

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy)
Ohio, Inc., for Recovery of Program Costs, Lost)
Distribution Revenue and Performance Incentives) Case No. 18-397-EL-RDR
Related to its Energy Efficiency and Demand)
Response Programs.)

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

In this case, Duke Energy Ohio, Inc. (“Duke” or the “Utility”) seeks approval to charge residential customers around \$27 million for energy efficiency and peak demand reduction program costs and utility profits over a two-year period (2017 and 2018).¹

The Office of the Ohio Consumers' Counsel (“OCC”) moves to intervene in this case on behalf of the 629,000 residential customers of Duke Energy Ohio, Inc. (“Duke” or the “Utility”) who are being asked to pay the program costs and profits for Duke's energy efficiency and peak demand reduction programs.² The Public Utilities Commission of Ohio (“PUCO”) should grant OCC's motion to intervene in this case for the reasons set forth in the attached memorandum in support.

¹ Direct Testimony of James E. Ziolkowski on Behalf of Duke Energy Ohio, Inc., Attachment JEZ-1, page 3 of 15 (\$8,472,905 for 2017 residential energy efficiency program costs plus \$612,448 for 2017 residential demand response program costs); page 7 of 15 (\$16,088,087 million for projected 2018 residential energy efficiency program costs and utility profits plus \$1,803,537 for projected 2018 residential demand response program costs and utility profits).

² See R.C. Chapter 4911.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Christopher Healey
Christopher Healey (0086027)
Counsel of Record
Bryce McKenney (0088203)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215
Telephone [Healey]: (614) 466-9571
Telephone [McKenney]: (614) 466-9585
christopher.healey@occ.ohio.gov
bryce.mckenney@occ.ohio.gov
(Willing to accept service by e-mail)

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy)
Ohio, Inc., for Recovery of Program Costs, Lost)
Distribution Revenue and Performance Incentives) Case No. 18-397-EL-RDR
Related to its Energy Efficiency and Demand)
Response Programs.)

MEMORANDUM IN SUPPORT

Residential customers pay for Duke’s energy efficiency programs, including program costs (customer rebates, administrative costs, marketing, etc.) and utility profits (often called “shared savings” in Ohio). In this case, Duke seeks to update the rider through which customers pay these charges. If the PUCO approves Duke’s application, residential customers will pay about \$9.1 million in charges for 2017 programs and about \$17.9 million in projected charges for 2018 programs.

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 consumers may be “adversely affected” by this case, especially if customers were unrepresented in a proceeding where Duke seeks to charge them for energy efficiency program costs and utility profits. 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.

OCC meets these criteria. First, the nature and extent of OCC's interest is representing residential consumers in this case where they are being asked to pay millions of dollars for energy efficiency programs and utility profits. 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 will advocate for residential consumers by advancing the position that rates should be no more than what is reasonable and permissible under Ohio law.³ OCC's position is therefore directly related to the merits of the proposal before the PUCO in this case.

Third, OCC's intervention will not unduly prolong or delay the proceeding. OCC, with its longstanding expertise and experience in PUCO proceedings, will contribute to the efficient processing of the case with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to fully developing and equitably resolving the factual issues. OCC's intervention will provide the PUCO with information relating to the interests of the residential consumers that pay Duke's energy efficiency rider charges. OCC will obtain and develop information that the PUCO should consider to equitably and lawfully decide the case in the public interest.

³ R.C. 4905.22.

OCC also satisfies the intervention criteria in the Ohio Administrative Code, which are subordinate to the criteria 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 residential utility consumer advocate, OCC has a real and substantial interest in this case where the outcome could affect the rates that residential customers pay.

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 has already 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.” While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion because it has been uniquely designated as the statutory representative of Ohio's residential utility consumers.⁴ That interest is different from, and not represented by, any other entity in Ohio.

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.⁵

⁴ R.C. Chapter 4911.

⁵ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 2006-Ohio-5853, 13-20 (2006).

The Ohio Consumers' Counsel 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.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Christopher Healey
Christopher Healey (0086027)
Counsel of Record
Bryce McKenney (0088203)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215
Telephone [Healey]: (614) 466-9571
Telephone [McKenney]: (614) 466-9585
christopher.healey@occ.ohio.gov
bryce.mckenney@occ.ohio.gov
(Willing to accept service by e-mail)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this Motion to Intervene has been served upon the below-named persons via electronic transmission this 20th day of April 2018.

/s/ Christopher Healey
Christopher Healey
Counsel of Record

SERVICE LIST

William.wright@ohioattorneygeneral.gov

Rocco.DAscenzo@duke-energy.com
Elizabeth.Watts@duke-energy.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/20/2018 5:06:57 PM

in

Case No(s). 18-0397-EL-RDR

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