

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy       )  
Ohio, Inc., for Authority to Change Accounting       )   Case No. 17-2118-GA-AAM  
Methods.    )

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

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This case is about whether consumers should help pay for a wall being built as a result of a landslide in Cincinnati. After agreeing to fund part of the wall, Duke Energy Ohio, Inc. (“Duke”) now seeks to turn around and charge its customers for what it agreed to pay. Duke asks the Public Utilities Commission of Ohio (“PUCO”) for authority to defer \$3 million in charges, plus interest, as part of the wall project. If Duke's application is approved, Duke’s natural gas customers will likely be asked to pay the charges and interest at a later date. The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene in this case on behalf of Duke’s approximately 422,000 residential natural gas customers.<sup>1</sup> The reasons why the PUCO should grant OCC’s Motion are further set forth in the attached Memorandum in Support.

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<sup>1</sup> 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/ Terry L. Etter

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**MEMORANDUM IN SUPPORT**

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After agreeing to pay the City of Cincinnati to help defray some of the costs of a retaining wall, Duke has asked the PUCO for permission to defer \$3 million plus interest for costs related to that wall. The wall is being built in a landslide area abutting City water and sewer lines and Duke natural gas lines.<sup>2</sup> Duke's customers will likely be asked to pay the charges and interest at a later date if Duke's application is approved. This case will thus affect residential natural gas consumers in Duke's service territory. OCC has authority under law to represent the interests of Duke's residential natural gas 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 their utility is seeking to defer charges that the customers may eventually have to pay. 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:

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<sup>2</sup> See Application (October 12, 2017) at 3.

- (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 making sure that customers pay rates that are just and reasonable. 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.

Second, OCC's advocacy for residential customers will include advancing the position that consumers pay for expenses that are ordinary and necessary for the provision of utility service. 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 utility rates, 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 the PUCO is considering allowing Duke to defer costs (with interest) for later collection from customers.

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.<sup>3</sup>

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

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,

BRUCE WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

/s/ Terry L. Etter

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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 6<sup>th</sup> day of November 2017.

/s/ Terry L. Etter

Terry L. Etter

Assistant Consumers' Counsel

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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.