BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust its Distribution Capital Investment Rider Rates Charged to Customers.	)))	Case No. 17-2088-EL-RDR

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") seeks to adjust the amount it charges consumers for electric service under its Distribution Capital Investment Rider ("DCI Rider"). Duke proposes to adjust the DCI Rider charge from 15.319%[1] of the customer's applicable base distribution charges to 11.944%.[2] The proposed adjustment to the DCI Rider is based on investment data from the fourth quarter of 2017 and will be implemented with the first billing cycle of April 2018.[3] The purpose of the DCI is to replace aging infrastructure and improve service reliability.[4] OCC is filing on behalf of the approximately 629,000 residential utility customers of Duke.[5] The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

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[1] Duke Tariff PUCO Electric No. 19, Sheet No. 103.10, page 1 of 1.

[2] Duke Tariff filing (March 19, 2018).

[3] DCI Quarterly Filing at 1 (January 26, 2018).

[4] *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-SSO at 72 (April 2, 2015).

[5] *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/ Kevin F. Moore
Kevin F. Moore, (0089228)
Counsel of Record
Amy Botschner-O'Brien (0074423)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215
Telephone: Moore – (614) 387-2965
Telephone: O'Brien – (614) 466-9549
Kevin.moore@occ.ohio.gov
Amy.botschner-obrien@occ.ohio.gov
(Both will accept service via email)

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MEMORANDUM IN SUPPORT

This case involves a charge on customers' bills for alleged improvements to Duke's distribution infrastructure and system. In this case, Duke is required to file quarterly Rider DCI updates for PUCO and intervenor review. OCC has authority under law to represent the interests of all of Duke's approximately 629,000 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 proceedings; and

(4) Whether the prospective intervenor will significantly contribute to 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 charges consumers for the Distribution Capital Investment Rider. 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 Duke's customers should receive adequate service at a reasonable rate under Ohio law.[6] OCC's position is therefore directly related to the merits of this pending case 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 to equitably and lawfully decide 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.

[6] 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 Duke DCI Rider is being charged correctly and in compliance with PUCO Orders.

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.[7]

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.

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[7] *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/ Kevin F. Moore
Kevin F. Moore, (0089228)
Counsel of Record
Amy Botschner-O'Brien (0074423)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215
Telephone: Moore – (614) 387-2965
Telephone: O'Brien – (614) 466-9549
Kevin.moore@occ.ohio.gov
Amy.botschner-obrien@occ.ohio.gov
(Both will accept service via email)

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 26th day of March, 2018.

/s/ Kevin F. Moore
Kevin F. Moore
Assistant Consumers' Counsel

SERVICE LIST

William.wright@ohioattorneygeneral.gov

Attorney Examiners:

Stacie.cathcart@puc.state.oh.us
Nicholas.walstra@puc.state.oh.us

Rocco.dascenzo@duke-energy.com
Elizabeth.watts@duke-energy.com
Jeanne.kingery@duke-energy.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/26/2018 4:13:38 PM

in

Case No(s). 17-2088-EL-RDR

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.