

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Proper Procedures)
and Process for the Commission’s) Case No. 20-599-GE-UNC
Operations and Proceedings During the)
Declared State of Emergency and Related)
Matters.)

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

On March 9, 2020, Governor DeWine declared a state of emergency to protect the health and safety of Ohioans from the dangerous effects of the coronavirus pandemic. These are extraordinary times, with severe health risks to Ohio families, closing businesses, lost jobs and wages, and more in Duke’s service area and throughout our great State. At this time of Governor DeWine’s strong leadership rallying Ohioans to fight back against the virus, the PUCO’s initiative in declaring an emergency to shield Ohioans from utility disconnections, door-to-door energy sales and more, is vitally important.

As part of the PUCO’s continued efforts, on March 12, 2020, it opened a docket and ordered the utilities to “ensure that utility service to customers is maintained during the state of emergency.”¹ The PUCO directed all utility companies to review their service disconnection policies, practices, and tariffs and promptly seek approval to suspend requirements that may “impose a service continuity hardship on residential and non-

¹ *In re the Proper Procedures and Process for the Commission’s Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC, Entry (March 12, 2020).

residential customers” or “create unnecessary COVID-19 risks associated with social contact.”²

Duke filed its proposal on March 19, 2020, and seeks approval to suspend certain requirements throughout the emergency and a reasonable period thereafter.

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene to protect the interest of 639,000 residential electric and 394,000 residential gas utility customers who will be impacted by, and will likely be asked to pay for, Duke’s proposal.³ 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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² Entry at ¶6(a).

³ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

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MEMORANDUM IN SUPPORT

In the coming months and potentially years, many Ohioans will struggle to pay their utility bills. Those Ohioans with financial challenges will include customers who have historically paid their bills in full and on time but who may be unable to continue doing so following the economic fallout of the coronavirus pandemic. Ohio businesses and families will face financial burdens that were unforeseeable just a few months ago.

Duke’s proposal is to begin waiving late fees, returned-check charges, and credit and debit card fees for residential customers “soon.”⁴ Duke is also requesting to suspend its compliance with important requirements in the Ohio Administrative Code and any related tariff requirements that exist to protect consumers.⁵ While making utility service affordable to all customers at this time is important, Duke’s proposal will create costs that

⁴ See, e.g., Duke’s Application at 4-5.

⁵ See, e.g., Duke’s Application at 5-8 (proposing to suspend compliance with O.A.C. 4901:1-10-04(C) safe voltage levels; O.A.C. 4901:1-10-05(F)(1) customer requested meter tests; O.A.C. 4901:1-10-05(I)(1) actual meter reads; O.A.C. 4901:1-10-05(I)(2) two actual meter reads per year; O.A.C. 4901:1-10-05(I)(3) actual meter reads and initiation and termination of service; O.A.C. 4901:1-10-05(J)(4) refusal to provide advanced meter opt-out service; O.A.C. 4901:1-10-09 requirement to meet minimum customer service levels; O.A.C. 4901:1-10-27(D)(3) inspect transmission and substation and equipment twelve times annually; O.A.C. 4901:1-18-07(A) & (B) reconnection timeframes; and O.A.C. 4901:1-18-17 suspend termination of PIPP plus customers. Duke also proposes to suspend compliance with the matching gas requirements under Chapter 13 of the Ohio Administrative Code, 4901:1-13-04(D); 4901:1-13-04(G)(1), (G)(5), and (G)(6); 4901:1-13-05(A), (D); 4901:1-16-04(I); and 4901:1-17 & 18).

Duke will likely seek to collect from customers at a later date.⁶ Any future costs that Duke ultimately seeks to collect from customers should be shared by all customers, with minimal cost shifting between customer classes. Moreover, any costs collected from customers in base rates and riders, but that are unspent as a result of activities being suspended through the crisis, should be used to offset any future costs that Duke later attempts to collect. As a result of lost wages, unemployment, and other financial hardships resulting from the coronavirus, the need to make sure that customers pay only fair, just, and reasonable rates is especially heightened. Customers should also continue to be protected by the requirements in the Ohio Administrative Code for gas and electric service. Any request by Duke to suspend these protective provisions should be met with great scrutiny.

The Office of the Ohio Consumers' Counsel ("OCC") has statutory authority to represent the interests of Duke's residential electric and 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 Public Utilities Commission ("PUCO") proceeding is entitled to seek intervention in that proceeding. The interests of Duke's residential customers may be "adversely affected" by this case, especially if the customers are unrepresented in a proceeding that will examine Duke's measures to address the coronavirus and Duke's request to suspend important consumer protections, while potentially later charging residential customers for a share of the costs of its proposal. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

⁶ See, e.g., Duke's Application (Duke did not request deferral authority in its initial filing, but likely will at a later date to defer and later collect costs associated with the crisis from consumers),).

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 where the Utility has a proposal to suspend compliance with consumer protections, and potentially later charge customers for the costs of its proposal to the extent that it suspends disconnections and waives late fees and other charges. A crucial part of the PUCO's review in this proceeding will be to determine how the costs of emergency measures should be funded and who should pay for each element of the emergency proposal. 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. Additionally, the PUCO specifically requested input from "interested persons" to provide the PUCO with suggestions that it should consider to avoid the imposition of a service continuity hardship on customers or the creation of unnecessary risks associated with social contact.⁷ As a representative of the residential customers of Duke that are affected by the COVID-19 virus and state of emergency, the OCC is an "interested person."

⁷ Entry at ¶10.

Second, OCC's advocacy for residential customers will include advancing the position that customers should remain connected during this emergency and that they should not later be billed unjust and unreasonable charges as a result of Duke's emergency proposal. OCC's advocacy will also include advancing the position that important consumer protections in the Ohio Administrative Code should not be suspended unless the PUCO determines that doing so is necessary. 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 best protect Duke's customers during this emergency and how much customers will later pay for Duke's emergency proposal.

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.⁸

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.

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

Respectfully submitted,

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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 9th day of April 2020.

/s/ Ambrosia E. Logsdon
Ambrosia E. Logsdon
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 Logsdon, Ambrosia E.