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 Related to its Energy Efficiency and Demand Response Programs.	))))))	Case No. 19-0622-EL-RDR

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene where Duke Energy Ohio, Inc. ("Duke" or the "Utility") seeks to update the rate that customers pay for energy efficiency.[1] For the past three years, Duke has sought to lower the amount customers pay for energy efficiency, but due to the PUCO's inaction, customers have been stuck paying a higher unjustified rate, resulting in over $30 million of overcharges. The time has come for the PUCO to give customers relief from continually overpaying for Duke's energy efficiency programs. There is no reason that customers should pay $3.44 to Duke, month after month, while Duke continues to hold on to more than $33 million in customer money, interest free.

OCC is filing on behalf of the 640,000 residential utility customers of Duke. The reasons the PUCO should grant OCC's motion are further set forth in the attached memorandum in support.

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

Respectfully submitted,

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MEMORANDUM IN SUPPORT

Duke's request gives the PUCO an opportunity to do the right thing by consumers and fix an issue that should have been fixed previously. Duke's residential customers have been overpaying for Duke's energy efficiency programs for years—to the tune of more than $33 million since 2016.

Unfortunately for Duke's residential customers, they have been paying an unnecessarily high rate for years as a result of the PUCO not ruling on Duke's annual energy efficiency applications. Residential customers have been paying the same rate ($0.003443 per kWh) for Duke's energy efficiency programs for five years.[2] Under this rate, a typical customer using 1,000 kWh per month is paying $3.44 per month for Duke's programs. Since that time, Duke has filed applications seeking to lower the rate, but the PUCO has not acted.

- In 2016, Duke filed an application seeking to lower the rate to $0.002642 per kWh, which would be a monthly charge of $2.64 for a typical customer.[3] The PUCO never ruled on Duke's application, so customers continued to pay the higher $3.44 monthly charge.

- In 2017, Duke filed an application seeking to lower the rate to $0.001544 per kWh, which would be a monthly charge of $1.54 for a typical

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[2] *See* Duke Tariff Sheet No. 119.2 (showing effective date of May 1, 2014).

[3] Case No. 16-664-EL-RDR, Ziolkowski Testimony, Exhibit at 10.

customer.[4] The PUCO never ruled on Duke's application, so customers continued to pay the higher $3.44 monthly charge.

- In 2018, Duke filed an application seeking to lower the rate to *negative* $0.001172 per kWh, which would be a monthly *credit* of $1.17 for a typical customer.[5] The PUCO never ruled on Duke's application, so customers continued to pay the $3.44 monthly charge instead of receiving a credit.

Now, in its 2019 application, Duke proposes a rate of negative $0.002157 per kWh for residential customers.[6] If the application is approved as filed, a typical customer using 1,000 kWh per month would receive a monthly credit of $3.44. If the PUCO does not approve Duke's application or does not otherwise order a different rate than what Duke proposes, then customers will continue to pay $3.44 per month, as they have for the last five years.

As a result of the PUCO's inaction, in the last three years alone, residential customers have paid an extra **$33.3 million** for Duke's energy efficiency programs:[7]

Year	Actual Program Costs & Shared Savings	Charges to Residential Customers	Overcharges
2016	$12,949,286	$25,072,795	$12,123,509
2017	$9,085,353	$23,832,826	$14,747,473
2018	$20,381,008	$26,861,932	$6,480,924
Total	$42,415,647	$75,767,553	***$33,351,906***

OCC has authority under law to represent the interests of all the 640,000 residential utility customers of Duke 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

[4] Case No. 17-781-EL-RDR, Ziolkowski Testimony, Attachment at 10.

[5] Case No. 18-397-EL-RDR, Ziolkowski Testimony, Attachment JEZ-1 at 15.

[6] Ziolkowski Testimony, Attachment JEZ-1 at 15.

[7] Ziolkowski Testimony, Attachment JEZ-1 at 15.

Ohio's residential customers may be "adversely affected" by this case, especially if the customers were unrepresented in a proceeding where Duke is seeking to update the rate for its energy efficiency programs. 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 involving Duke's proposal for credits to customers resulting from customers overpaying for energy efficiency programs in prior years. 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, among other things, advancing the position that Duke's customers deserve to stop overpaying for Duke's energy efficiency programs. OCC's position is therefore directly related to the merits of this case, which 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 customers deserve a credit for having overpaid for Duke's energy efficiency programs.

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 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 ("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.[8]

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.

Respectfully submitted,

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[8] *See Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20.

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 April 2019.

/s/ Christopher Healey
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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 Healey, Christopher Mr.