

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for the Establishment of a)	Case No. 12-2400-EL-UNC
Charge Pursuant to Revised Code Section)	
4909.18.)	

In the Matter of the Application of Duke)	Case No. 12-2401-EL-AAM
Energy Ohio, Inc., for Approval to Change)	
Accounting Methods.)	

In the Matter of the Application of Duke)	Case No. 12-2402-EL-ATA
Energy Ohio, Inc., for the Approval of a)	
Tariff for a New Service.)	

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene¹ in these cases where Duke Energy Ohio makes an inappropriate request for regulatory changes to collect from its customers, "over time,"² \$774 million dollars for providing capacity services over the next three years. OCC is filing on behalf of all the approximately 611,000 residential electric customers of Duke Energy Ohio ("Duke" or "Utility"). The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant 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.

² See Duke Application at ¶10.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

On August 29, 2012, Duke Energy Ohio filed an Application with the Public Utilities Commission of Ohio to initiate a process under which it wants ultimately to collect from customers an additional \$774³ million of capacity revenues. In order to assure collection of the entire \$774 million from customers, Duke Energy Ohio seeks: 1) a Commission Order establishing a cost-based charge⁴ for it's capacity; 2) authorization from the PUCO to permit it to defer the difference between the revenues currently being charged and its cost of capacity; and 3) an Order approving a new placeholder tariff to allow "future recovery of the deferred amounts."⁵ Duke indicates that it will request approval to begin collecting the deferred amounts, plus carrying charges, in a subsequent

³ It is not clear from the application whether or not the \$774 million includes any carrying charges. If carrying charges are proposed but not yet quantified, the cost to customers will be even much greater.

⁴ Duke claims its cost of capacity is \$224.15/MW-day. Duke Application at ¶8.

⁵ Duke Application at ¶2.

proceeding, with the application being filed no later than March 1, 2013.⁶ Duke alleges that its application is not unjust or unreasonable and should be approved without hearing.⁷

If this application is granted it will adversely affect the Utility's residential customers and will violate numerous provisions of the Ohio Revised Code, as well as the provisions of the Stipulation reached in Duke's recent electric security plan ("ESP") proceeding, Case No. 11-3549-EL-SSO, which the Commission approved less than a year ago.⁸ OCC has authority under law to represent the interests of all the approximately 611,000 residential electric customers of Duke Energy Ohio, pursuant to R.C. Chapter 4911. Residential customers will be adversely affected because granting the application will ultimately lead to Duke establishing rates to collect \$774 million of revenues from customers, including residential customers. If the application is approved, these increased rates will be collected through a non-bypassable rider called the "Deferred Recovery – Capacity Obligation Rider."

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. As explained above, the interests of Ohio's residential customers may be "adversely affected" by these cases, especially if the customers are unrepresented in proceedings where the Utility seeks PUCO approval of all the steps necessary to collect from them additional revenues in the amount of \$774 million. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

⁶ Duke Application at ¶17.

⁷ Id. at ¶12.

⁸ See *In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO et al., Opinion and Order (Nov. 22, 2011).

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 residential customers where their electric utility, Duke Energy Ohio, seeks to collect an additional \$774 million from them. 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 residential customers will include advancing the position that Duke's application should be denied because it is unlawful, unreasonable, and unjust. Duke's application will impede the Commission in ensuring that rates to customers will be reasonably priced in accordance with R.C. 4928.02(A). Duke does not provide details as to the collection period or how the rate will be designed for collection from customers; nor does Duke identify the magnitude of the increase customers can expect if the application is granted. Duke's approach is for the Commission to approve the application now, with details such as customer impacts, the collection period, the carrying charge costs, and the design of the rates to not be considered until Duke files an application in 2013 to collect the rate increase. Such a process is *per se* unreasonable, unlawful, and should be rejected in favor of a fair, open, and studied process with public

input along the way. OCC's positions are therefore directly related to the merits of these cases that are pending before the PUCO, the authority with regulatory control of public utilities' rates 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 cases with consideration of the public interest. In cases of this nature, with hundreds of millions of dollars at stake, the processing of the cases must afford parties, including OCC, due process. Such due process must include adequate discovery rights to enable parties to determine the impact of Duke's proposal on customers. A hearing should also be held.

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 cases in the public interest. Moreover, OCC was a party to the Duke ESP Stipulation that this application appears to violate.

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 advocate for residential utility customers, OCC has a very real and substantial interest in these cases where Duke seeks a Commission Order that will establish the cost of Duke's capacity and permit accounting changes that will facilitate Duke collecting additional revenues from customers for capacity service.

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 customers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio has confirmed OCC’s right to intervene in PUCO proceedings, in deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. Those PUCO proceedings involved applications by utilities to change their accounting procedures. The Court specifically ruled that whether or not a hearing is held, intervention ought to be liberally allowed so that positions of all persons with a real and substantial interest in the proceeding can be considered by the PUCO.⁹ The Court found that the PUCO abused its discretion in denying OCC’s interventions and that OCC should have been granted intervention in both proceedings.¹⁰

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 OCC’s Motion to Intervene.

⁹*Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

¹⁰*Id.*

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below via electronic transmission this 31st day of August 2012.

/s/ Maureen R. Grady

Maureen R. Grady

Assistant Consumers' Counsel

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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 Grady, Maureen R. Ms.