

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Duke Energy Ohio, Inc., for a Waiver.) Case No. 16-1096-EL-WVR

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
MOTIONS TO INTERVENE AND DISMISS
AND MEMORANDA IN SUPPORT**

Ohio Partners for Affordable Energy ("OPAE") hereby respectfully moves the Public Utilities Commission of Ohio ("Commission") for leave to intervene in the above-captioned application of Duke Energy Ohio, Inc., ("Duke") pursuant to Revised Code §4903.221 and Rule 4901-1-11 of the Commission's Code of Rules and Regulations with full powers and rights granted by the Commission specifically, by statute or by the provisions of the Commission's Code of Rules and Regulations to intervening parties.

Pursuant to Ohio Adm. Code Rule 4901-1-12, OPAE also moves to dismiss this application. The reasons for granting OPAE's motions are set forth in the attached Memoranda in Support.

Respectfully submitted,

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In the Matter of the Application of)
Duke Energy Ohio, Inc., for a Waiver.) Case No. 16-1096-EL-WVR

**MEMORANDA IN SUPPORT OF MOTIONS TO INTERVENE
AND DISMISS**

I. Memorandum in Support of the Motion to Intervene

Ohio Partners for Affordable Energy (“OPAE”) should be permitted to intervene in this matter pursuant to Section 4903.221, Revised Code, and the Commission’s Rules and Regulations contained in Rule 4901-1-11 of the Ohio Administrative Code. The above-referenced application is a request of Duke Energy Ohio, Inc., (“Duke”) for a waiver of a fundamental consumer protection: the right of a customer to receive personal notice on the day of disconnection for nonpayment.

In determining whether to permit intervention, the following criteria are to be considered: the nature of the person’s interest; the extent to which that interest is represented by existing parties; the person’s potential contribution to a just and expeditious resolution of the proceeding; and, whether granting the intervention will unduly delay or unjustly prejudice any existing party. OPAE meets all four criteria for intervention in this application.

OPAE is an Ohio nonprofit corporation with a stated purpose of advocating for affordable energy policies for low and moderate income Ohioans; as such, OPAE has a real and substantial interest in this matter, which will address Duke’s request for a waiver of Rule 4901:1-18-06(A)(2). The proposed waiver will directly affect the ability of low-income customers to maintain service and to challenge the utility bill as required by Sections 4905.04 and 4933.122, Revised Code. In addition, most OPAE members are responsible for implementing the annual Winter Reconnection Order, qualifying

customers for the Percentage of Income Payment Plan and providing other customer services previously provided directly by utilities. Therefore, OP&E members will be directly affected by the increase in disconnections that will likely occur if the waiver is granted.¹ Moreover, many of OP&E's members are community action agencies. Under the federal legislation authorizing the creation and funding of these agencies, originally known as the Economic Opportunity Act of 1964, community action is charged with advocating for low-income residents of their communities.

OP&E's primary interest in this application is to protect the interests of low and moderate income Ohioans whose electric service may be unjustly disconnected as a result of the waiver sought by Duke. Further, OP&E has been recognized by the Commission in the past as an advocate for consumers and particularly low-income consumers, who may be affected by the outcome of this case.

For the above reasons, OP&E has a direct, real and substantial interest in this matter. The disposition of this matter may impair or impede OP&E's ability to protect its interests. No other party to the matter will adequately represent the interests of OP&E. OP&E is a rare organization that serves as an advocate as well as a provider of bill payment assistant services to customers in danger of disconnection. No other party represents this group of interests. OP&E's participation in this matter will not cause undue delay, will not unjustly prejudice any existing party, and will contribute to the just and expeditious resolution of the issues raised by this application.

Therefore, OP&E is entitled to intervene in this application with the full powers and rights granted by statute and by the provisions of the Commission's Codes of Rules and Regulations to intervening parties.

¹A list of OP&E members can be found on the website: www.ohiopartners.org.

II. Memorandum in Support of the Motion to Dismiss

The Commission should be concerned when any public utility seeks a waiver of a rule providing basic and fundamental consumer protections such as those contained in Ohio Adm. Code Chapter 4901:1-18. In this case, the Commission has already shown its concern by rejecting the proposed waiver. Thus, this application is barred by the doctrines of res judicata and collateral estoppel because Duke is seeking the same waiver already denied by the Commission in Duke's application in Case No. 10-249-EL-WVR ("2010 Waiver Case").

OPAE was an intervener in the 2010 Waiver Case, where the issues presented were the same as those in the instant application. The Entry issued on June 2, 2010 in Case No. 10-249-EL-WVR makes clear that concerns for the protection of customers are critical:

Without personal notification, or the display of notice, it is possible that customers may be unaware of the pending disconnection, or may believe that the lack of service is the result of an outage. Moreover, the Commission agrees with OPAE's concern that customers who have not paid their utility bill may not have immediate access to text or electronic messaging, despite their selection of such means of notification at an earlier date.

Case No. 10-249-EL-WVR, Entry (June 2, 2010) at 8.

The Commission's Entry did leave the door open for future consideration:

Therefore, while the Commission may be willing to discuss alternative notice processes in the future, at this time, the Commission finds that the processes set forth in this rule should remain in force. *Id.*

The Commission directed Duke to commence discussions with the Staff regarding alternative notice procedures.

However, Duke's new application does not state that such discussions have occurred as required by the Commission. Duke fails to provide any substantive

justification for filing essentially the same application as in the 2010 Waiver Case. Instead, Duke repeats the same nostrums describing the wonders of advanced metering infrastructure (“AMI”) and falsely implies that the Commission has endorsed the diminution of consumer protection as set forth in the Ohio Administrative Code.

Duke repeatedly cites to documents filed in Case No. 10-2326-GE-RDR as justification for what it characterizes as Commission approval. Actually, in Case No. 10-2326-GE-RDR, Duke simply agreed in a stipulation not to seek a waiver of what is now Rule 4901:1-18-06(A)(2) – the personal visit requirement – through 2015. The Commission never mentioned this provision of the stipulation in the Opinion and Order in Case No. 10-2326-GE-RDR filed on June 13, 2012. What is clear from the Case No. 10-2326-GE-RDR application is that the savings from the waiver Duke proposes are not included in the operational savings Duke agreed to pass back to customers. What is also clear is that the Commission has not endorsed the waiver it already denied, the genesis for OPAE’s argument that the doctrines of res judicata and collateral estoppel apply to the instant application.

Duke complied with its agreement in Case No. 10-2326-GE-RDR not to request the waiver through 2015, but an intervening act undercuts Duke’s argument in favor of a waiver now. In Ohio Power Company, Case No. 13-1938-EL-WVR, the Commission approved a waiver of Rule 4901:1-18-06(A)(2) as a pilot program for Ohio Power Company (“AEP Ohio”). The instant Duke application mimics the AEP Ohio waiver approved by the Commission as a pilot program. The AEP Ohio decision established a series of metrics that will be analyzed, and which also are included in the Duke filing.

There is no need for two pilots on the same issue. There is no need for Duke customers to be subjected to a reduction in critical consumer protections, especially when the issue is being studied in another utility service territory. Duke provides no compelling reasons why the AEP Ohio pilot is inadequate for the Commission to determine whether Rule 4901:1-18-06(A)(2) should be modified. One pilot is enough.

Because Duke has previously requested and been denied the waiver requested in the instant application, the doctrines of res judicata and collateral estoppel should be followed and the application should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Motion to Intervene and Motion to Dismiss and Memoranda of Support will be served by the Commission's Docketing Division electronically upon the following parties who are electronically subscribed on this 2nd day of June 2016.

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Summary: Motion to Intervene and to Dismiss and Memoranda in Support electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy