

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio for Approval of the Fourth)
Amended Corporate Separation Plan) Case No. 15-441-EL-UNC
Under Section 4928.17, Revised Code and)
4901:1-37 Ohio Administrative Code.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene¹ in this case involving a review of Duke Energy Ohio, Inc.'s ("Duke") amended corporate separation plan. OCC represents the interests of the approximately 615,000 residential electric consumers of Duke. The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's Motion to Intervene ("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,

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/s/ Jodi Bair

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

This case involves the review of Duke’s amended corporate separation plan with regard to whether it complies with Ohio’s corporate separation law set forth in R.C. 4928.17 and Ohio Adm. Code Section 4901:1-37. According to Ohio law, a corporate separation plan must satisfy the public interest in preventing unfair competitive advantage, abuse of power and be consistent with the policy set forth in R.C. 4928.02, which requires that consumers have adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service. OCC has authority under law to represent the interests of all the approximately 615,000 residential electric customers of Duke. In accordance with Chapter 4911, OCC files this motion to intervene to ensure that Duke’s corporate separation plan satisfies the public interest and effectuates the policy of R.C. 4928.02, to the benefit of Duke’s residential customers.

II. INTERVENTION

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 this case, especially if the

consumers were unrepresented in a proceeding that involves Duke's corporate separation plans. To the extent that Duke collects both fully regulated rates for its distribution service and receives market based competitive rates for the generation services provided by its affiliates, residential customers could be adversely affected if Duke's corporate separation plan allows Duke to incorporate costs associated with competitive generation services provided by its affiliates (e.g. Conesville, LLC, Hanging Rock II, LLC) through regulated distribution rates. This would violate both R.C. 4928.17 and R.C. 4928.02(H).

In addition, Duke's residential customers could be adversely affected if Duke's corporate separation plan allows Duke to give its unregulated generation affiliates an advantage over other suppliers of generation service. R.C. 4928.17 precludes a utility from extending any undue preference or advantage to its affiliates engaged in supplying competitive generation. 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 consumers of Duke in order to help assure that the generation and distribution services

are provided at reasonable prices, and upon reasonable terms and conditions. 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 consumers will include advancing the position that the corporate separation plan undertaken by the Company should provide for a level playing field for generation providers;² prevent subsidization of competitive services through regulated distribution service;³ and prohibit Duke from providing an undue preference to its affiliates engaged in providing generation services. 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 the terms under which public utilities provide their services.

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 has information and will develop additional information that the PUCO should consider for equitably and lawfully deciding whether 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.

² Required under R.C. 4928.03.

³ Required under R.C. 4928.07 and R.C. 4928.17(A)(1)-(3).

Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a very real and substantial interest in this case where rates and services to residential customers are at issue.

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 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 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.⁴

III. CONCLUSION

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 residential consumers, the Commission should grant OCC’s Motion to Intervene.

⁴ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

Respectfully submitted,

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/s/ Jodi Bair

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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 by electronic transmission this 12th day of June 2015.

/s/ Jodi Bair

Jodi Bair

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 Bair, Jodi Ms.