

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke     )  
Energy Ohio, Inc., for Implementation of     ) Case No. 18-1830-GA-UNC  
the Tax Cuts and Jobs Act of 2017.     )

In the Matter of the Application of Duke     )  
Energy Ohio, Inc., for Approval of Tariff     ) Case No. 18-1831-GA-ATA  
Revisions.     )

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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 in this case where Duke Energy Ohio, Inc. ("Duke") proposes to return the benefits of the Tax Cuts and Jobs Act of 2017 to its natural gas customers.<sup>1</sup> One of OCC's key issues for Ohio consumers is the reduction of their utility rates commensurate with the federal government's reduction of the utilities' corporate income tax rates. Duke's filing was required by the Public Utilities Commission of Ohio ("PUCO"). The PUCO initiated case 18-0047-AU-COI to determine how best to provide Ohio consumers with the full benefit of the federal tax cuts, and directed all rate-regulated utility companies to file an application "not for an increase in rates," in a newly initiated proceeding.<sup>2</sup> The PUCO should guarantee that natural gas consumers receive the full benefit of the tax cuts through reductions in Duke's rates now.

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

<sup>2</sup> *In re the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Case No. 18-0047-AU-COI Finding and Order (October 24, 2018).

OCC is filing on behalf of Duke's nearly 400,000 residential gas utility customers in Ohio.<sup>3</sup> The PUCO should grant OCC's motion to intervene for the reasons set forth in the attached memorandum in support.

Respectfully submitted,

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Ohio Consumers' Counsel

/s/ Angela D. O'Brien

William J. Michael, Counsel of Record  
(0070921)

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<sup>3</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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In this case, Duke proposes several methods to return tax savings to consumers in accordance with the Finding and Order in the PUCO’s investigation in Case No. 18-47-AU-COI regarding the implementation of the Tax Cuts and Jobs Act of 2017.<sup>4</sup> Duke’s proposal includes returning the tax savings by (1) reducing its current base gas distribution rates; (2) creating a new rider to refund excess accumulated deferred income taxes (EDITs) and deferrals recorded between January 1, 2018 and March 31, 2019; and (3) modifying its existing Riders AMRP and AU in order to refund EDITs from investments recovered through those riders.

The PUCO should thoroughly review Duke’s proposals to guarantee that Ohio consumers receive the full benefit of the tax cuts through reductions in rates as soon as possible. OCC has statutory authority to represent the interests of Duke’s nearly 400,000 residential gas utility customers under 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

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<sup>4</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for Implementation of the Tax Cuts and Jobs Act of 2017*, Case No. 18-1830-GA-UNC (December 21, 2018) at 3.

Ohio's residential customers may be "adversely affected" by this case, especially if they were unrepresented in a proceeding to determine the benefits to customers resulting from federal tax cuts. 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 Duke's residential customers in this case where the reasonableness of Duke's proposals to refund consumer savings under the Tax Cuts and Jobs Act will be evaluated. This interest is different from that of any other party, and especially different from that of Duke whose advocacy includes the financial interest of its shareholders. Further, the PUCO specifically requested the input from "interested stakeholders" when evaluating any utility proposal to comply with its Investigation of Tax Cuts and Jobs Act of 2017.<sup>5</sup> As a representative of Duke's residential customers who will be affected by the outcome of this case, the OCC is an "interested stakeholder."

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<sup>5</sup> Finding and Order (October 24, 2018) at 18.

Second, OCC's advocacy for residential customers will include advancing the position that the federal Tax Cuts and Jobs Act of 2017 should result in the full flow-through of millions of dollars of utility tax savings to Ohio consumers by reducing their utility rates. 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 how to return the benefits of the Tax Cuts and Jobs Act of 2017 to customers.

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.

Further, 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>6</sup>

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

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<sup>6</sup> See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

Respectfully submitted,

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(All 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 15th day of February 2019.

/s/ Angela D. O'Brien

Angela D. O'Brien

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 Angela D. O'Brien