

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Duke Energy Ohio, Inc., for an) Case No. 17-32-EL-AIR
Increase in Electric Distribution Rates.)

In the Matter of the Application of)
Duke Energy Ohio, Inc., for Tariff) Case No. 17-33-EL-ATA
Approval.)

In the Matter of the Application of)
Duke Energy Ohio, Inc. for Approval) Case No. 17-34-EL-AAM
to Change Accounting Methods.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in these cases involving increased rates that Duke Energy Ohio, Inc. ("Duke" or the "Utility") proposes to collect from residential customers, including an inappropriate increase in the customer charge from \$6.00 to \$22.77 per month.¹ OCC is filing on behalf of all of Duke's approximately 623,000 residential electric utility customers who would have no choice but to pay the \$22.77 monthly customer charge. The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's 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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OHIO CONSUMERS' COUNSEL

/s/ Ajay Kumar

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MEMORANDUM IN SUPPORT

On January 31, 2017, Duke docketed at the PUCO a Notice of Intent to file for an increase in electric distribution rates, an application for tariff approval for its electric distribution service and an application for approval of a change in accounting methods. OCC has authority under law to represent the interests of Duke’s approximately 623,000 residential utility customers, under 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” by these cases, especially if the customers were unrepresented in proceedings where the utility seeks to increase rates to customers for distribution service. Among other issues, Duke has applied for an increase in the Customer Charge from \$6.00 to \$22.77.² Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

² *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR, Pre-filing Notice of Duke Energy Ohio, Inc. at Exhibit 3 (Jan. 31, 2017).

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 to represent the residential customers of Duke in these cases where Duke seeks to increase rates charged to customers for electric distribution service. 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 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 these cases that are pending before the PUCO, which is 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 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 cases 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 these cases where Duke seeks to increase the rates it charges to residential customers by increasing the customer charge from \$6.00 to \$22.77, among other changes.³

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 customers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio (“Court”) 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

³ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR, Pre-filing Notice of Duke Energy Ohio, Inc. at Exhibit 3 (Jan. 31, 2017).

discretion in denying OCC's interventions and that OCC should have been granted intervention in both proceedings.⁴

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 Commission should grant OCC's Motion to Intervene.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Ajay Kumar
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⁴ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20 (2006).

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 21st day of February 2017.

/s/ Ajay Kumar
Ajay Kumar
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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 Kumar, Ajay K. Mr.