

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke       )  
Energy Ohio, Inc., for Approval to Adjust       )       Case No. 22-163-EL-RDR  
its Power Future Initiatives Rider.               )

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

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The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene where Duke Energy ("Duke" or "Utility") seeks to charge residential consumers more than \$6.1 million per year through the Utility's Power Future Rider for capital investments and operations and maintenance expenditures that are not already in base rates.<sup>1</sup> OCC is filing on behalf of the approximately 660,000 residential utility consumers of Duke.<sup>2</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.

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<sup>1</sup> Duke Energy Ohio, Inc.'s Application for Approval of Component Two of its Power Future Initiatives Rider (Rider PF) ("Duke Application"), Case No. 22-163-EL-RDR (March 31, 2022). The types of charges were described in the previous Settlement in this proceeding. *See, In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case Nos. 17-32-EL-AIR, et al., Stipulation and Recommendation at 16-18; Attachment F (April 13, 2018); and Opinion and Order at 43-45; 84-85 (December 19, 2018).

<sup>2</sup> *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/ Amy Botschner O'Brien  
Amy Botschner O'Brien (0074423)  
Counsel of Record  
Ambrosia E. Wilson (0096598)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
65 East State Street, Suite 700  
Columbus, Ohio 43215  
Telephone [Botschner O'Brien]: (614) 466-9575  
Telephone [Wilson]: (614) 466-1292  
[amy.botschner.obrien@occ.ohio.gov](mailto:amy.botschner.obrien@occ.ohio.gov)  
[ambrosia.wilson@occ.ohio.gov](mailto:ambrosia.wilson@occ.ohio.gov)  
(willing to accept service by e-mail)

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke     )  
Energy Ohio, Inc., for the Approval to     )     Case No. 22-163-EL-RDR  
Adjust its Power Future Initiatives Rider.     )

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**MEMORANDUM IN SUPPORT**

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Duke wants to charge consumers more than \$6.1 million through the Utility's Power Future Initiatives Rider for its costs associated with grid modernization functionality and communication infrastructure for calendar year 2021 that are not otherwise recovered in base rates or other riders.<sup>3</sup> OCC has authority under law to represent the interests of all the approximately 660,000 residential utility consumers of Duke under R.C. Chapter 4911.<sup>4</sup>

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," especially if the consumers were unrepresented in a proceeding where they could be charged for Duke's grid modernization.<sup>5</sup> 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:

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<sup>3</sup> Duke Application; *See also, In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case Nos. 17-32-EL-AIR, et. al., Opinion and Order at 43-45 (December 19, 2018). Duke's Rider PF was approved to address prudently incurred capital and operations and maintenance (O&M) costs not otherwise recovered in base rates or existing rider mechanisms.

<sup>4</sup> R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

<sup>5</sup> Duke Application at 4-6 (March 31, 2022).

- (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; and
- (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 consumers of Duke which involves potential charges to these consumers for grid modernization. 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, among other things, advancing the position that consumers should not pay more than is just and reasonable for Duke's grid modernization. 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 has intervened and participated in Duke's prior cases seeking an adjustment of the same rider mechanism.<sup>6</sup>

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 consumers, OCC has a very real and substantial interest in this case where residential consumers could be charged millions of dollars for components of Duke's grid modernization.

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 consumers. 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

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<sup>6</sup> See generally PUCO Case No. 20-666-EL-RDR and PUCO Case No. 21-12-EL-RDR.

discretion in denying OCC's interventions and that OCC should have been granted intervention in both proceedings.<sup>7</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/ Amy Botschner O'Brien  
Amy Botschner O'Brien (0074423)  
Counsel of Record  
Ambrosia E. Wilson (0096598)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
65 East State Street, Suite 700  
Columbus, Ohio 43215  
Telephone [Botschner O'Brien]: (614) 466-9575  
Telephone [Wilson]: (614) 466-1292  
[amy.botschner.obrien@occ.ohio.gov](mailto:amy.botschner.obrien@occ.ohio.gov)  
[ambrosia.wilson@occ.ohio.gov](mailto:ambrosia.wilson@occ.ohio.gov)  
(willing to accept service by e-mail)

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<sup>7</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 19<sup>th</sup> day of April 2022.

/s/ Amy Botschner O'Brien  
Amy Botschner O'Brien  
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**

[john.jones@ohioAGO.gov](mailto:john.jones@ohioAGO.gov)  
[stacie.cathcart@igs.com](mailto:stacie.cathcart@igs.com)  
[evan.betterton@igs.com](mailto:evan.betterton@igs.com)  
[michael.nugent@igs.com](mailto:michael.nugent@igs.com)

[rocco.dascenzo@duke-energy.com](mailto:rocco.dascenzo@duke-energy.com)  
[jeanne.kingery@duke-energy.com](mailto:jeanne.kingery@duke-energy.com)  
[larisa.vaysman@duke-energy.com](mailto:larisa.vaysman@duke-energy.com)

Attorney Examiner:

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Summary: Motion Motion to Intervene by Office of the Ohio Consumers' Counsel  
electronically filed by Ms. Alana M. Noward on behalf of Botschner O'Brien, Amy