

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter of the Application of Duke)
Energy Ohio, Inc., for Approval to Modify) Case No. 20-794-GA-RDR
Rider FBS and Rider EFBS.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene and to provide comments to protect consumers where Duke Energy Ohio, Inc. ("Duke") is establishing the method for setting charges on consumers for balancing its natural gas distribution system.¹ OCC is filing on behalf of Duke's 406,000 residential natural gas utility customers. The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's Motion are further 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,

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Ohio Consumers' Counsel

/s/ William J. Michael
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MEMORANDUM IN SUPPORT AND COMMENTS

In this case, Duke is setting the method for calculating the charges for balancing its natural gas system through its Firm Balancing System and Enhanced Firm Balancing System Riders (“Balancing Charges”). The Balancing Charges relate to, among other things, the price for the natural gas that Duke’s gas cost recovery customers (usually residential and small commercial customers) pay. OCC has authority under law to represent the interests of all the 406,000 residential natural gas utility customers of Duke, pursuant to 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 make determinations related to the method by which Duke calculates its Balancing Charges that customers pay. 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 involving Duke's Balancing Charges. This interest is different than that of any other party and especially different than that of Duke, whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential customers will include advancing the position that Duke's rates should be no more than what is reasonable and lawful under Ohio law, for service that is adequate 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 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.

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 evaluate the method by which Duke will set its Balancing Charges.

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.²

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.

² See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

COMMENTS

As the Attorney Examiner noted, Duke's application reflects the consensus reached by the collaborative formed as a result of a settlement reached in Duke's last gas cost recovery case ("GCR").³ To protect consumers, OCC was an active participant in that collaborative process. OCC's recommendations made during the collaborative are reflected in Duke's application. For example, the GCR customers' (typically residential and small commercial) charges will not increase as a result of the methodology proposed by Duke in its application.⁴ Duke will establish internal procedures to monitor and confirm that GCR customers' charges do not increase.⁵ And if for some reason they do (as found by the PUCO after an audit), Duke will credit its GCR customers in the amount of the overcharge.⁶ These are important consumer protections that should be adopted.

OCC appreciates the work of the collaborative generally and Duke in particular. As a result of the consumer protections included in Duke's application, OCC recommends that the PUCO approve the application as filed. OCC reserves its rights to file reply comments and to apply for rehearing if the PUCO does not approve Duke's application as filed.

³ See Entry (May 7, 2020) at 2.

⁴ See Duke's Application (April 28, 2020) at 4.

⁵ See *id.*

⁶ See *id.*

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Intervene and Comments was served on the persons stated below via electronic transmission, this 27th day of May 2020.

/s/ William J. Michael
William J. Michael
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 and Comments by The Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Michael, William J.