

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Authority to) Case No. 13-662-EL-UNC
Establish an Energy Efficiency Pilot)
Program for Low Income Customers.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene¹ in this case where Duke Energy Ohio, Inc. ("Duke" or "Utility") seeks to implement an energy efficiency pilot program for benefiting low-income customers and for purposes of its meeting statutory benchmarks related to peak demand reduction and energy efficiency that are found in R.C. 4928.66. OCC is filing on behalf of all the approximately 635,000 residential electric utility customers of Duke Energy Ohio, Inc. ("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.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Michael J. Schuler

Michael J. Schuler, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

(614) 466-9547 (telephone)

(614) 466-9475 (fax)

schuler@occ.state.oh.us

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Authority to) Case No. 13-662-EL-UNC]
Establish an Energy Efficiency Pilot)
Program for Low Income Customers.)

MEMORANDUM IN SUPPORT

This case involves the proposed institution of an energy efficiency pilot program for benefiting low-income customers, while assisting Duke in meeting its energy efficiency benchmarks set forth in R.C. 4928.66. Under this proposed program, Duke will be permitted to purchase (with customers' money) the energy savings--at a rate of \$0.255 per first-year kWh²--that are realized through leveraged funds acquired by People Working Cooperatively³ ("PWC").⁴ "Leveraged funds" are non-Duke funds such as Electric Partnership Program ("EPP"), Home Weatherization Assistance Program ("HWAP"), and Department of Energy funds. OCC appreciates the opportunity for low-income customers to benefit from PWC's weatherization programs.

It is Duke's position that it should "be able to recognize 100% of the energy efficiency benefits" produced by PWC, including those leveraged funds that are acquired

² Duke will pay \$0.255 for the kWh produced in the first year an energy efficiency measure and will not pay for any kWh produced by that measure over the rest of its lifetime. It represents a front-loaded payment.

³ From PWC's web site: "People Working Cooperatively is a unique, non-profit organization serving low-income, elderly, and disabled homeowners. PWC strengthens communities by providing professional, critical home repairs, weatherization, modification, and maintenance services to help residents stay safely in their homes."

⁴ Duke Application, at 5-6; Proposed Statement of Work, at ¶1(B).

because of Duke's funding of PWC's whole-home weatherization portfolio.⁵ According to Duke's Application, the incremental energy efficiency that PWC produces using leveraged funds is only made possible because of the financial support provided by Duke.⁶ Therefore, Duke proposes the institution of the low-income energy efficiency pilot program to enable it to apply additional weatherization savings that result from leveraged funds "to its benchmark for purposes of meeting its energy efficiency mandate" set forth in R.C. 4928.66.⁷

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. Consumers may be adversely affected in the absence of OCC's intervention.

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 customers of Duke in this case involving benefits to low-income customers and the

⁵ Proposed Statement of Work, at ¶1(A).

⁶ Duke Application, at 4-5

⁷ Id.

purchase of energy efficiency that Duke will use toward meeting the benchmarks delineated in R.C. 4928.66. 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 position, in its advocacy for residential customers, is support for this pilot program. OCC supports the pilot program primarily because of the potential benefits for low-income customers.⁸ With regard to OCC's support, OCC notes the following matters.

There should be a cap of \$2 million over the three-year life of the pilot program. Duke should annually report the incremental energy efficiency obtained through leveraged dollars to the Duke Energy Efficiency Collaborative, and this annual reporting should also be reflected in Duke's energy efficiency portfolio status report that is filed with the PUCO. On page 6 of Duke's Application, the future of this pilot program is addressed as follows: "[i]f, at the end of the three-year pilot period, Duke Energy Ohio and PWC agree to continue the program and the Commission does not end the program, the energy efficiency program shall continue indefinitely." OCC recommends that this pilot program should be evaluated in the Collaborative near the end of the three-year period, with participation by all interested parties for considering whether the program should continue beyond the initial three years. A PUCO Order would then be required for the program to continue.

⁸ In supporting this pilot program, OCC preserves all of its rights to take positions it deems appropriate in all other cases. Specifically, OCC reserves the right to take positions on whether the savings realized through this pilot program should be calculated as part of the shared savings mechanism set forth in Case No. 11-4393-EL-RDR.

OCC's support is premised on our understanding that the funds paid by Duke's customers, as a result of this pilot program, will be used solely for additional weatherization of low-income residential customers' homes. The pilot program must be in compliance with law and rules. OCC's support for this pilot program is not intended to be applicable to, or precedent for any other program in any other case or matter. And the PUCO should clarify in the ordering paragraphs of its decision, that its ruling is not precedent, given the nature of the program as a pilot. Based on the nature of the proposed program as a pilot and OCC's preceding points, OCC believes that the PUCO could allow implementation of the pilot program now without additional process prior to implementation.

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.

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 advocate for residential utility customers, OCC has a very real and substantial interest in this case..

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 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 in both proceedings.⁹

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. Moreover, OCC supports this pilot program, with the conditions described above.

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

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Michael J. Schuler

Michael J. Schuler, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

(614) 466-9547 (telephone)

(614) 466-9475 (fax)

schuler@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below *via* electronic service this 30th day of April 2013.

/s/ Michael J. Schuler

Michael J. Schuler
Assistant Consumers' Counsel

SERVICE LIST

William Wright
Chief, Public Utilities Section
Public Utilities Commission of Ohio
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
William.wright@puc.state.oh.us

Amy B. Spiller
Deputy General Counsel
Elizabeth H. Watts
Associate General Counsel
Duke Energy Business Services, LLC
139 E. Fourth Street, 1303 Main
Cincinnati, Ohio 45202
Amy.spiller@duke-energy.com
Elizabeth.watts@duke-energy.com

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, Ohio 45839-1793
cmooney@ohiopartners.org

Andrew J. Sonderman
Kegler Brown Hill & Ritter LPA
Capitol Square, Suite 1800
65 East State Street
Columbus, Ohio 43215-4294
asonderman@keglerbrown.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/30/2013 5:19:36 PM

in

Case No(s). 13-0662-EL-UNC

Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Schuler, Michael Mr.