

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke     )  
Energy Ohio, Inc., for Approval of its     )  
2021 Energy Efficiency and Demand Side     ) Case No. 20-1444-EL-POR  
Management Portfolio of Programs and     )  
Cost Recovery Mechanism.     )

In the Matter of the Application of Duke     )  
Energy Ohio, Inc., for Approval of Tariff     ) Case No. 20-1445-EL-ATA  
Amendments.     )

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

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The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene where Duke Energy Ohio seeks approval to charge residential consumers up to \$7 million in 2021 for energy efficiency programs—and to possibly get its foot in the door for higher charges in the future if it can establish legal precedent. The \$7 million includes \$450,000 (or more) in a "Joint Benefit Recognition Mechanism," which is a form of customer-funded utility profits (much like Duke's prior charges to customers for "shared savings)."<sup>1</sup> Duke makes this proposal despite the Ohio General Assembly's recent legislation (House Bill 6) to end energy efficiency mandates and the corresponding charges to consumers, and the PUCO's decision that current energy efficiency programs must end this year.<sup>2</sup>

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<sup>1</sup> See Direct Testimony of James Ziolkowski, JEZ-1 Attachment (June 8, 2020).

<sup>2</sup> See House Bill 6 (effective Oct. 22, 2019), codified in relevant part in R.C. 4928.66; Case No. 16-576-EL-POR, Finding & Order (Feb. 26, 2020).

OCC is filing on behalf of the 640,000 residential utility customers of Duke.<sup>3</sup> The reasons the Public Utilities Commission of Ohio (“PUCO”) should grant OCC’s motion are further set forth in the attached memorandum in support.

Respectfully submitted,

Bruce Weston (#0016973)  
Ohio Consumers’ Counsel

/s/ Christopher Healey

Christopher Healey (0086027)  
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<sup>3</sup> See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

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**MEMORANDUM IN SUPPORT**

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For the last decade, customers have subsidized utility-run energy efficiency programs, paying for (1) the costs of running the programs (rebates, marketing, administrative expenses), (2) utility profits on the programs (sometimes called “shared savings”), and (3) decoupling or “lost revenues” charges, which are intended to make the utility whole for revenues it might have received if consumers had not deployed energy efficiency to reduce their usage. These subsidies are not trivial: in recent years, Duke’s programs (including profits) have cost customers more than \$40 million per year. Statewide, customers have paid more than \$1 billion for energy efficiency, including hundreds of millions in utility profits, since 2009.

Beginning in 2021, the mandated energy efficiency programs will be ending in Ohio, as a result of House Bill 6 which the legislature described as saving consumers money through eliminating the programs.<sup>4</sup> But Duke now “voluntarily” proposes programs for 2021.<sup>5</sup> Of course, when Duke says that programs are “voluntary,” that does not mean the charges for these

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<sup>4</sup> See R.C. 4928.66(A)(1)(a)-(b) (energy efficiency and peak demand reduction mandates through 2020).

<sup>5</sup> Application at 1.

programs are voluntary for customers. Under Duke's proposal, residential customers would be required to *involuntarily* pay for the programs.

OCC has authority under law to represent the interests of all the 640,000 residential utility customers of Duke, 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 Duke seeks to charge them up to \$7 million for energy efficiency programs, including profits for Duke. 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 a proposal to charge customers for energy efficiency programs and utility profits on those programs. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of Duke's shareholders.

Second, OCC's positions for residential customers will include, among other things, consideration of whether Duke should be allowed to charge consumers for non-mandated energy efficiency and that the PUCO should not allow Duke to charge customers for profits on energy efficiency. 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 residential customers could be charged \$7 million for non-mandated energy efficiency programs, including utility profits.

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/ Christopher Healey*

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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 9th day of November 2020.

/s/ Christopher Healey  
Christopher Healey  
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 Healey, Christopher Mr.