

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of Duke Energy Ohio,) Case No. 17-1118-EL-RDR
Inc.'s Distribution Capital Investment Rider.)

**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") is collecting charges from customers through the Delivery Capital Investment Rider ("DCI Rider"). The purpose of the DCI is to replace aging infrastructure and improve service reliability.¹ The DCI was approved in Duke's last electric security plan case. Duke was permitted to collect up to \$50 million for 2016.² Duke's current tariffs allow it to assess for the DCI Rider all retail jurisdictional customers a charge of 10.738% of the customer's applicable distribution charges.³ OCC is filing on behalf of all the Duke's approximately 623,000 residential utility customers of Duke.⁴ 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*In the Matter of application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 14-841-EL-SS at 72 (April 2, 2015).

² *Id.*

³ Duke Tariff Sheet No. 103.7 (Effective March 31, 2017).

⁴ *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/ Jodi Bair

Jodi Bair, (0062921) Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: Bair – (614) 466-9559

Jodi.bair@occ.ohio.gov

(Will accept service via email)

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MEMORANDUM IN SUPPORT

This case involves a charge on customers' bills for Duke's distribution system. OCC has authority under law to represent the interests of all of Duke's approximately 623,000 residential electricity 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" by this case, especially if the customers were unrepresented in a proceeding that involves an investigation into the appropriateness of costs Duke collected from customers. 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 an investigation into the reasonableness of costs Duke collected from customers. 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 receive adequate service at a reasonable rate under Ohio law.⁵ 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.

⁵ R.C. 4905.22.

Code 4901-1-11(A)(2). As the advocate for residential utility customers, OCC has a very real and substantial interest in this case in which the PUCO must address whether the Utility is providing adequate service under Ohio law.

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.⁶

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.

⁶ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Jodi Bair

Jodi Bair, (0062921) Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: Bair – (614) 466-9559

Jodi.bair@occ.ohio.gov

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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 13th day of June, 2017.

/s/ Jodi Bair _____

Jodi Bair

Assistant Consumers' Counsel

SERVICE LIST

William.wright@ohioattorneygeneral.gov

Elizabeth.watts@duke-energy.com

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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 Bair, Jodi Ms.