

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke) Case No. 22-1004-GE-WVR
Energy, Ohio, Inc. for a Waiver.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene on behalf of Duke's residential utility consumers. Duke is applying for a waiver of PUCO rules, to avoid harm to about 5,600 low-income consumers that Duke mis-billed in August, September or October of 2022.¹ These people are already at-risk as participants in the percentage of income payment plan programs. Ohio law requires protection of at-risk populations, per R.C. 4928.02(L).

Duke's mis-billing resulted in consumer bills that were artificially low or that even showed credit balances. Consumer confusion and frustration has resulted from these mis-billings. Worse, the mis-billing has created the potential, in the absence of action, for consumers to be disconnected. This case is on the PUCO's agenda for its November 16, 2022 meeting under Ohio's Open Meetings Act.

OCC has been in discussions with the Legal Aid Society of Southwest Ohio, which has been seeking protection for these consumers. And OCC has been in contact with Duke, which (we appreciate) that the Utility is looking to remedy the problem for affected consumers.

¹ Application at 1 (October 28, 2022).

To avoid consumer harm, Duke is applying for waivers of rules. Duke seeks a temporary waiver of the rule governing the use of PIPP installment payments, O.A.C. 4901:1-18-13(A). And Duke seeks a temporary waiver of the rule governing consumer debt-reduction for on-time PIPP payments, O.A.C. 4901:1-18-14(A).

OCC's Motion to Intervene should be granted, per R.C. 4903.221. The reasons the 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/ Ambrosia E. Wilson
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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke) Case No. 22-1004-GE-WVR
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MEMORANDUM IN SUPPORT

Duke provides gas and electric distribution services to Ohio consumers. Those consumers include low-income consumers on the percentage of income payment plan (PIPP) and Graduated PIPP. About 5,600 of these PIPP consumers were mis-billed by Duke.

Duke seeks a temporary waiver of the rule governing the use of PIPP installment payments, O.A.C. 4901:1-18-13(A). And Duke seeks a temporary waiver of the rule governing consumer debt-reduction for on-time PIPP payments, O.A.C. 4901:1-18-14(A).² Duke seeks these waivers in order to correct the billing errors that occurred to PIPP consumers from August through October 2022.³

These billing errors occurred because Duke’s billing system applied on-time payment credits and/or the Home Energy Assistance (HEAP) payment credits to these consumers’ PIPP installment amount, rather than their past arrearages—as required by the PUCO rules. As a result of these billing errors, some PIPP consumers received bills displaying lower balances—or even zero—balances or credit amounts.

² Application at 1.

³ *Id.*

When consumers received their incorrect August bills, Duke notes that these incorrect bills could have impacted consumers' understanding of what—if any—installment payments were due. Confusion and frustration resulted for these consumers.

In further complication of matters for these impacted consumers, Duke moved the credits from installment balances to their arrearage (debt) balances. That switch created a higher-than-usual installment balance for some of the impacted consumers. In sum, the mis-billed consumers are at risk for disconnection when Ohio's harsh winter is beginning.

Some of these consumers contacted the Legal Aid Society of Southwest Ohio (LASSO) and OCC for assistance with resolving these billing issues. These consumers need help. And we appreciate that Duke appears to be responding with help to unwind its mis-billings and their negative billing statement consequences.

Accordingly, Duke seeks a temporary waiver that would permit Duke to move unpaid accumulated installment balances, as of the end of the incorrectly billed months, to appropriately adjust the impacted consumers' arrearage balances. Duke asserts that the adjustments would be necessary to correct the arrearages in all respects, including for purposes of accurately reflecting the balances owed for collection from all consumers (what Duke refers to as "cost-recovery").

Duke also seeks a temporary waiver that would permit Duke to grant on-time incentive credits, and a 1/24 or 1/12 payment plan arrearage to impacted consumers. The credits would be for all of the months that each consumer's account was impacted, as if the consumer had made an on-time payments during that time. This remedy is needed to preserve the mis-billed consumers' opportunity to receive arrearage reduction for on-time payments.

OCC has authority under law to represent the interests of Ohio’s residential utility consumers 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 Duke’s residential consumers—particularly mis-billed low-income consumers—may be “adversely affected” by this case because the issues involve mis-billings and remedies to avoid harm to mis-billed consumers. 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 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 Ohio residential consumers on issues affecting the price of their electric and gas service, among other things, such as billing issues. This interest is different than that of any other party.

Second, OCC’s legal positions will include, among other things, advocacy for Duke’s mis-billed residential consumers. These already at-risk consumers are entitled to protection under law from negative consequences related to the mis-billings by the Utility. Also, R.C. 4928.02(L) requires the PUCO to protect at-risk consumers. OCC’s advocacy is therefore directly related to the merits of this case, which is pending before the PUCO, the authority with regulatory oversight with respect to natural gas PIPP. The

Ohio Department of Development (which has oversight of electric PIPP) has already granted Duke a waiver for electric PIPP services, for remedying the mis-billings.⁴ (*See* attachment).

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 O.A.C. 4901-1-11(A)(2). As the advocate for residential utility consumers, OCC has a very real and substantial interest in this case.

OCC meets the criteria of O.A.C. 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.

In addition, O.A.C. 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

⁴ E-mail from the Ohio Department of Development to Duke (October 26, 2022) (Attachment 1).

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 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, O.A.C. 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,

Bruce Weston (0016973)
Ohio Consumers’ Counsel

/s/ Ambrosia E. Wilson
Ambrosia E. Wilson (0096598)
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Amy Botschner O’Brien (0074423)
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(willing to accept service by e-mail)

⁵ 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 14 day of November 2022.

/s/ Ambrosia E. Wilson
Ambrosia E. Wilson
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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Vaysman, Larisa

From: Brandy.Kolattukudy@development.ohio.gov
Sent: Wednesday, October 26, 2022 3:40 PM
To: Vaysman, Larisa; Megan.Meadows@development.ohio.gov; Keri.Harris@development.ohio.gov
Cc: D'Ascenzo, Rocco; Kirk.Jones@development.ohio.gov; Carmosino, Mitch; Schenck, Carolyn Mae; Barbara.Bossart@puco.ohio.gov; Luke.Stedke@development.ohio.gov; tonja.stewart@puco.ohio.gov
Subject: [EXTERNAL] RE: PIPP Discussion

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Hi Larisa,

After speaking with our legal counsel, we do authorize Duke to continue with the proposed plan below.

If you need an official letter from Development, please let me know.

Thank you,



Brandy Kolattukudy
Deputy Chief, Office of Division Support

77 South High Street
Columbus, Ohio 43215
O: 614.466.1863

Brandy.Kolattukudy@development.ohio.gov

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From: Vaysman, Larisa <Larisa.Vaysman@duke-energy.com>
Sent: Tuesday, October 25, 2022 6:52 PM
To: Meadows, Megan <Megan.Meadows@development.ohio.gov>; Kolattukudy, Brandy <Brandy.Kolattukudy@development.ohio.gov>; Harris, Keri <Keri.Harris@development.ohio.gov>
Cc: D'Ascenzo, Rocco <Rocco.D'Ascenzo@duke-energy.com>; Jones, Kirk <Kirk.Jones@development.ohio.gov>; Carmosino, Mitch <Mitch.Carmosino@duke-energy.com>; Schenck, Carolyn Mae <Carolyn.Schenck@duke-energy.com>; Bossart, Barbara <Barbara.Bossart@puco.ohio.gov>; Stedke, Luke <Luke.Stedke@development.ohio.gov>; Stewart

Shaw, Tonja <tonja.stewart@puco.ohio.gov>

Subject: RE: PIPP Discussion

Attachment 1

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Megan, Brandy, Keri,

Thank you for meeting with us today regarding the recent technical issues that resulted in approximately 5,600 PIPP Plus customers having on-time incentive credits and/or HEAP credits applied to their installment amount due instead of their PIPP Plus arrearage balance. Pursuant to our conversation, here is a summary of our proposed response to the recent PIPP billing issues discussed. As discussed, Duke would need a waiver from PUCO and authorization from ODOD to take the steps below.

1. Unpaid installment balances accumulated during the period impacted by these technical issues (August, September, and/or October billing months, depending on the customer) would be moved to the customer's arrearage balance. The moved amounts would be treated as arrearages in all respects, including for purposes of cost recovery.
2. On-time incentive credits would be granted for all of the months that a customer was impacted, as if the customer had made an on-time payment during that time.

Upon receiving the required authorizations from PUCO and ODOD, Duke would take the above-listed steps and also send a letter to all impacted customers, explaining what occurred and what the customers should expect to see on forthcoming bills. We would also work with our community action agency partners to ensure they are aware of the issue and resolution.

Thank you again for your time and we look forward to your feedback on our proposal.

Best regards,
Larisa

Larisa M. Vaysman
phone: 513-287-4010
fax: 513-287-4385

-----Original Appointment-----

From: Schenck, Carolyn Mae <Carolyn.Schenck@duke-energy.com>

Sent: Monday, October 24, 2022 4:41 PM

To: Schenck, Carolyn Mae; Schenck, Carolyn Mae; Megan.Meadows@development.ohio.gov;
Brandy.Kolattukudy@development.ohio.gov; Luke.Stedke@development.ohio.gov; Vaysman, Larisa;
Barbara.Bossart@puco.ohio.gov; Carmosino, Mitch

Cc: D'Ascenzo, Rocco; Keri.Harris@development.ohio.gov; Kirk.Jones@development.ohio.gov

Subject: PIPP Discussion

When: Tuesday, October 25, 2022 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

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11/14/2022 1:07:33 PM

in

Case No(s). 22-1004-GE-WVR

Summary: Motion Motion to Intervene by Office of the Ohio Consumers' Counsel
electronically filed by Mrs. Tracy J. Greene on behalf of Wilson, Ambrosia E.