

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Duke Energy Ohio, Inc. for Recovery	)	Case No. 14-457-EL-RDR
of Program Costs, Lost Distribution	)	
Revenue and Performance Incentives	)	
Related to Its Energy Efficiency and	)	
Demand Response Programs.	)	

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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. proposes to increase one of the charges it collects from residential customers for electric service.<sup>1</sup> OCC is filing on behalf of all of Duke's 660,000 residential utility customers. The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

BRUCE J. WESTON  
CONSUMERS' COUNSEL

/s/ Terry L. Etter

Terry L. Etter, Counsel of Record  
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<sup>1</sup> See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

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**MEMORANDUM IN SUPPORT**

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In this proceeding, Duke seeks PUCO approval to collect from customers the actual 2013 costs and projected 2014 costs related to Duke's energy efficiency and demand response programs. For residential customers, the amount Duke would collect under Rider EE-PDRR would increase to \$0.003915 per kWh.<sup>2</sup> This is 13.7% more than the amount Duke will collect from residential customers (\$0.003443 per kWh) through Rider EE-PDRR beginning in May 2014.<sup>3</sup> OCC has authority under law to represent the interests of all of Duke's 660,000 residential utility 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 customers may be "adversely affected" by this case, especially if the customers were unrepresented in a proceeding where Duke seeks to increase one of the

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<sup>2</sup> See Revised Tariffs and Workpapers (April 17, 2014), Revised Attachment JEZ-2.

<sup>3</sup> See *In the Matter of the Application of Duke Energy Ohio, Inc. for Recovery of Program Costs, Lost Distribution Revenue and Performance Incentives Related to Its Energy Efficiency and Demand Response Programs*, Case No. 13-753-EL-RDR, Revised Tariff Sheet 119.1 (April 9, 2014). The PUCO approved the application in the 13-753 case, with modifications to reduce the amount of shared savings Duke would receive. See *id.*, Opinion and Order (April 2, 2014) at 8-9.

charges that customers pay as part of their electric 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 customers in this case involving Duke's request to increase the charge customers pay for energy efficiency and demand response programs. 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 for electric service should be no more than what is reasonable and lawful 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 proposing to increase one of the charges that residential customers pay as part of their electric bills.

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 "[t]he 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>4</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 PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

/s/ Terry L. Etter

Terry L. Etter, Counsel of Record  
Assistant Consumers' Counsel

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<sup>4</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 30<sup>th</sup> day of April 2014.

/s/ Terry L. Etter

Terry L. Etter

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 Etter, Terry L.