

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.)	

**DUKE ENERGY OHIO, INC.'S MEMORANDUM CONTRA THE MOTION TO
INTERVENE OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

On May 1, 2015, Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) initiated the above-captioned proceeding solely for the purpose of identifying the Rider DCI rate that will be implemented with the first billing cycle of July 2015. On June 5, 2015, The Office of the Ohio Consumers' Counsel (OCC) moved to intervene in the proceeding. The OCC states in its motion that "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 Accordingly, the OCC argues that it should be granted intervention. As OCC indicated in its motion, interventions in Commission proceedings are governed by R.C. 4903.221 and O.A.C. 4901-1-11. However, the OCC's motion fails to set forth a sufficient basis for intervention in this cost recovery proceeding. Rather, the OCC seeks intervention in this proceeding only to oppose the very existence of Rider DCI, notwithstanding the limited purpose of the captioned matter and the fact that the OCC continues to litigate the rider's approval in another matter.² As Duke Energy Ohio demonstrates herein, the OCC's motion should be denied.

¹ OCC Motion to Intervene, at pp. 1

² *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Establish a Standard Service Offer Pursuant to R.C. 49281.43 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 14-841-EL-SSO, *et al.*, OCC Application for Rehearing, (May 4, 2015) at pp. 52-63.

Nature of the Prospective Intervenor's Interest

The first element to be considered by the Public Utilities Commission of Ohio (Commission), pursuant to R.C. 4903.221, is the nature and extent of the prospective intervenor's interest. In its Memorandum in Support, the OCC states briefly that 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. This argument may serve to justify intervention where Duke Energy Ohio is proposing, for the first time, rate recovery and the process associated with same. But the justification cannot be applied to the circumstance at issue here, as the Commission has already approved, in another proceeding, the creation of Rider DCI, the annual filings to be made by the Company, and the audit process to which the rider will be subject.³ And, importantly, the OCC has challenged the Commission's ruling on rehearing – in that other case.⁴ To allow the OCC to intervene in this proceeding only to lodge continued objection to the Commission's prior ruling is improper and does not warrant intervention here.

Legal Position and Probable Relation to Merits of the Case

The second element to be considered by the Commission, pursuant to R.C. 4903.221, is the prospective intervenor's legal position and its probable relation to the merits of the case. Again, however, the OCC's interest appears to relate to its desire to object to Rider DCI. But the OCC has had ample opportunity to advance this position in the Company's pending electric securing plan (ESP3) case. Its initial post-hearing arguments were rejected and, at this time, the parties in the ESP3 case await the Commission's decision on rehearing. To enable the OCC to submit continued objection to Rider DCI and, by extension, the Commission's decision in the

³ *Id.*, Opinion and Order, at pp. 66-72 (April 2, 2011)

⁴ See footnote 1, *infra*.

ESP3 case runs afoul of the filing requirements applicable to applications for rehearing. Further, in approving Rider DCI, the Commission directed Duke Energy Ohio to file quarterly filings, which would be automatically approved sixty days after filing.⁵ Thus the OCC's attempt herein to relitigate matters already considered and rejected by the Commission are improper and wasteful of the Commission's resources as well as those of the Company.

Undue Delay and Significant Contribution

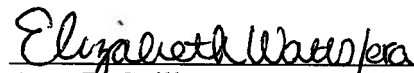
The third and fourth elements to be considered by the Commission, pursuant to R.C. 4903.221, are whether the requested intervention will unduly prolong or delay the proceeding and whether the prospective intervenor will provide a significant contribution to full development and equitable resolution of the factual issues. As the OCC offers nothing of value to this proceeding and will undoubtedly unduly prolong and delay the proceeding in order to raise matters fully briefed and pending Commission review on rehearing in the ESP3 case, the OCC's claim to meet the requirements for intervention fails. The OCC seeks to raise issues that are unrelated to the calculation of the Company's Rider DCI's rate. Asserting arguments in this docket that do not belong here will, by definition, unduly prolong and/or delay the proceeding. Based upon the OCC's motion, the OCC has no discernible contribution to make to this proceeding, especially given the filing requirements applicable to Rider DCI. Rather, it is undeniable that the OCC's sole motivation reflects an interest in a prior proceeding. It must be concluded, therefore, that the elements set forth in Ohio law as necessary for intervention in Commission proceedings have not been met by OCC.

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission deny the motion by OCC for intervention in this proceeding.

⁵ See footnote 2, *infra*.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

A handwritten signature in cursive script, appearing to read "Elizabeth Watts", is written over a horizontal line.

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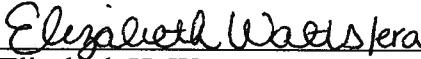
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal delivery, or electronic mail, on this 19th day of June 2015, to the following parties.


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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/19/2015 1:14:24 PM

in

Case No(s). 15-0795-EL-RDR

Summary: Memorandum Duke Energy Ohio, Inc.'s Memorandum Contra The Motion To Intervene of The Office of The Ohio Consumers' Counsel electronically filed by Ms. E Minna Rolfes on behalf of Duke Energy Ohio, Inc. and Amy B. Spiller and Elizabeth H. Watts