BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust and Set Rider DSR.	)))	Case No. 23-126-EL-RDR
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of Tariff Amendments.	)))	Case No. 23-281-EL-ATA

MOTION TO INTERVENE
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL

Duke Energy Ohio, Inc. ("Duke") seeks to use single-issue ratemaking (a rider) to charge consumers over $13.9 million for expenses related to major storms that occurred in 2022.[1] Duke proposes charging residential consumers $0.84 per month for such expenses.[2]

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene on behalf Duke's over 600,000 residential utility consumers.[3] 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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[1] *See* Application, Attachment 1.

[2] *Id.*at Attachment 2.

[3] *See* R.C. Chapter 4911, R.C. 4903.221, and O.A.C. 4901-1-11.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ William J. Michael
William J. Michael (0070921)
Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone [Michael]: (614) 466-1291
william.michael@occ.ohio.gov
(willing to accept service by email)

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MEMORANDUM IN SUPPORT

Ohio law requires the PUCO to make sure that public utilities provide Ohioans with adequate service and that the charges consumers pay for that service are just and reasonable.[4] In this case, the PUCO will determine the reasonableness and lawfulness of charging consumers, through a rider, more than $13.9 million.[5] Duke asserts that the expenses are for restoration efforts related to major storms that occurred during 2022.[6] OCC has authority under law to represent the interests of all residential utility consumers of Duke, under to 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 the consumers were unrepresented in a proceeding where the utility seeks to use single-issue ratemaking to charge consumers for expenses to restore electric service because of major storms. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

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[4] R.C. 4905.22.

[5] *See* Application, Schedule A-1.

[6] *See* Application.

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 Duke's residential consumers in this single-issue ratemaking case regarding the reasonableness and lawfulness of the storm restoration charges Duke seeks to collect from consumers. OCC's 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 consumers should pay no more for electric service 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.

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 where Duke seeks to use single-issue ratemaking to include charges for major storm costs on consumers' electric bills.

In addition, 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) that OCC already has addressed and that OCC satisfies.

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 consumers. 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.[7]

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[7] *See Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20.

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/ William J. Michael
William J. Michael (0070921)
Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone [Michael]: (614) 466-1291
william.michael@occ.ohio.gov
(willing to accept service by email)

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 19th day of April 2023.

/s/ William J. Michael
William J. Michael
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

Attorney Examiners:
matthew.sandor@puco.ohio.gov
nicholas.walstra@puco.ohio.gov

rocco.dascenzo@duke-energy.com
jeanne.kingery@duke-energy.com
larisa.vaysman@duke-energy.com
elyse.akhbari@duke-energy.com

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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 Michael, William J..