

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy)
Ohio, Inc. for the Annual Audit of Rider SCR,) Case No. 18-0046-EL-RDR
Rider RE, Rider RC, Rider LFA, Rider ESSC,)
and Rider ECF.

**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") is collecting charges from customers through its Supplier Cost Reconciliation Rider ("Rider SCR"), Retail Energy Rider ("Rider RE"), Retail Capacity Rider ("Rider RC"), Load Factor Adjustment Rider ("Rider LFA"), and Economic Competitiveness Fund ("Rider ECF").¹ This proceeding is an annual audit to determine whether the 2017 charges that been collected by Duke under these riders are reasonable and in compliance with PUCO Orders.² OCC is filing on behalf of the 623,000 residential utility customers of Duke. The reasons the PUCO should grant OCC's motion to intervene are further set forth in the attached Memorandum in Support.

¹ Rider SCR reconciles and collects costs related to the competitive auctions for the standard service offer. Riders RC and RE collect costs for capacity and energy, respectively, supplied to the standard service offer customers. Rider LFA was created to incentivize larger customers to reduce their load factor and Rider ECF collects costs for Duke's large customer interruptible program.

² Duke's ESSC Rider was terminated by PUCO Order. See *In the Matter of the 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-SSO, Opinion and Order at 66 (April 2, 2015). Duke's current Tariff states that the ESSC Rider has been cancelled and withdrawn. See Duke PUCO Electric No. 19, Sheet 113.8.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

This case involves charges on customers' bills for the collection of costs from Duke's Rider SCR, Rider RE, Rider RC, Rider LFA, and Rider ECF. The outcome of this proceeding could impact the utility bills that Ohio customers pay. Ohio law authorizes OCC to represent the interests of all of Duke's 623,000 residential utility customers.³

R.C. 4903.221 provides that any person "who may be adversely affected" by a PUCO proceeding is entitled to intervene in that proceeding. The interests of Ohio's residential consumers may be adversely affected by this case because Duke's Rider SCR, Rider RE, Rider RC, Rider LFA, and Rider ECF charges could cost consumers millions of dollars. 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

³ See R.C. Chapter 4911.

- (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 consumers. This interest is different from 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 will include (without limitation) that utility rates charged to consumers should be just and reasonable.⁴ OCC will work to determine whether the proposed charges for Duke's Rider SCR, Rider RE, Rider RC, Rider LFA, and Rider ECF are just and reasonable. OCC's position is therefore directly related to the merits of this case.

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."⁵ As the residential utility consumer advocate, OCC has a real and substantial interest in this case in which the

⁴ See R.C. 4905.22 ("All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission . . .").

⁵ Ohio Adm. Code 4901-1-11(A)(2).

PUCO will review the charges that customers pay for Duke's Rider SCR, Rider RE, Rider RC, Rider LFA, and Rider ECF.

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." Although OCC does not concede that the PUCO must consider this factor, OCC satisfies it because OCC has been uniquely designated as the state representative of the interests of Ohio's residential utility consumers. 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 consumers, 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.

Respectfully submitted,

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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 electric transmission this 15th day of February 2018.

/s/ Kevin Moore

Kevin Moore

Assistant Consumers' Counsel

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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 Moore, Kevin F. Mr.