

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., to Update Its) Case No. 15-795-EL-RDR
Distribution Capital Investment Rider.)

**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") seeks to charge customers \$19.9 million for expenses associated with distribution projects through a rider mechanism ("Rider DCI") that allows single issue ratemaking.¹ OCC is filing on behalf of all the 615,000 residential utility customers of Duke. 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
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/s/ William J. Michael

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¹ See proposed tariff sheet attached as Attachment A to Duke's cover letter.

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MEMORANDUM IN SUPPORT

This case involves Duke’s effort to collect through its Rider DCI a charge of 4.931 percent of customers’ applicable base distribution charges to collect the revenue requirement associated with distribution capital costs.² OCC has authority under law to represent the interests of all of Duke’s 615,000 residential utility customers under 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 customers’ bills will be increased. 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

² See *id.*; see also *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modification, and Tariffs for Generation Service*, Case No. 14-841-EL-SSO.

- (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 an increase in their bills equal to 4.931 percent of their distribution base rate. This interest is different than that of any other party and especially different than that of Duke whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential customers will include advancing the position that rates charged customers must be reasonable, lawful, and only for adequate services. Further, billing for public utility services should be understandable.

However, Duke's Rider DCI is yet another instance of single-issue ratemaking through a rider. Riders allow utilities to collect certain costs from consumers outside of base rate cases. In base rate cases, all elements of cost-of-service are examined and, thus, consumer protection is enhanced. Riders act as a disincentive for utilities to control costs and potentially incentivize uneconomic choices. Riders should be limited to costs that are large, volatile, and not within utilities' control, such as purchased gas costs for a gas distribution utility and fuel and purchased power for an integrated electric utility. In addition to not providing consumers with the protections afforded by a base rate case, single-issue rate making through riders increases the complexity of consumers' bills.³

³ In 2008, Duke had 10 riders. It now has 17. Simplifying rate structures in base rate cases does not work, practically, since single-issue ratemaking obviates the need for base rate cases.

They cannot be understood.⁴

The PUCO should limit the use of riders to those instances where costs are large, volatile, and not within utilities' control. 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.⁵

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 seeks to increase customers' bills by 4.931 percent of their distribution base rate.

⁴ Wal-Mart Stores East, LP and Sam's East, Inc., have recently filed testimony in Duke's and Ohio Power's ESP cases confirming the complexity that riders contribute to utility bills, rendering them unintelligible. *See* September 26, 2014 Direct Testimony of Steve W. Chriss, Case No. 14-841; May 5, 2014 Direct Testimony of Steve W. Chriss, Case No. 13-2385. That large, commercial consumers have difficulty understanding utility bills riddled with riders serves to highlight and underscore the complexity faced by residential consumers.

⁵ Further, Duke asserts in its cover letter that quarterly filings are automatically approved. *See* May 1, 2015 Letter from Amy B. Spiller, Duke's Deputy General Counsel, to Ms. Barcy F. McNeal, PUCO Secretary. But the Opinion and Order in Case No. 14-841 clearly states that quarterly filings are *not* automatically approved on filing. *See* Case No. 14-841, Opinion and Order at 70-72.

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 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.

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

Respectfully submitted,

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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 5th day of June, 2015.

/s/ William J. Michael
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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 Michael, William J. Mr.