

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for Authority to)	Case No. 14-0075-EL-POR
Establish an Energy Efficiency Pilot)	
Program.)	

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where Duke Energy Ohio, Inc. ("Duke" or "Utility") seeks to conduct a pilot program and any associated cost recovery, which could result in increased rates for Duke's residential customers.¹ OCC is filing on behalf of Duke's 610,000 residential utility customers. 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
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MEMORANDUM IN SUPPORT

On January 13, 2014, Duke filed an Application for approval of a pilot program that assesses whether co-marketing and coordinating Duke’s Residential Smart\$aver Program with Greater Cincinnati Energy Alliance’s (“GCEA”) energy efficiency investments (including leveraging GCEA’s GC-Help financing program) will result in a higher customer adoption of energy efficiency measures.² Duke’s Residential Smart\$aver program provides financial incentives for residential customers to perform energy-efficiency improvements to their homes.³ Similarly, GCEA works to incent residential energy efficiency investments in the greater Cincinnati area through low-cost financing.⁴

Pursuant to the PUCO-approved Stipulation and Recommendation in Case No. 13-431-EL-POR, Duke and GCEA have met to discuss options for coordinating their efforts to leverage existing resources and increasing overall customer adoption of energy efficiency.⁵ Now, Duke requests approval of the pilot program “that was developed in the course of these discussion[s],” as well as the associated “cost recovery.”⁶ Pursuant to

² Application to Establish an Energy Efficiency Pilot Program, at pp. 3-5 (Jan. 13, 2014).

³ *See*, Id. at 2.

⁴ *See*, Id. at 3.

⁵ *See*, Id.

⁶ Id. at 2.

R.C. Chapter 4911, OCC has authority under law to represent the interests of Duke's approximately 610,000 residential electric customers.

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 customers were unrepresented in a proceeding where Duke seeks "cost recovery" for the aforementioned pilot program and could result in increased rates for Duke's residential customers.⁷ 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 co-marketing financial incentives for residential energy efficiency programs, which could result in increased rates. 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.

⁷ Id. at 2, 6.

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'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 cost recovery from the residential class associated with this pilot program.

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.⁸

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,

BRUCE J. WESTON
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/s/ Michael J. Schuler

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⁸ 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 10th day of February 2014.

/s/ Michael J. Schuler
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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/10/2014 4:30:05 PM

in

Case No(s). 14-0075-EL-POR

Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Schuler, Michael J.