

In the Matter of the Application of)
Duke Energy Ohio, Inc., to Adjust) Case No. 13-1141-GE-RDR
Rider DR-IM and Rider AU for 2012)
Grid Modernization Costs.)

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case that involves collecting charges from customers for costs associated with the grid modernization (also known as "smart grid") program of Duke Energy Ohio, Inc. OCC is filing on behalf of all of Duke's approximately 690,000 residential electricity customers and approximately 420,000 residential gas customers.¹ The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

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

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Duke Energy Ohio, Inc., to Adjust)	Case No. 13-1141-GE-RDR
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MEMORANDUM IN SUPPORT

On June 28, 2013, Duke filed an Application for riders to collect from customers Duke's actual spending on its grid modernization program in 2012.² Through Rider DR-IM, Duke proposes to collect \$4.91 per month from each residential electricity customer for grid modernization costs.³ Through Rider AU, Duke proposes to collect \$1.48 per month from each residential gas customer for grid modernization costs, and to give Duke's gas-only customers in Adams County, Georgetown and Lebanon a credit of \$0.70 per month.⁴ OCC has authority under law to represent the interests of all Duke's approximately 690,000 residential electricity customers and approximately 420,000 residential gas customers, 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 the rates that Duke's

² See Application at 1.

³ See id., Direct Testimony of Peggy Laub at 10.

⁴ See id. at 15. According to Ms. Laub, Duke provides only gas service in Adams County, Georgetown and Lebanon, which are outside of Duke's electric service territory. The customers are given a credit reflecting the common costs of the electric and gas SmartGrid programs and the allocable project management organization costs. See id. at 5-6.

residential customers may pay for electric and/or gas service. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the PUCO 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. 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's customers should receive adequate service at a reasonable rate under Ohio law.⁵ 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.

⁵ 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 PUCO must address whether the Company is providing adequate service for reasonable rates 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 PUCO 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 involving claims the PUCO erred by

denying OCC's interventions, the Court found that the PUCO abused its discretion and that OCC should have been granted intervention in both proceedings.⁶

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 PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

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⁶ 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 19th day of July 2013.

/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.