BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of Duke)	
Energy Ohio, Inc.'s Distribution Capital)	Case No. 18-1036-EL-RDR
Investment Rider.)	

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 the amount Duke Energy Ohio, Inc. ("Duke" or "Utility") charges customers through its Distribution Capital Investment Rider ("DCI Charge") will be audited and reviewed. The intended purpose of the DCI Charge is for Duke to charge customers to fund its replacement of aging infrastructure and improve service reliability. Duke was authorized to charge customers up to \$35 million for the first five months of 2018 and then up to \$5 million per month after that. OCC is filing on behalf of Duke's approximately 623,000 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.

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

² In re Duke Energy Ohio, Inc., Case No. 14-841-EL-SSO, Opinion and Order (Apr. 2, 2015) at 72.

³ Id.; In re Duke Energy Ohio, Inc., Case No. 14-841-EL-SSO, Second Entry on Rehearing (July 25, 2018).

Respectfully submitted,

Bruce Weston (#0016973) Ohio Consumers' Counsel

/s/ Bryce McKenney
Bryce McKenney, Counsel of Record (#0088203)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel 65 East State Street, 7th Floor Columbus, Ohio 43215
Telephone [McKenney]: (614) 466-9585
Bryce.mckenney@occ.ohio.gov
(Willing to accept service via email)

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of Duke)	
Energy Ohio, Inc.'s Distribution Capital)	Case No. 18-1036-EL-RDR
Investment Rider.)	

MEMORANDUM IN SUPPORT

This case involves the amount Duke charges customers so that the utility can replace aging infrastructure and improve its reliability. OCC has authority under law to represent the interests of all of Duke's approximately 623,000 residential electric 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. The interests of Ohio's residential customers may be "adversely affected" by this case, especially if the customers were unrepresented in a proceeding that will investigate the appropriateness of Duke's charges to 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;

(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 the residential customers of Duke in this case investigating the reasonableness of Duke's charges to customers. 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 advocacy for residential customers will include advancing the position that Duke should charge customers no more than what is reasonable and lawful under Ohio law. 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' 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 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 will determine whether the utility is providing adequate service for the amount it charges customers under Ohio law.

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.⁴

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.

3

⁴ 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/ Bryce McKenney

Bryce McKenney, Counsel of Record (#0088203)

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel 65 East State Street, 7th Floor Columbus, Ohio 43215
Telephone [McKenney]: (614) 466-9585
Bryce.mckenney@occ.ohio.gov

(Willing to 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 7th day of December 2018.

/s/ Bryce McKenney
Bryce McKenney
Assistant Consumers' Counsel

SERVICE LIST

William.wright@ohioattorneygeneral.gov E

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

Attorney Examiners:

Stacie.cathcart@puc.state.oh.us Nicholas.walstra@puc.state.oh.us This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/7/2018 2:56:02 PM

in

Case No(s). 18-1036-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 McKenney, Bryce