

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of                    )  
Duke Energy Ohio, Inc. to Establish            ) Case No. 16-1602-EL-ESS  
Minimum Reliability Performance            )  
Standards Pursuant to Chapter 4901:1-        )  
10, Ohio Administrative Code.                )

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

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To protect consumers, the Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where Duke Energy Ohio, Inc. ("Duke") proposes lower reliability standards for the service it provides to customers<sup>1</sup> while at the same time collecting millions of dollars from customers for plant improvement, including deployment of smart grid technology. OCC files this Motion to Intervene on behalf of Duke's approximately 630,000 residential electric distribution consumers, who would be affected by the reliability standards.<sup>2</sup> The reasons why the Public Utilities Commission of Ohio ("PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

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<sup>1</sup> See Application (July 22, 2016) at 3-4.

<sup>2</sup> See R.C. Chapter 4911, R.C. 4903.221, and Ohio Adm. Code 4901-1-11.

Respectfully submitted,

BRUCE WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

/s/ Terry L Etter

Terry L. Etter (0067445), Counsel of Record  
Jodi J. Bair (0062921)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (614) 466-7964 (Etter Direct)

Telephone: 614-466-9559 (Bair Direct)

[terry.etter@occ.ohio.gov](mailto:terry.etter@occ.ohio.gov)

(willing to accept service by e-mail)

[Jodi.bair@occ.ohio.gov](mailto:Jodi.bair@occ.ohio.gov)

(willing to accept service by e-mail)

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke	)	
Energy Ohio, Inc. to Establish Minimum	)	Case No. 16-1602-EL-ESS
Reliability Performance Standards	)	
Pursuant to Chapter 4901:1-10, Ohio	)	
Administrative Code.	)	

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**MEMORANDUM IN SUPPORT**

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In this case, the PUCO will determine how reliable service needs to be for Duke's electric service customers. Duke proposes to lower the standards of reliability for electric service provided to its customers, even though it continues to collect millions of dollars from customers for plant improvement. In addition, Duke's customers have paid hundreds of millions of dollars to install smart grid technology that is supposed to improve service reliability. OCC has authority under law to represent the interests of all of Duke's 630,000 residential utility customers, pursuant to 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," especially if the customers were unrepresented in a proceeding to determine standards for establishing how reliable their electric service should be. 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 Duke's residential customers in this case involving the reliability standards for electric service provided to Duke's Ohio customers. This interest is different from that of any other party and especially different from that of the utility, whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential customers will include advancing the position that rates should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. 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.

Third, OCC's intervention will not unduly prolong or delay the proceeding. 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 reliability standards for electric service provided to Duke’s Ohio customers are being considered.

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.<sup>3</sup>

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

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.

Respectfully submitted,

BRUCE WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

/s/ Terry L Etter

Terry L. Etter (0067445), Counsel of Record  
Jodi J. Bair (0062921)  
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Telephone: (614) 466-7964 (Etter Direct)

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[terry.etter@occ.ohio.gov](mailto:terry.etter@occ.ohio.gov)

(willing to accept service by e-mail)

[Jodi.bair@occ.ohio.gov](mailto:Jodi.bair@occ.ohio.gov)

(willing to accept service by e-mail)

## **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 5<sup>th</sup> day of October 2016.

/s/ Terry L. Etter

Terry L. Etter

Assistant Consumers' Counsel

## **SERVICE LIST**

William Wright  
Attorney General's Office  
Public Utilities Commission of Ohio  
30 E. Broad St., 16<sup>th</sup> Floor  
Columbus, Ohio 43215  
[William.wright@ohioattorneygeneral.gov](mailto:William.wright@ohioattorneygeneral.gov)

Amy B. Spiller  
Elizabeth H. Watts  
Duke Energy Ohio Inc.  
139 East Fourth Street  
1303-Main  
Cincinnati, Ohio 45202  
[Amy.Spiller@duke-energy.com](mailto:Amy.Spiller@duke-energy.com)  
[Elizabeth.Watts@duke-energy.com](mailto:Elizabeth.Watts@duke-energy.com)

Attorney Examiner:

[Nicholas.walstra@puc.state.oh.us](mailto:Nicholas.walstra@puc.state.oh.us)

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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 Etter, Terry L.