

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio, Inc. for Approval to Modify)	Case No. 17-0872-EL-RDR
Rider PSR.)	
In the Matter of the Application of Duke)	
Energy Ohio, Inc. for Approval to Amend)	Case No. 17-0873-EL-ATA
Rider PSR.)	
In the Matter of the Application of Duke)	
Energy Ohio, Inc. for Approval to Change)	Case No. 17-0874-EL-AAM
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 this case where Duke Energy Ohio, Inc. ("Duke" or "Utility") seeks (once again) to require customers to subsidize its portion of the energy and capacity produced by Ohio Valley Electric Corporation ("OVEC") power plants, through a "price stabilization rider." OCC is filing on behalf of all the 611,000 residential utility customers of Duke. The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Modify Rider PSR.)	Case No. 17-0872-EL-RDR
)	
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Amend Rider PSR.)	Case No. 17-0873-EL-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods.)	Case No. 17-0874-EL-AAM
)	

MEMORANDUM IN SUPPORT

In this case, Duke has asked the PUCO to allow it to charge customers for a price stabilization rider that subsidizes Duke's interest in OVEC power plants over a long period of time -- until 2040. Yet, in 2015, the PUCO denied Duke's request for the same subsidy over a much shorter period of time (three years). The PUCO was not persuaded that a three year PSR proposal would promote rate stability or was in the public interest, and a 23-year proposal is no less problematic. *See In re Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer*, Case No. 14-841-EL-SSO, Opinion and Order at 47 (Apr. 2, 2015). OCC (and others) opposed Duke's prior request for a PSR on numerous grounds, including that the PSR allowed Duke to collect transition charges after the market development period had ended, violating R.C. 4928.38. The prior case is pending before the PUCO, with rehearing granted to allow the PUCO more time to consider the issues raised on rehearing. *Id.*

OCC has authority under law to represent the interests of all the 611,000 residential utility customers of Duke, 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 this case, especially if the customers were unrepresented in a proceeding which may result in increased rates to customers to subsidize Duke's share of energy and capacity produced by OVEC power plants. 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 the residential customers of Duke in this case involving Duke's request for customer-funded subsidies of OVEC power plants. 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 Duke's customers should pay 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 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 Duke seeks an unlawful transition charge to subsidize Duke's share of uneconomic OVEC generation.

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.¹

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,

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OHIO CONSUMERS' COUNSEL

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¹ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

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 27th day of April 2017.

/s/ William J. Michael
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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 Michael, William J. Mr.