

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application Duke) Case No. 14-2209-EL-ATA
Energy Ohio for Tariff Approval.)

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

The Office of Ohio Consumers' Counsel ("OCC") respectfully moves to intervene, out of time, in this case¹ where the Public Utilities Commission of Ohio ("PUCO") seeks to establish policies regarding Duke Energy Ohio's ("Duke" or "Utility") treatment of the energy usage data of its 400,000 residential customers. As required by Ohio Adm. Code 4901-1-13, the OCC demonstrates that it has good cause to request intervention out of time due to a change brought about by the PUCO's recent Entry expanding the issues of the case to include residential customers. In this case, Duke submitted its Application for Tariff Approval ("Application"), specifically, requesting an amended tariff that specifies the terms, conditions, and charges associated with Customer Energy Usage Data ("CEUD"). The Application as filed, only applied to non-residential customers with an electrical load of 200kW or greater who wish to participate in the electric customer choice program and customers have interval data recorders installed at their facilities to participate in the program.²

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

² Duke Application at 1 (Dec. 16, 2015).

OCC did not move to intervene because the Application, as filed, did not affect residential customers. OCC filed a letter in the docket outlining recommendations for consumer protections relating to CEUD.³

After reviewing the PUCO's December 16, 2015 Entry in this case, it appears that the PUCO has expanded the scope of the proceeding such that the CEUD of Duke's residential customers may be affected. Therefore, OCC has a real and substantial interest in this proceeding. The interests of Duke's residential customers are not represented by any existing party; participation in this proceeding will contribute to a just and expeditious resolution of the issues involved without unduly delaying the proceeding or unjustly prejudicing any existing party; and thereby move to intervene in this proceeding pursuant to R.C. 4903.221, Ohio Adm. Code 4901-1-11 and Ohio Adm. Code 4901-1-13.

WHEREFORE, OCC respectfully requests that the PUCO of Ohio grant OCC's motion to intervene for these reasons and those set forth in the attached Memorandum in Support.

³ OCC Comments (March 6, 2015).

Respectfully submitted,

BRUCE J. WESTON (0016973)
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MEMORANDUM IN SUPPORT

On December 16, 2014, Duke filed an Application for an amended tariff that set forth the terms, conditions and charges associated with CEUD for customers with an electrical load of 200kW or greater.⁴ On January 30, 2015, the Attorney Examiner in this proceeding set a schedule for Motions to Intervene and Initial Comments to be filed by March 6, 2015 and Reply Comments on March 27, 2015. OCC filed a letter outlining recommendations regarding CEUD; however, did not seek to intervene because the Utility’s Application did not affect residential customers. The Application was specific to commercial or industrial customers served with interval meters.

However, the PUCO’s December 16, 2015 Entry expands the scope of the proceeding by finding that a hearing should be held and specific issues, such as “What type of CEUD should be available to CRES providers?”; “What are the estimated costs to provide AMI CEUD to CRES providers and what is the appropriate cost recovery mechanism?”; and “What is realistic timeframe for implementing a CEUD sharing system?”⁵ If the PUCO makes decisions resulting from these questions, Duke residential customers served with AMI (“smart meters”) will be directly affected because notification and disclosure requirements associated with release of customer usage

⁴ Duke Application at 1 (Dec. 16, 2014).

⁵ Entry at 5 (Dec. 16, 2015).

information is at risk. In addition, it appears that the PUCO wishes to develop a cost recovery mechanism that could impact all Duke residential customers served with smart meters.

According to 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 consumer protections for the customers are at issue. 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 residential customers in this case where the CEUD of residential customers may be a risk of being shared and customers may be responsible for paying for this service. This interest is different from that of any other party and especially different from that of Duke, whose advocacy includes the financial interest of its shareholders.

Second, OCC's advocacy for residential customers will include advancing the position that consumer protection laws and regulations that are essential to ensuring that consumers are adequately protected in sharing information about their electricity usage. 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 provision of natural gas in Ohio.⁶

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 consumer protections are very important when customers' energy usage information may be shared and customers may incur charges resulting from the information sharing necessary consumer protections.

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.

⁶ R.C. 4928.10 and R.C. 4929.22.

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.⁷

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. Furthermore, OCC has demonstrated good cause for granting this Motion out-of-time under Ohio Adm. Code 4901-1-13 because it was not until the PUCO’s December 16, 2015 Entry was filed -- which expanded scope of this case -- did the Utility’s residential customers have an interest in the resolution of this case. On behalf of Ohio residential customers, the PUCO should grant OCC’s Motion to Intervene.

⁷ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

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 18th day of December 2015.

/s/ *Jodi Bair*

Jodi Bair
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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/18/2015 4:54:47 PM

in

Case No(s). 14-2209-EL-ATA

Summary: Motion Motion to Intervene Out-of-Time by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Bair, Jodi Ms.