involving solar renewable energy benchmarks established by the General Assembly to provide better quality generation for the state. This proceeding could also affect Duke’s purchase of renewable energy credits, which in turn could affect the rates consumers pay Duke for generation. 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 Duke's residential consumers in order to advocate that Duke's efforts in meeting the solar renewable energy benchmarks prescribed by the General Assembly should not result in unreasonable rates for consumers. This interest is different from 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, *inter alia*, advancing the position that Duke should meet its solar renewable energy benchmarks to provide adequate service (including the intended benefits to the public under Ohio's new energy law) at a reasonable rate under Ohio law.³ 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.

³ R.C. 4905.22.

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 the Commission must address whether Duke is providing adequate service under Ohio law.

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 deciding two appeals in which OCC claimed the PUCO erred by

denying its interventions. The Court found that the PUCO abused its discretion in denying OCC's interventions and that OCC should have been granted intervention.⁴

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.

Respectfully submitted,

BRUCE J. WESTON
INTERIM CONSUMERS' COUNSEL

/s/ Terry L. Etter

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⁴ See *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 this Motion to Intervene was served on the persons stated below via regular mail service this 26th day of January 2012.

/s/ Terry L. Etter _____
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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 Etter, Terry L.