

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke     )  
Energy Ohio Inc., Concerning its Energy     ) Case No. 13-431-EL-POR  
Efficiency and Peak-Demand Reduction     )  
Programs and Portfolio Planning.     )

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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") moves to intervene in this case where Duke Energy Ohio, Inc. ("Duke" or the "Utility") filed an Application for Energy Efficiency and Peak Demand Reduction Portfolio of Programs ("Portfolio Application")<sup>1</sup> Duke proposes that its residential customers continue to pay, over the next three years, for a number of energy efficiency programs as well as the added costs associated with a number of new programs that Duke intends to implement. Duke also asks for its customers to pay the extra costs associated with the shared savings mechanism for which Duke is seeking a one-year extension.<sup>2</sup> OCC is filing on behalf of Duke's 610,000 residential electric utility customers. The reasons the PUCO should grant OCC's Motion are further set forth in the attached Memorandum in Support.

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

<sup>2</sup> Application at 3.

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

/s/ Michael J. Schuler

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**MEMORANDUM IN SUPPORT**

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Duke filed this Portfolio Application, pursuant to Ohio Admin. Code 4901:1-39-04, seeking approval of a new portfolio of energy efficiency and peak demand reduction programs. Duke is also seeking a one-year extension of the shared savings cost recovery mechanism set forth in Case No. 11-4393-EL-RDR. In that case, Duke agreed (in a Stipulation with OCC and others) that the shared savings cost recovery mechanism would expire on December 31, 2015.<sup>3</sup> But Duke is now seeking to extend that program to run through December 31, 2016.<sup>4</sup>

By way of background, the shared savings mechanism requires Duke's customers to pay Duke an incentive for energy efficiency and peak demand electricity savings once they exceed 100% of the benchmarks set forth in R.C. 4928.66. Once the 100% threshold is surpassed, Duke is permitted to collect shared savings on the entire amount of energy efficiency and peak demand savings, including those savings below 100% of the benchmark. In other words, all of Duke's distribution customers pay Duke a percentage of the savings resulting from the energy efficiency implemented by program participants,

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<sup>3</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for an Energy Efficiency Cost Recovery Mechanism and for Approval of Additional Programs for Inclusion in its Existing Portfolio*, Case No. 11-4393-EL-RDR, Stipulation and Recommendation at 5 (Nov. 18, 2011).

<sup>4</sup> Application at 3.

when the statutory benchmark is exceeded. The percentage that customers pay to Duke is on a sliding scale where Duke can share in up to 13%<sup>5</sup> of the savings that exceed the benchmark (depending upon the amount of savings by which Duke exceeds the benchmark).

In support of its proposal to extend the shared savings mechanism, Duke referred to the Stipulation that allowed for the program it wants to continue. The terms of that Stipulation, however, were “not deemed binding with respect to related issues that may arise in any other proceeding.”<sup>6</sup> Therefore, to the extent that Duke is now using the Stipulation in Case No. 11-4393-EL-RDR as precedent for its request to extend the shared savings mechanism, that use is inappropriate under the terms of that agreement.

Under Duke’s Application, both the portfolio programs and the shared savings recovery mechanism would run from January 1, 2014 until December 31, 2016.<sup>7</sup> Moreover, Duke not only proposes to continue the programs that were part of its portfolio plan set forth in Case No. 11-4393-EL-RDR, but also seeks to add a number of new programs.<sup>8</sup> OCC has authority under law to represent the interests of all the residential utility 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 customers may be “adversely affected” by this case, especially if the

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<sup>5</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for an Energy Efficiency Cost Recovery Mechanism and for Approval of Additional Programs for Inclusion in its Existing Portfolio*, Case No. 11-4393-EL-RDR, Stipulation and Recommendation at 4-5 (Nov. 18, 2011).

<sup>6</sup> Id. at 8.

<sup>7</sup> Id. at 3, 5.

<sup>8</sup> Id. at 4.

customers were unrepresented in this case where Duke is seeking to continue or institute programs that have costs that customers pay. Duke's proposed programs include extending its energy efficiency portfolio and its shared savings cost recovery mechanism with the addition of new 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 customers of Duke in this case involving the extension of a number of energy efficiency and peak demand reduction programs and the institution of new programs of a similar nature. 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 rates should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. OCC will be developing its positions, for advocacy in this case, with regard to the proposals of Duke and others. 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.

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 where Duke is seeking approval of its energy efficiency and peak demand reduction portfolio.

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.<sup>9</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 residential customers, the Commission should grant OCC's Motion to Intervene.

Respectfully submitted,

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<sup>9</sup> 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 electronic transmission this 8<sup>th</sup> day of May 2013.

/s/ Michael J. Schuler

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