

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Application)
of Duke Energy Ohio, Inc., for an) Case No. 19-1769-GA-RDR
Adjustment to Rider AMRP Rates.)

In the Matter of the Annual Application) Case No. 19-1770-GA-ATA
of Duke Energy 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") has filed a pre-filing notice of its proposal to adjust its Accelerated Mains Replacement Rider ("AMRP") charges to be effective in May 2020. Under Rider AMRP, customers are charged for the replacement of cast iron and steel mains and metallic service lines with plastic mains and service lines throughout Duke's service territory.

OCC represents the interests of Duke's 390,000 residential gas utility customers.¹ The PUCO should grant OCC's motion to intervene for the reasons 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.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Amy Botschner O'Brien

Amy Botschner O'Brien (0074423)
Counsel of Record
Ambrosia E. Logsdon (0096598)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

65 East State Street, 7th Floor
Columbus, Ohio 43215-4213
Telephone: [Botschner O'Brien]: (614) 466-9571
Telephone [Logsdon]: (614) 466-1292
amy.botschner.obrien@occ.ohio.gov
ambrosia.logsdon@occ.ohio.gov
(willing to accept service by e-mail)

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MEMORANDUM IN SUPPORT

Duke’s pre-filing notice alerts the Public Utilities Commission of Ohio (PUCO) that its application will propose a decrease in rates of approximately \$849,000 for Rider AMRP for Duke’s gas distribution service, to be effective May 2020.² While Duke has completed the replacement of all cast iron and steel mains with plastic mains in its distribution system,³ Duke has been authorized to file for annual rate changes to charge customers for the cost of this replacement program.⁴ OCC has statutory authority to represent the interests of Duke’s 390,000 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 customers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding regarding charges to consumers under

² Duke’s Pre-Filing Notice at 5-2, November 15, 2018.

³ *Id.*

⁴ *In the Matter of the Application of Duke Energy Ohio, Inc for an Increase in Rates*, Case No. 12-1685-GA-AIR, Stipulation and Recommendation approved November 13, 2013.

Duke's AMRP Rider. 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 under the utility's AMRP Rider. 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 shareholders.

Second, OCC's advocacy for residential customers will include advancing the position that Duke should charge customers no more than what is just and reasonable 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 ("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

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.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Amy Botschner O'Brien
Amy Botschner O'Brien (0074423)
Counsel of Record
Ambrosia E. Logsdon (0096598)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
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Telephone: [Botschner O'Brien]: (614) 466-9571
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amy.botschner.obrien@occ.ohio.gov
ambrosia.logsdon@occ.ohio.gov
(willing to accept service by e-mail)

⁵ 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 27th day of November 2019.

/s/ Amy Botschner O'Brien
Amy Botschner O'Brien
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

SERVICE LIST

Steven.beeler@ohioattorneygeneral.gov
John.jones@ohioattorneygeneral.gov
Steven.darnell@ohioattorneygeneral.gov

Amy.spiller@duke-energy.com
Rocco.dascenzo@duke-energy.com
Jeanne.kingery@duke-energy.com

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Summary: Motion Motion to Intervene by The Office of The Ohio Consumers' Counsel
electronically filed by Mrs. Tracy J Greene on behalf of Amy Botschner O'Brien