

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaints of	)	
Kim Wiethorn, Karen and Majeb Dabdoub,	)	
Jeff and Linda Sims, Fred Vonderhaar, Donald	)	
and Nancy Jacob, James Johnson, Majid	)	
Qureshi, Keith Donovan, Julie Reynolds, John	)	Case No. 17-2344-EL-CSS
Lu, Robert Schneider, Amanda Sachs, John	)	
Hasselbeck, Lawrence Hug, Dennis Mitman	)	
and Susan Shorr, Nicole Hiciu, Jason Mayhall,	)	
James and Shelley Hoyer, Theresa Reis, Gary	)	
Balser, David Siff, Carrie and Dan Gause,	)	
Phyllis Wahl, Susan Falick, Jerry and Lou	)	
Ullrich, Dan and Vicki Kemmeter, Kim	)	
Carrier, Dan and Michele Reece, Deloris	)	
Reese, Darrelle Reese, Julie Carnes, Todd and	)	
Michelle Bacon, Patricia Lohse, Dennis Baker,	)	
Jenny and Charlie Gast, Robb and Kathleen	)	
Olsen, Nancy Steinbrink, John and Barbara	)	
Collins, Jonathan Mackey, Valerie Van Iden,	)	
Joseph Grossi, Fu Wong and Peony Lo,	)	
Melissa and Peter Broome, Melisa Kuhne, Jim	)	
and Laura Haid, Olga Staios, Shana Berge,	)	
Gregory Hoeting, Richard and Carol	)	
Tenenholtz, R. Allen Pancoast, Paul and Karen	)	
Smith, Jason Dimaculangan, John D. Gump,	)	
Brian and Melissa Weiss, Evelyn and Tom	)	
King, Anne Wymore, John and Sally Riester,	)	
Philip Griggs, Sharon M. Felman, Anita Deye,	)	
Clifford W. Fauber, Nicole Menkaus, James	)	
Wulker, Timothy Wilson, Sandra Nunn,	)	
Sanford T. and Barbara L. Casper, Mark and	)	
Calissa Thompson, Mike Preissler, Patricia L.	)	
McGill, Dana and Joy Steller, Marc Wahlquist,	)	
Gary Pauly, Steve and Nanci Schmidt,	)	
Kathleen Danner, Randall J. Fick, Greg	)	
Chtelmakh, Wayne and Bertha Davis, Eric	)	
Hatfield, John Kilgore, Rob and Karen Ripp,	)	
Shuku Nishihata, Mark Lykins, and the	)	
Symmes Township Trustees,	)	
Complainants,	)	
v.	)	
Duke Energy Ohio, Inc.	)	
Respondent.	)	

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

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The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene<sup>1</sup> in this case where there is a complaint about the tree-clearing policies and practices of Duke Energy Ohio, Inc. ("Duke") and their impact on consumers. OCC represents Duke's residential utility customers. 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,

BRUCE WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

/s/Terry L. Etter

Terry L Etter (0067445)  
Assistant Consumers' Counsel

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<sup>1</sup> See R.C. Chapter 4911, R.C. 4903.221, and Ohio Adm. Code 4901-1-11.

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## MEMORANDUM IN SUPPORT

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This case involves allegations that Duke’s policies and practices regarding the clearing of trees on residential property are unjust, unreasonable, and unlawful.<sup>2</sup> Duke’s tree-clearing policies and practices affect not just the Complainants in this case. All property owners who are residential customers of Duke’s electric service are potentially affected by the policies and practices at issue in this case. OCC has authority under law to represent the interests of Duke’s residential utility 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. In this case, Duke’s tree-clearing policies and practices are alleged to have violated Ohio law designed to ensure that the utility service provided to consumers is in all respects just and reasonable.<sup>3</sup> Hence, OCC and the residential consumers it represents may be “adversely affected” by this case, and 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;

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<sup>2</sup> See Second Amended Complaint, January 5, 2018, ¶¶146-150.

<sup>3</sup> See *id.*, ¶¶148-150, citing R.C. 4905.22.

- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding;
- (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 that of the state's representative of residential consumers. The case involves allegations that Duke's tree-clearing policies and practices are unjust, unreasonable, and unlawful. These policies and practices affect Duke's residential consumers. 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 legal position includes, among other things, that Ohioans should be protected against unjust, unreasonable, and unlawful tree-clearing policies and practices of public utilities. 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' vegetation management 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 a public utility's tree-clearing policies and practices are alleged to be unjust, unreasonable, and unlawful.

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.<sup>4</sup>

Moreover, the Supreme Court of Ohio ("Court") 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>5</sup>

OCC meets the criteria set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11, and the precedent established by the Ohio Supreme Court for intervention. On behalf of Ohio residential customers, the PUCO should grant OCC's Motion to Intervene.

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<sup>4</sup> Although there are residential customers among the Complainants in this case, they do not represent the interests of other residential consumers who are subjected to Duke's tree-clearing policies and practices.

<sup>5</sup> See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

Respectfully submitted,

BRUCE WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

/s/Terry L. Etter

Terry L. Etter (0067445)  
Assistant Consumers' Counsel

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(willing to accept email service)

### **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 5<sup>th</sup> day of February 2018.

*/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.