

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke )  
Energy Ohio, Inc. to Adjust and Set the ) Case No. 23-457-EL-RDR  
Rate for Rider BTR. )

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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> on behalf of the 680,000 residential electric utility consumers of Duke. OCC will give consumers a voice regarding another Duke rider (add-on charge) on their electric bills.

On July 14, 2023, Duke Energy Ohio ("Duke") submitted its annual application to adjust the amount it charges consumers for costs related to the Base Transmission Rate Rider ("BTR").<sup>2</sup> This transmission rate is used by Duke to make all of its electric consumers pay for noncompetitive-based transmission charges,<sup>3</sup> including charges approved by the Federal Energy Regulatory Commission.<sup>4</sup> These charges are intended to be used to support the electric transmission system. These charges, even if related to a rate decrease, cannot be levied on consumers unless they are found to be just and reasonable by the Public Utilities Commission of Ohio ("PUCO"). In other words, the PUCO should ensure that Duke has proposed enough of a rate decrease.

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<sup>1</sup> See R.C. Chapter 4911, R.C. 4903.221 and O.A.C. 4901-1-11.

<sup>2</sup> See Case No. 11-2641-EL-RDR, et al., Opinion and Order at 7 ("Rider BTR shall be created as an unavoidable rider to allow for recovery of MTEP [Midwest Transmission Expansion Planning] and RTEP [Regional Transmission Expansion Plan] charges, NITS [Network Integration Transmission Services] charges that will be paid by Duke for all shopping and nonshopping load, and other nonmarket-based charges, including but not limited to Commission audits.")

<sup>3</sup> *Id.*

<sup>4</sup> See Application (July 14, 2023) at ¶ 2.

Duke also uses the BTR to charge consumers for Supplemental Transmission Projects. There is little to no regulatory oversight of the costs, necessity, or prudence of supplemental transmission project costs by the PUCO, federal regulators, or any other entity.

In the present filing, Duke proposes to collect \$88,658,127.20 from residential consumers through the BTR. That is for the period October 2023 through September 2024.<sup>5</sup>

The PUCO should grant OCC's motion to intervene on behalf of consumers, for the reasons set forth in the attached memorandum in support.

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

*/s/ Donald J. Kral*  
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<sup>5</sup> Application (July 14, 2023) at Schedule B-2.

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**MEMORANDUM IN SUPPORT**

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The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene to protect residential consumers from any unreasonable or unlawful charges sought by Duke Energy Ohio, Inc. (“Duke”). Duke proposes to collect more than \$88 million from residential consumers through its Base Transmission Rate Rider (“BTR”) during the period October 2023 through September 2024.<sup>6</sup> The BTR is a mechanism through which Duke charges consumers for non-market-based transmission charges<sup>7</sup> approved by the Federal Energy Regulatory Commission.<sup>8</sup>

Duke’s BTR also includes charges for costly Supplemental Transmission Projects. There is little to no regulatory oversight of the costs, necessity, or prudence of supplemental transmission project investment costs at the state or federal level.

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 may be “adversely affected” by this case. That is especially

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<sup>6</sup> Application (July 14, 2024) at Schedule B-2, p. 1.

<sup>7</sup> See Case No. 11-2641-EL-RDR, et al., Opinion and Order at 7 (“Rider BTR shall be created as an unavoidable rider to allow for recovery of MTEP [Midwest Transmission Expansion Planning] and RTEP [Regional Transmission Expansion Plan] charges, NITS [Network Integration Transmission Services] charges that will be paid by Duke for all shopping and nonshopping load, and other nonmarket-based charges, including but not limited to Commission audits.”)

<sup>8</sup> Application (July 14, 2023) at ¶ 2.

so if they were unrepresented in a proceeding to determine the charges they pay under Duke's BTR. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

Moreover, OCC's intervention is consistent with R.C. 4903.221(B) which 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 full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is representing residential consumers in this case, where Duke is proposing adjustments to its transmission rate. These adjustments include charges to consumers for Supplemental Transmission Projects that are not reviewed for prudence by state or federal regulators. This interest is different than that of any other party, including Duke itself whose advocacy includes promoting the financial interest of its stockholders.

Second, OCC's advocacy for residential consumers will include advancing the position that charges and rates cannot be assessed to consumers unless the charges are just and reasonable, as required by Ohio law. OCC's position is, therefore, directly related to the merits of Duke's application for collecting charges under its BTR and is consistent with Ohio law.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in representing residential

consumers 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's advocacy on behalf of residential consumers will result in the development of information that the PUCO should consider for equitably and lawfully deciding the case.

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 the PUCO will determine charges to consumers under the BTR.

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 more than satisfies it, as OCC is uniquely 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 this proceeding.

In transmission rider cases, O.A.C. Rule 4901:1-36-03(F) provides that "(a)ffected parties may file a motion to intervene and detailed comments on any issues concerning any application filed under this rule within forty days of the date of the filing

of the application.” As a representative of the residential consumers who will be affected by the outcome of this case, OCC is an “affected part[y]” within the meaning of O.A.C. 4901:1-36-03(F).

Moreover, the Supreme Court of Ohio has affirmed 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>9</sup>

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,

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Ohio Consumers’ Counsel

*/s/ Donald J. Kral*  
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<sup>9</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 the foregoing Motion to Intervene has been served electronically upon those persons listed below this 26<sup>th</sup> day of July 2023.

/s/ Donald J. Kral

Donald J. Kral

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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Summary: Motion Motion to Intervene by Office of the Ohio Consumers' Counsel  
electronically filed by Ms. Alana M. Noward on behalf of Mr. Donald J. Kral.