

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke    )    Case No. 19-2223-EL-UNC  
Energy Ohio, Inc., for Approval of        )  
McMann Battery Storage Project.         )

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

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Duke Energy Ohio, Inc., (“Duke”) seeks approval from the Public Utilities Commission of Ohio (“PUCO”) to spend approximately \$11.7 million to construct the McMann Battery Storage Pilot Project and to charge customers for this project through a single-issue ratemaking charge, Rider DCI. This is Duke’s first filing describing its project that is intended “for the purpose of deferring circuit investments or addressing distribution reliability issues.”<sup>1</sup> The PUCO agreed to allow the battery storage project to go forward as a pilot but required the project to be pre-approved by the PUCO and subject to ongoing monitoring.<sup>2</sup>

The Office of the Ohio Consumers’ Counsel’s (“OCC”) moves to intervene for consumer protection. OCC’s motion to intervene should be granted for the reasons set forth in the attached Memorandum in Support.

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<sup>1</sup> Case No. 19-2223-EL-UNC, Duke Application at 1 (Dec. 20, 2019).

<sup>2</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase of its Electric Distribution Rates*, Case No. 17-0032-EL-AIR, et al., Opinion and Order at ¶ 208 (Dec. 19, 2018).

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

*/s/ Amy Botschner O'Brien*

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**MEMORANDUM IN SUPPORT**

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The PUCO will be reviewing Duke’s \$11.7 million proposal to initiate the McMann Battery Storage Pilot Program to be charged to customers through the utility’s Rider DCI.<sup>3</sup> The battery storage project’s intended purpose is to defer circuit investments or to address distribution reliability issues.<sup>4</sup> Duke’s battery storage project was approved as a pilot program in Duke’s latest Electric Security Plan (“ESP”).<sup>5</sup>

OCC has authority under law to represent the interests of Duke’s 640,000 million residential electric 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 where the PUCO will review Duke’s proposal and determine how much Duke

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<sup>3</sup> Rider DCI was approved in 2015. See, *In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case No. 14-0841-EL-SS0, Opinion and Order at 66 (April 2, 2015).

<sup>4</sup> Case No. 19-2223-EL-UNC, Duke Application at 1 (Dec. 20, 2019).

<sup>5</sup> See, *In the Matter of Application of Duke Energy Ohio, Inc. for an Increase of its Electric Distribution Rates*, Case No. 17-0032-EL-AIR, *et al.*, Opinion and Order (Dec. 19, 2018), approving Stipulation and Recommendation (April 13, 2018).

can charge customers for its battery storage project. 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 consumers. 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 Duke's shareholders.

Second, OCC's advocacy for residential customers will include, among other things, advancing the position that customers should only be made to pay rates that are found to be just and reasonable with costs that are found to be prudent and necessary to provide service to customers. 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 the PUCO will determine what Duke can charge customers for its battery storage pilot project.

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 which 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.<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 Supreme Court of Ohio 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*

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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.

**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 27<sup>th</sup> day of January 2020.

/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:

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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 Botschner-O'Brien, Amy