

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Approval of a Grid) Case No. 14-1160-EL-UNC
Modernization Opt-Out Tariff and for a) Case No. 14-1161-EL-AAM
Change in Accounting Procedures Including)
a Cost Recovery Mechanism.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in these cases where Duke Energy Ohio, Inc. ("Duke") is proposing charges and terms of service for residential customers who do not want an advanced electric meter installed at their homes.¹ OCC is filing on behalf of all of Duke's 660,000 residential electric customers. The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/Terry L. Etter

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

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MEMORANDUM IN SUPPORT

On June 27, 2014, Duke filed an application seeking PUCO approval of a new tariff section establishing charges and terms of service for residential customers who do not want an advanced electric meter installed at their homes. Duke is also seeking accounting authority to defer and collect from residential customers various alleged costs associated with the residential customers who do not have advanced electric meters installed at their homes.²

If the PUCO approves the deferral authority, Duke proposes to charge residential customers a one-time fee of \$126.70 to remove the advanced meter and install a non-advanced meter.³ If the PUCO does not approve the deferral authority sought by Duke, Duke proposes to set the one-time charge for residential customers at \$1,073.10.⁴ Residential customers would also be charged \$40.63 per month, regardless of whether the PUCO approves the deferral authority.⁵ OCC has authority under law to represent the

² See Application at 1.

³ See id. at 4.

⁴ See id.

⁵ See id.

interests of all of Duke's 660,000 residential electric 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 these cases, especially if the customers were unrepresented in proceedings involving the establishment of charges and terms of service for residential customers who do not want an advanced electric meter installed at their homes. 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 these cases involving charges and terms of service for residential customers who do not want an advanced electric meter installed at their homes. 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's position is therefore directly related to the merits of these cases that are 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 these cases where the charges and terms of service will be established for Duke's residential customers who do not want an advanced electric meter installed at their homes.

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.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 customers, the PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/Terry L. Etter

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⁶ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

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 18th day of July 2014.

/s/Terry L. Etter

Terry L. Etter

Assistant Consumers' Counsel

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/18/2014 3:28:55 PM

in

Case No(s). 14-1160-EL-UNC, 14-1161-EL-AAM

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.