

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)	
Investigation of the Disconnection)	Case No. 17-2089-GE-COI
Policies and Practices of Duke)	
Energy Ohio, Inc.)	

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

This case is about disconnection of Duke Energy Ohio, Inc. (“Duke”) consumers’ electric and natural gas services, an issue of great significance for Ohioans’ safety and well-being. Rules of the Public Utilities Commission of Ohio (“PUCO”), when followed, protect consumers regarding disconnection of their utility service. The PUCO is investigating the policies and practices of Duke in disconnecting residential customers’ utility service. The PUCO found that Duke had unlawfully disconnected a customer’s electric service during the winter heating season, after which an elderly woman and her disabled son died from hypothermia.

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene in this case on behalf of Duke’s approximately 655,000 residential electric and natural gas customers.¹ The reasons why the 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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MEMORANDUM IN SUPPORT

This case came about because the PUCO found that Duke had unlawfully disconnected the electric service of two residential consumers during the winter heating season in 2011.² Tragically, the consumers died. Because of that case and because Duke has had the same disconnection procedures since 2011, the PUCO determined that it should hire an independent auditor to review Duke's practices and policies for disconnecting customers' utility service.³ This case will thus affect residential utility consumers in Duke's service territory. 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," especially if the customers were unrepresented in a proceeding where the PUCO is investigating the disconnection policies and practices of their utility company. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

² *Pitzer v. Duke Energy Ohio, Inc.*, Case No. 15-298-GE-CSS, Opinion and Order (August 30, 2017), ¶¶58-59.

³ *Id.*, ¶83.

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 investigating Duke's policies and practices for disconnecting customers' utility service. 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.

OCC has been concerned about the impact of Duke's disconnection policies and practices on Ohioans. OCC sought PUCO review of Duke's disconnection policies and practices in another case three years ago.⁴ There, the PUCO denied OCC the opportunity to address the issue and advised OCC to raise the matter "in an appropriate docket."⁵ In response to the PUCO's directive, OCC joined Communities United for Action

⁴ See *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust Rider DR-IM and Rider AU for 2013 SmartGrid Costs*, Case No. 14-1051-GE-RDR, Direct Testimony of James D. Williams (December 31, 2014).

⁵ Case No. 14-1051-GE-RDR, Entry (January 22, 2015) at 3.

(“CUFA”) in filing a Complaint against Duke. The Complaint alleged that Duke’s disconnection policies and practices violate the PUCO’s disconnection rules and orders⁶ that help protect consumers.⁷ The case lay dormant for nearly two years awaiting PUCO rulings on several motions.

In an Entry issued on October 11, 2017 (the same day the instant proceeding began), the PUCO ruled that no reasonable grounds had been stated for the Complaint and dismissed it. However, the PUCO specifically invited OCC and CUFA to participate in this case.⁸ In addition, OCC participated as an intervenor in the *Pitzer* case in which the PUCO ordered this investigation after finding that Duke unlawfully disconnected service to two consumers.

Second, OCC’s advocacy for residential customers will include advancing the position that Duke must comply with the PUCO’s rules and orders that protect consumers when their utility service is or is about to be disconnected for nonpayment. OCC’s position is therefore directly related to the merits of this case that is pending before the PUCO, which is the authority with regulatory control over 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 and matters regarding Duke’s disconnection policies and practices, will duly allow for the efficient processing of the case with consideration of the public interest.

⁶ Such as the PUCO’s winter reconnection orders.

⁷ *OCC and CUFA v. Duke*, Case No. 15-1588-GE-COI, Complaint (September 15, 2015).

⁸ Case No. 15-1588-GE-COI, Entry (October 11, 2017), ¶22.

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 the PUCO is investigating Duke's policies and practices in disconnecting customers' utility 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) 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.⁹

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's residential customers, the PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

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⁹ 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 24th day of October 2017.

/s/ Terry L. Etter

Terry L. Etter

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Summary: Motion Motion to Intervene by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Etter, Terry Mr.