

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Nestlé Purina PetCare Company for	)	Case No. 22-932-EL-AEC
Approval of an Economic Development	)	
Arrangement with Duke Energy Ohio,	)	
Inc.	)	

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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<sup>1</sup> in this case where a mercantile customer (Nestle Purina PetCare Company) seeks a discount for electric service that would be subsidized by other Duke consumers.<sup>2</sup> OCC generally does not favor making consumers pay subsidies to monopoly utilities such as Duke Energy Ohio. However, OCC is not objecting to this application given the law (R.C. 4905.31) as written and that OCC's consumer protection expectations are met in the Application.

In this regard, the Applicant has made sufficient public-benefit commitments to support its request for a subsidized discount. The Applicant's commitments include 300 new jobs, a substantial investment in Ohio (\$550 million), a limit on both the amount of the subsidy (\$3,750,000) and on the duration of the subsidy (5 years), and transparency instead of secrecy for the public.

OCC is filing on behalf of the 639,000 residential utility customers of Duke. The reasons the PUCO should grant OCC's Motion are further set forth in the attached Memorandum in Support.

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

<sup>2</sup> See Application at 16 (Oct. 7, 2022).

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

/s/ Maureen R. Willis

Maureen R. Willis (0020847)  
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**MEMORANDUM IN SUPPORT**

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Nestle Purina PetCare Company (“Applicant”), a mercantile customer of Duke, seeks an electric rate discount (via a unique arrangement). The discount would be subsidized by other consumers of Duke, including residential consumers.

OCC has authority under law to represent the interests of the 639,000 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 consumers may be “adversely affected” by this case, especially if they are unrepresented in this proceeding where the PUCO will determine, among other things, whether they should subsidize the discounted electric rates the Applicant seeks from 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 proceeding; and

- (4) Whether the prospective intervenor will significantly contribute to the 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 the Applicant's request for discounted electric rates that other consumers would subsidize. This interest is different than that of any other party and especially different than the Applicant whose advocacy includes its own interest.

Second, OCC's advocacy for residential consumers will include advancing the position that electric 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 that is pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio. At the outset of this pleading, OCC noted the Applicant's public-benefit commitments.

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 the 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 consumers are being asked to subsidize an electric rate discount given to the Applicant.

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 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 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>3</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.

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<sup>3</sup> 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/ Maureen R. Willis

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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 27<sup>th</sup> day of October 2022.

/s/ Maureen R. Willis

Maureen R. Willis  
Senior 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. Alana M. Noward on behalf of Willis, Maureen R.