

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke        )   Case No. 21-1014-GE-WVR  
Energy Ohio, Inc., for a Waiver.                )

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

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OCC<sup>1</sup> moves to intervene where Duke<sup>2</sup> seeks a waiver of important consumer protection rules regarding consumer participation in the Percentage of Income Payment Plan Plus (PIPP Plus) and the Graduate PIPP Plus program.<sup>3</sup> Duke claims that its new customer information system cannot accommodate recent PIPP rules amendments.<sup>4</sup> Duke's inability to comply with the requirements in the PUCO's rules does not constitute good cause for a waiver of the rules.

OCC is filing on behalf of Duke's approximately 640,000 residential electric and 410,000 residential gas consumers. The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

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<sup>1</sup> The Office of the Ohio Consumers' Counsel.

<sup>2</sup> Duke Energy Ohio, Inc. ("Duke").

<sup>3</sup> Application at 1. Duke seeks waiver of O.A.C. Rule 4901:1-18-12(D)(3) (protecting consumers who have been dropped from the PIPP plus program due to nonpayment); Rule 4901:1-18-15(E) and (F) (protecting consumers who voluntarily leaves PIPP plus and who are otherwise eligible for PIPP plus, and then within twelve months re-enroll in PIPP plus); and Rule 4901:1-18-16 (protecting consumers on the graduate percentage of income payment plan program).

<sup>4</sup> Duke Application at 1 (Sept. 29, 2021).

Respectfully submitted,

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Ohio Consumers' Counsel

/s/ Amy Botschner O'Brien  
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**MEMORANDUM IN SUPPORT**

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Duke seeks waiver from several important consumer protection rules designed to help low-income Ohioans obtain utility service. First, Duke seeks a 24-month waiver of O.A.C. 4901:1-18-12(D)(3) and 4901:1-18-15(E) and (F), which protects consumers who have been dropped from the PIPP Plus program or who voluntarily leave the program.<sup>5</sup> Second, Duke seeks a waiver until April 2022 from O.A.C. 4901:1-18-16, which protects PIPP Plus consumers who become eligible to enter the Graduate PIPP Plus program and the manner in which the consumer is billed for the initial installments.<sup>6</sup> Under the rules, to be eligible for Graduate PIPP Plus, a former PIPP Plus customer is permitted to cure any missed PIPP Plus payments within two billing cycles of the customer's removal from PIPP Plus. Duke instead proposes alternative procedures to these rules said to better accommodate the utility's transition to a new billing system.<sup>7</sup> Duke's inability to comply with the requirements in the PUCO's rules does not constitute good cause for a waiver of the rules.

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<sup>5</sup> Application at 1-5 (Duke requests this waiver for 24-months to accommodate its transition to its new CIS. Duke requests to treat customers who are PIPP inactive at the time of transition and become eligible to reinstate within 24 months of transition as new PIPP Plus enrollments instead of reinstatements).

<sup>6</sup> Application at 2, 6 (Duke requests this waiver to temporarily delay implementation of upcoming rule changes addressing eligibility and billing for the Graduate PIPP Plus program until the utility transitions to the new CIS in April 2022. Duke would give former PIPP Plus customers one billing cycle to cure any missed PIPP Plus payments).

<sup>7</sup> See Duke Application.

OCC seeks consumer protection for Duke’s approximately 640,000 residential electric and 410,000 residential gas consumers.

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 consumers may be “adversely affected” by this case, especially if the consumers were unrepresented in a proceeding where Duke seeks waiver of important consumer protections in the Percentage of Income Payment Plan Plus (PIPP Plus) and the Graduate PIPP Plus program. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Public Utilities Commission of Ohio (“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 Ohio’s residential utility consumers in this case where Duke seeks PUCO permission to waive certain consumer protection requirements found in the PIPP Plus and Graduate PIPP recent amendments.<sup>8</sup> These rules protect low-income consumers trying to afford utility service.

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<sup>8</sup> See Case No. 19-0052-AU-ORD.

This interest is different from that of any other party and especially different from that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential consumers will include advancing the position that consumer protections should not be reduced through PUCO rule waivers. OCC's position is therefore directly related to the merits of this case that is before the PUCO.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings and consumer protection advocacy 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. This includes advocating that important consumer protections should not be waived unless waiver results in better protection for consumers.

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 statutory advocate for residential utility consumers, OCC has a very real and substantial interest in this case where Duke seeks permission to waive some of the consumer protection requirements under the PUCO rules.

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 OCC has been uniquely designated as the state representative of the interests of Ohio’s residential utility consumers. OCC’s 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>9</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 consumers, the PUCO should grant OCC’s Motion to Intervene.

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<sup>9</sup> 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 5<sup>th</sup> day of November 2021.

/s/ Amy Botschner O'Brien  
Amy Botschner O'Brien  
Counsel of Record  
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 Office of the Ohio Consumers' Counsel  
electronically filed by Ms. Deb J. Bingham on behalf of Botschner-O'Brien, Amy