

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. for an Adjustment to) Case No. 21-618-GA-RDR
the Capital Expenditure Program Rider)
Rate.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene where Duke Energy Ohio, Inc. ("Duke") seeks to increase charges on residential customers by more than \$14 million per year¹ under its Capital Expenditure Program ("CEP") Rider². Under the Rider Duke asks to collect from customers deferred expenses and capital investments outside of a base rate case. OCC is filing on behalf of the approximately 406,000 residential utility customers of Duke. 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 Application, Attachment A at p. 3 of 6 (proposing to increase charge from \$3.69/month to \$6.612/month; \$2.92 per month increased charge for residential customers * 12 months * 406,000 residential customers).

² See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ William J. Michael

William J. Michael (0070921)
Counsel of Record
Amy Botschner O'Brien (0074423)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

65 East State Street, 7th Floor
Columbus, Ohio 43215-4213
Telephone [Michael]: (614) 466-1291
Telephone [Botschner O'Brien] (614) 466-9575
william.michael@occ.ohio.gov
amy.botschner.obrien@occ.ohio.gov
(willing to accept service by email)

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. for an Adjustment to) Case No. 21-618-GA-RDR
the Capital Expenditure Program Rider)
Rate.)

MEMORANDUM IN SUPPORT

Duke seeks to increase charges to each of its approximately 406,000 residential customers: \$2.92 per month under a Capital Expenditure Program Rider.³ These charges relate to investments that Duke made in 2019 and are in addition to the base distribution rates and other riders that customers currently pay for natural gas utility service from Duke. The prudence and reasonableness of Duke’s 2019 investments will be reviewed.⁴ OCC has authority under law to represent the interests of all the approximately 406,000 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”, especially if the customers are unrepresented in a proceeding where Duke seeks to charge them an additional \$14 million per year. 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;

³ See fn. 1, *supra*.

⁴ May 5, 2021 Entry.

- (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 involving proposed charges for Duke's capital investments. 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 stockholders.

Second, OCC's advocacy for residential customers will include, among other things, advancing the position that 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, 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 Duke seeks to charge every residential customer a flat charge of \$6.61 per month under its Capital Expenditure Program Rider.

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.⁵

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.

⁵ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ William J. Michael

William J. Michael (0070921)
Counsel of Record
Amy Botschner O'Brien (0074423)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

65 East State Street, 7th Floor
Columbus, Ohio 43215-4213
Telephone [Michael]: (614) 466-1291
Telephone [Botschner O'Brien] (614) 466-9575
william.michael@occ.ohio.gov
amy.botschner.obrien@occ.ohio.gov
(willing to accept service by email)

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 26th day of May 2021.

/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:

SERVICE LIST

Robert.eubanks@ohioAGO.gov
Chelsea.fletcher@OhioAGO.gov

Jeanne.kingery@duke-energy.com
Don.wathen@duke-energy.com
Larisa.vaysman@duke-energy.com
Rocco.Dascenzo@duke-energy.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/26/2021 5:15:41 PM

in

Case No(s). 21-0618-GA-RDR

Summary: Motion Motion to Intervene by Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Michael, William J.