

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Duke Energy Ohio, Inc., Under the)	
Commission's Proceedings During the)	Case No. 20-856-EL-AEC
Declared State of Emergency, for a)	
Reasonable Arrangement with)	
Customers Served Under Rates DS,)	
DP, and TS.)	

In the Matter of the Application of)	
Duke Energy Ohio to Modify its)	Case No. 20-857-EL-RDR
Economic Competitiveness Fund)	
Rider and Request for Waivers.)	

**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

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).

disconnection policies, practices, and tariffs and promptly seek approval to suspend requirements that may “impose a service continuity hardship on residential and non-residential customers” or “create unnecessary COVID-19 risks associated with social contact.”²

Duke filed its Plan on March 19, 2020, and a Supplemental Plan on April 16, 2020. The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene to protect the interest of 640,000 residential electric customers who may be impacted by Duke’s Supplemental Plan which provides electricity discounts (subsidies) to industrial and commercial customers.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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Ohio Consumers’ Counsel

/s/ Ambrosia E. Wilson

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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. In these challenging times the PUCO should be following a least cost approach to ratemaking to avoid creating any additional, unnecessary burden on Ohioans.

In its Supplemental Plan, Duke is requesting a "Reasonable Arrangement" under R.C. 4905.31. The "Reasonable Arrangement" will allow commercial and industrial customers to pay lower minimum demand charges from Summer 2020 until September 2020.⁴ The Supplemental Plan appears to provide that the "delta revenues" or electricity discount (the difference between the tariffed minimum demand charges and what they

⁴ See, e.g., Duke's Supplemental Application at 5.

will pay under the “Reasonable Arrangement”) would be charged only to those consumers (commercial and industrial) who benefit from the temporary reduction in demand charges through Duke’s Economic Competitiveness Fund Rider (“Rider ECF”).⁵ This approach differs from the approach other utilities (DP&L and AEP) have proposed where the cost of the discount is to be shifted to other utility customers who did not receive the benefit of the discount.

Duke’s expressed intention to recover lost revenue through the Economic Competitiveness Rider, if actually done (and done properly), may very well be a fair outcome for all customers because it avoids the cost shifting found in other utilities’ proposals. But of course, the devil is in the details, in that the Economic Competitiveness Rider today collects commercial and industrial customer subsidies from residential consumers. As Duke’s Supplemental Plan is considered by the PUCO, it is important to preserve a plan that does not result in any cost-shifting between customer classes, with residential customers paying through utility bills for the electricity subsidies for corporate customers. That would be inappropriate. As a result of lost wages, unemployment, and other financial hardships resulting from the coronavirus emergency, the PUCO should guard against making residential customers pay Duke’s make-whole charges related to corporate electricity discounts.

The Office of the Ohio Consumers’ Counsel (“OCC”) has statutory authority to represent the interests of Duke’s 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 Public Utilities Commission (“PUCO”) proceeding is entitled to seek intervention in

⁵ See, e.g., Duke’s Supplemental Application at 8. To achieve this end, Duke is requesting a modification to its Rider ECF. See, e.g., *id.* at 5-14.

that proceeding. The interests of Duke’s residential customers may be “adversely affected” by this case, especially if these customers are unrepresented in a proceeding that will examine Duke’s proposals for charges on consumers (perhaps residential consumers), including the charges described above. 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 residential customers in this case where Duke is proposing to provide electricity discounts to certain customers and wants to be made whole for those subsidies. 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.⁶ As the state representative of the

⁶ Entry at ¶10.

residential customers of Duke that are affected by the COVID-19 virus and state of emergency, the OCC is an “interested person.”

Second, OCC’s advocacy for residential customers will include advancing the position that residential customers should not be billed unjust and unreasonable charges as a result of Duke’s emergency plan. 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 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 Supplemental Plan.

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.⁷

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.

⁷ 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 22nd day of April 2020.

/s/ Ambrosia E. Wilson
Ambrosia E. Wilson
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 Wilson, Ambrosia E.