

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy)
Ohio, Inc., for Authority to Defer Environmental) Case No. 19-1085-GA-AAM
Investigation and Remediation Costs.)

In the Matter of the Application of Duke Energy) Case No. 19-1086-GA-UNC
Ohio, Inc. for Tariff Approval.)

**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 extend its current accounting authority (beyond December 31, 2019) to defer expenses it incurs to clean up now-defunct manufactured gas plant ("MGP") sites. This is not the first time Duke has sought an extension of its deferral authority for MGP cleanup costs. The last time the Public Utilities Commission of Ohio ("PUCO") authorized Duke to defer its MGP cleanup costs, the PUCO "stress[ed] that any future request submitted by Duke for an additional extension of deferral authority beyond December 31, 2019, will be heavily scrutinized, in order to ensure that the [PUCO]'s original intent to protect the public interest and hold Duke and its shareholders accountable, in part, for the remediation continues to be realized."¹ OCC is filing on behalf of the nearly 400,000 residential gas utility customers of Duke. The reasons the PUCO should grant OCC's motion are further set forth in the attached memorandum in support.

¹ *In re Duke for Authority to Defer Environmental Investigation and Remediation Costs*, Case No. 16-1106-GA-AAM, et al., Finding and Order (Dec. 21, 2016) at ¶37.

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 43215-4213
Telephone [Healey]: (614) 466-9571
Telephone [McKenney]: (614) 466-9585
christopher.healey@occ.ohio.gov
bryce.mckenney@occ.ohio.gov
(will accept service via email)

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy)
Ohio, Inc., for Authority to Defer Environmental) Case No. 19-1085-GA-AAM
Investigation and Remediation Costs.)

In the Matter of the Application of Duke Energy) Case No. 19-1086-GA-UNC
Ohio, Inc. for Tariff Approval.)

MEMORANDUM IN SUPPORT

Duke is seeking PUCO permission to extend its accounting authority (beyond December 31, 2019) to defer millions of dollars in expenses associated with clean-up costs at Duke’s defunct MGP sites. This deferral is the first step toward charging consumers for Duke’s costs to clean up the defunct MGP sites. OCC has authority under law to represent the interests of all 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 Ohio’s residential consumers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding that will ultimately determine the amount residential consumers are charged by Duke for its MGP cleanup costs. 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 the residential customers of Duke in this case involving Duke's application for authority to continue deferring MGP cleanup costs before it eventually charges those costs to consumers. This interest is different from that of any other party and especially different than that of Duke, whose advocacy includes the financial interest of stockholders.

Second, OCC's legal position will include, without limitation, advancing the position that utility rates charged to consumers should be just and reasonable.² OCC will work to determine whether the proposed charges for Duke's MGP cleanup costs have been prudently incurred and are just and reasonable.

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 for equitably and lawfully deciding the case in the public interest.

² See R.C. 4905.22 ("All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission . . .").

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 consumers, OCC has a very real and substantial interest in this case where the PUCO will determine whether Duke can continue deferring MGP cleanup costs before it eventually charges consumers for those cleanup costs.

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 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 consumers. 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.³

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

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 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 43215-4213
Telephone [Healey]: (614) 466-9571
Telephone [McKenney]: (614) 466-9585
christopher.healey@occ.ohio.gov
bryce.mckenney@occ.ohio.gov
(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 electric transmission this 30th day of May 2019.

/s/ Christopher Healey

Christopher Healey
Counsel of Record

SERVICE LIST

john.jones@ohioattorneygeneral.gov

rocco.dascenzo@duke-energy.com

elizabeth.watts@duke-energy.com

jeanne.kingery@duke-energy.com

Attorney Examiner:

Megan.addison@puco.ohio.gov

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/30/2019 9:17:03 AM

in

Case No(s). 19-1085-GA-AAM, 19-1086-GA-UNC

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.