BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In The Matter of the Annual Energy Efficiency Portfolio Status Report of Duke Energy Ohio, Inc.	)))	Case No. 17-689-EL-EEC

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

In this case, Duke Energy Ohio, Inc. ("Duke" or the "Utility") submits its annual report on its energy efficiency and peak demand reduction programs, which customers pay for. The Office of the Ohio Consumers' Counsel ("OCC") files this motion on behalf of Duke's 620,000 residential electric customers. The Public Utilities Commission of Ohio ("PUCO") should grant OCC's motion to intervene for the reasons set forth in the attached Memorandum in Support.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

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MEMORANDUM IN SUPPORT

In this proceeding, Duke has filed its annual energy efficiency status report for its 2016 energy efficiency programs. The report includes information about Duke's compliance with statutory energy efficiency and peak demand reduction requirements, the performance of Duke's programs (including information on energy saved and participation rates), and program cost-effectiveness, among other things. OCC has authority under law to represent the interests of Duke's 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 this case, especially if the customers were unrepresented in a proceeding where the Utility is required to provide important information about its energy efficiency programs, which customers pay for. 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 where Duke provides its required annual report on its energy efficiency programs. OCC's 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 the rates consumers pay for electric service (including charges for energy efficiency) should be no more than what is reasonable and lawful 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 real and substantial interest in this case involving the Utility's energy efficiency programs, which affect the rates residential customers pay for electric service.

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), which OCC already has addressed and which 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, in deciding two consolidated appeals regarding OCC's right to intervene, the Supreme Court of Ohio has confirmed that "intervention ought to be liberally allowed."[1] In those cases, OCC explained in its motion to intervene that the proceeding could negatively impact residential consumers, and OCC established that the interests of consumers would not be represented by existing parties.[2] Because there was no evidence disputing OCC's position, nor any evidence that OCC's intervention would unduly delay the proceedings, the Supreme Court found that the PUCO could not deny OCC the right to intervene.[3]

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[1] See Ohio Consumers' Counsel v. Pub. Util. Comm., 111 Ohio St. 3d 384, 2006-Ohio-5853, ¶ 20 (2006).

[2] Id. ¶¶ 18-20.

[3] Id. ¶¶ 13-20.

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)
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Counsel of Record

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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 11th day of May 2017.

/s/ Christopher M. Healey
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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 Healey, Christopher Mr.