

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., for a Waiver of) Case No. 21-1100-EL-WVR
Specific Sections of the Ohio
Administrative Code.

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

OCC¹ moves to intervene where Duke² seeks a six-month waiver (meaning it will not need to comply with) of an important consumer protection rule regarding publishing and maintaining an online bill calculator that allows consumers to determine the accuracy of their bill.³ Duke also seeks a four-year waiver of the rule requiring utilities to include transmission outages when calculating outage data submitted to the PUCO,⁴ and a one-year waiver of the rule requiring electric marketer billing information on the bills of those residential consumers who choose a competitive retail electric supplier.⁵

¹ The Office of the Ohio Consumers' Counsel.

² Duke Energy Ohio, Inc. ("Duke").

³ Case No. 21-1100-EL-WVR, Application for Waiver of Duke Energy Ohio, Inc. ("Application") at 1, 3-5 (Nov. 1, 2021). Duke seeks a 6-month waiver of Rule 4901:1-10-22(C) (requiring electric utilities to publish and maintain an online active bill calculator that shows each and every rate or charge and permits customers to enter their billing determinates to determine the accuracy of their bill.)

⁴ Application at 2, 5. Duke seeks a 4-year waiver of Rule 4901:1-10-01(T) (requiring utilities to include transmission outages when computing the major event day (MED) threshold. Because the standards through 2025 were set under the previous version of the rule, where calculations excluded transmission outages, Duke believes it would be consistent to continue to exclude transmission outages from the MED threshold calculation until new standards are set (i.e., 2026 and going forward).

⁵ Application at 1-2. Due to its transitioning to its new customer information system, Duke seeks a 12-month waiver of Rule 4901:1-10-33(A), which states, "an electric utility cannot discriminate or unduly restrict a customer's CRES provider from including non-jurisdictional charges on a consolidated electric bill" and accompanying revisions to Rules 4901:1-10-22(B)(16) and 4901:1-10-33(C)(9), by removing all non-jurisdictional charges from the bill.

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.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Amy Botschner O'Brien
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MEMORANDUM IN SUPPORT

Duke wants a waiver from an important consumer protection rule designed to help residential consumers understand their utility bills. Duke seeks a six-month waiver of the rule⁶ requiring that each electric utility publish and maintain an online active bill calculator that shows each and every rate or charge collected by Duke from its consumers. This consumer protection rule permits customers to enter their billing determinates to determine the accuracy of their monthly bill received from Duke. Duke also seeks four-year waiver of the rule⁷ requiring utilities to include transmission data when computing outages, and a twelve-month waiver of the rule⁸ requiring marketer billing information on the electric bills of those customers who choose a competitive retail electric supplier. Duke avers that non-compliance with these rules is necessitated while the utility transitions to a new customer information system.

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

⁶ O.A.C. 4901:1-10-22(C).

⁷ O.A.C. 4901:1-10-01(T).

⁸ O.A.C. 4901:1-10-33(A); 4901:1-10-22(B)(16); 4901:1-10-33(C)(9).

consumer protections rules. 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. 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. 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.⁹

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.

Respectfully Submitted,

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⁹ 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 12th day of November 2021.

/s/ Amy Botschner O'Brien
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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