

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Duke Energy Ohio, Inc.) Case No. 24-297-GE-UNC

**JOINT MOTION TO INTERVENE
AND MOTION TO ESTABLISH PROCEDURAL SCHEDULE
INCLUDING A REASONABLE TIME PERIOD FOR DISCOVERY
AND AN EVIDENTIARY HEARING
BY
PROSENIORS, INC.
AND
LEGAL AID SOCIETY OF SOUTHWEST OHIO, LLC.**

The Consumer Parties¹ move to intervene² in this case where the Public Utilities Commission of Ohio (“PUCO”) will consider whether a Settlement between the PUCO Staff and Duke Energy Ohio (“Duke”) is reasonable. The Consumer Parties also move to establish a procedural schedule including a reasonable time-period for discovery followed by an evidentiary hearing.

This case involves the PUCO Staff’s investigation of customer service and billing issues related to Duke’s April 2022 transition to a new Customer Information System³ and the associated waiver of certain PUCO rules.⁴ The PUCO Staff and Duke negotiated and agreed to the Settlement behind closed doors before the issues ever reached the public docket. And the Settlement was negotiated without the input of representatives acting on behalf of Duke’s residential consumers, who are the parties most affected.

¹ Pro Seniors, Inc., & Legal Aid Society of Southwest Ohio, LLC.

² See R.C. 4911, R.C. 4903.221 and O.A. C. 4901-1-11.

³ Joint Stipulation and Recommendation (March 28, 2024), Exhibit A, p.2.

⁴ Case No. 22-43-GE-WVR (“Waiver Case”).

According to the PUCO Staff and Duke, the Settlement purportedly resolves the issues identified by the PUCO Staff in its Amended Notice of Probable Noncompliance.⁵ However, consumer advocates for Duke's residential utility consumers (the Consumer Parties) were denied a seat at the table. The interests of Duke's residential consumers in adequate, safe, and reasonable electric utility service may be adversely affected by the Settlement. The Consumer Parties should be allowed to intervene and participate in this proceeding through discovery, testimony, and an evidentiary hearing.

The Consumer Parties are filing on behalf of low-income and senior residential utility consumers of Duke whom the Consumer Parties serve. The reasons the PUCO should grant the Consumer Parties' Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

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⁵ Joint Stipulation and Recommendation (March 28, 2024) p.1.

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Duke Energy Ohio, Inc.) Case No. 24-297-GE-UNC

MEMORANDUM IN SUPPORT

I. INTRODUCTION

This case concerns the PUCO Staff’s investigation of Duke’s ongoing customer service and billing issues since the implementation of Duke’s new Customer Information System and the associated waiver of certain PUCO rules over a year ago.⁶ As a result of investigating customer contacts to the PUCO’s Consumer Service Division (“CSD”) and additional investigation by the Reliability and Service Analysis Division (“RSAD”), the PUCO Staff found that Duke is in probable non-compliance with the PUCO’s rules and Ohio law.⁷

The PUCO Staff and Duke agreed to resolve the compliance issues by negotiating the Settlement behind closed doors. The Settlement was negotiated without consumers’ representation on behalf of Duke’s residential consumers who are adversely affected by Duke’s service and billing failures that are at issue in this case. The Settlement was kept secret before it was filed. This case was opened with the public docketing of the Settlement.

⁶ *Id.*

⁷ *Id.*

The PUCO Staff investigation disclosed ongoing billing and customer service issues since Duke's implementation of its new Customer Information System, including:

1. Inaccurate bills, untimely billing, and unusually high bills resulting from Duke estimating meter reads for prolonged periods of time;
2. Failure to bill those customers participating in Duke's "soft-close" program⁸ when their usage started again resulting in cost-shifting to other consumers that must pay the difference for gas lost because it was not billed; and
3. Deficiencies in response time regarding how long it takes Duke to determine appropriate corrective actions and communicate corrective actions to customers.⁹

II. RECOMMENDATIONS

A. The PUCO should grant the Consumer Parties' Motion to Intervene.

The interests of Duke's low-income and senior residential consumers in adequate, safe, and reasonable electric utility service may be adversely affected if the Settlement does not contain sufficient consumer protections. The Consumer Parties should be allowed to intervene and conduct discovery regarding the Settlement. And the PUCO should require testimony regarding the Settlement as required by O.A.C. 4901-1-30(D), followed by an evidentiary hearing.

⁸ Duke's "soft-close" program is a process where Duke does not disconnect gas service for those customers who request seasonal disconnection.

⁹ Joint Stipulation and Recommendation (March 28, 2024), Exhibit A, p.2.

ProSeniors and The Legal Aid Society of Southwest Ohio are the Consumer Parties that seek to protect the low-income and senior residential utility consumers of Duke whom they serve through this Motion to Intervene.

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 low-income and senior residential consumers may be “adversely affected” by this case, especially if the consumers were unrepresented. Here, consumers were unrepresented in settlement negotiations and will continue to be unrepresented while the PUCO is considering whether the Settlement purportedly resolving Duke’s customer service and billing issues is reasonable. 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 permissive intervention:

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 Consumer Parties’ interest is representing the low-income and senior residential consumers of Duke whom they serve in this case where Duke and the PUCO Staff have purportedly resolved customer service and billing issues without input from consumers advocates. The PUCO Staff, by contrast, considers the

interests of marketers, utilities and business and industrial consumers.¹⁰ And the Consumer Parties' interest is especially different than that of Duke whose advocacy includes the financial interest of its stockholders.

Second, Consumer Parties' advocacy for residential consumers will include whether the Settlement benefits low-income and senior consumers and is in the public interest. The Consumer Parties' advocacy for low-income and senior residential consumers will also advance the position that Duke should justly and expeditiously remedy its ongoing customer service and billing issues to comply with Ohio law and PUCO rules, without harming consumers. The Consumer Parties' 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, Consumer Parties' intervention will not unduly prolong or delay the proceedings. The key consideration is whether the intervention will cause "undue delay." This case was opened after the PUCO Staff and Duke negotiated and agreed to the Settlement. The Consumer Parties had no opportunity to advocate for low-income and senior consumers during the secret settlement negotiations and no further proceedings have been scheduled so the Consumer Parties' intervention will not cause undue delay.

Consumer Parties' will attempt to avoid duplicative discovery in the proceeding. The issues Consumer Parties' will raise concern whether the Settlement between the PUCO Staff and Duke is just and reasonable and benefits consumers. In addition, Consumer Parties will also use its best efforts to comply with any procedural schedule that the PUCO adopts for this proceeding.

¹⁰ PUCO web page, PUCO Mission and Commitments, available at: <https://puco.ohio.gov/about-us/resources/mission-and-commitments> (last accessed April 23, 2024)

Further, the Consumer Parties have longstanding expertise and experience in PUCO proceedings and consumer protection advocacy and will duly allow for the efficient processing of the case with consideration of the public interest. Therefore, there will be no prejudice to the PUCO Staff or Duke in granting intervention.

Fourth, the Consumer Parties' intervention will significantly contribute to full development and equitable resolution of the factual issues. The Consumer Parties will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest. This includes complaints about Duke's billing practices which the Consumer Parties received from their clients. This also includes analyzing the reasonableness of the Settlement that was negotiated and agreed to in secret between the PUCO Staff and Duke.

The Consumer Parties also satisfy the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that Consumer Parties satisfy 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 advocates for low-income and senior residential utility consumers, the Consumer Parties have a very real and substantial interest in this case to determine when consumers receive essential consumer protections from Duke's improper billing practices.

In addition, the Consumer Parties meet 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 the Consumer Parties already have addressed and that the Consumer Parties satisfy.

Ohio Administrative Code Section 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 the Consumer Parties do not concede the lawfulness of this criterion, the Consumer Parties represent the interest unique and specific categories of Ohio's residential utility consumers. Individually and together, Consumer Parties' interest is different from, and not represented by, any other entity in Ohio.

B. The PUCO should grant the Consumer Parties' Motion to Establish a Procedural Schedule, including a reasonable time period for discovery followed by an evidentiary hearing.

In addition to granting the Consumer Parties intervention, the PUCO should also establish a procedural schedule that accommodates appropriate due process in this case. For low-income and senior residential consumers, that means allowing discovery to be conducted as required by R.C. 4903.082,¹¹ and requiring that testimony be filed, as required by O.A.C. 4901-1-30(D). Due process also requires the PUCO to hold an evidentiary hearing to develop a complete record that will assist the PUCO in a full and fair consideration of the reasonableness of the Settlement.¹² The PUCO routinely relies on testimony in contested cases and a hearing is an important part of any contested matter before the PUCO.

Here, the PUCO should afford Consumer Parties ample rights to discovery to allow them to explore the reasonableness of the Settlement reached by Duke and the PUCO Staff.¹³ And, the PUCO has long held that it is in the public interest for it "to base

¹¹ See R.C. 4903.82 ("All parties and intervenors shall be granted ample rights of discovery. The present rules of the public utilities commission should be reviewed regularly by the commission to aid full and reasonable discovery by all parties. Without limiting the commission's discretion the Rules of Civil Procedure should be used wherever practicable.")

¹² See R.C. 4903.09 (providing that the PUCO must include "a transcript of all testimony" in its written opinion in a contested case); see also O.A.C. 4901:1-27-10(A)(2)(c).

¹³ See *Ohio Consumers' Counsel v. PUC (2006)* 111 Ohio St.3d 300, 320-22 (finding that the PUCO erred in denying OCC's motion to compel discovery and finding that Ohio law allows broad and ample discovery rights).

its decisions on as full and complete a record as possible.”¹⁴ Without an opportunity to conduct discovery and present evidence at a hearing and be heard, there will not be a fully developed record for the PUCO to rely upon. A hearing is imperative in this case. The “procedural history” of this matter all took place outside of the eyes of the public. As provided in the Settlement:

- On May 24, 2023, the PUCO Staff issued a notice of probable non-compliance (“Initial PNC Letter”) outlining alleged violations of the Ohio Administrative Code by Duke.¹⁵
- On June 16, 2023, Duke submitted to the PUCO Staff its written response to the Initial PNC Letter.¹⁶
- Duke subsequently provided additional materials to the PUCO Staff in the months following the communications described above.¹⁷
- As a result of the additional materials supplied to the PUCO Staff by Duke, the PUCO Staff issued an Amended PNC Letter of November 9, 2023.¹⁸
- The Signatory Parties have engaged in settlement negotiations with the understanding that Duke has already implemented or is in the process of implementing the corrective actions agreed to in this Stipulation, which

¹⁴ *In the Matter of the Application of Columbus & Southern Ohio Elec. Co. for Auth. to Amend & to Increase Certain of Its Rates & Charges for Elec. Serv., In the Matter of the Application of Columbus & Southern Ohio Elec. Co. for Auth. to Amend & to Increase Certain of Its Rates & Charges for Elec. Serv. in Various Municipalities in Franklin Cty., Ohio.*, 1976 WL 408123, *2, Case No. 74-760-EL-AIR, Interim Order (May 27, 1976).

¹⁵ Stipulation at 2

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at p. 3.

the Signatory Parties believe resolve all of Staff’s concerns raised in the Amended PNC Letter. The Settlement provides for Duke to pay a civil forfeiture to the PUCO in the amount of \$450,000.¹⁹

An almost year-long clandestine process taints this case. Duke and the PUCO Staff engaged in private discussions and document exchanges concerning alleged violations, culminating in a Settlement only filed on March 28, 2024. This secrecy deprived the Consumer Parties of almost a year's worth of discovery, intervention opportunities, and access to public records – rights guaranteed by R.C. 4901.12.²⁰

R.C. 4901.12 mandates public access to PUCO proceedings and documents. By circumventing this statute, Duke, Staff, and ultimately the PUCO through its acquiescence, erected a wall of secrecy around crucial proceedings. This illegal maneuver denied the Consumer Parties, and others, the right to participate and scrutinize the case, undermining public trust and violating the very purpose of open government.

To remedy this injustice and uphold the principles of transparency and fairness, a hearing is not just warranted – it is imperative. Only through a public and documented process can the Consumer Parties and the public properly assess the reasonableness of the Settlement and ensure a just outcome.

The PUCO has pending other rule enforcement cases which, like the present case, were initially opened by the filing of a Settlement between the Company and PUCO Staff

¹⁹ *Id.*

²⁰ R.C. 4901.12, states that “Except as provided in section 149.43 of the Revised Code and as consistent with the purposes of Title XLIX of the Revised Code, all proceedings of the public utilities commission and all documents and records in its possession are public records.”

resolving the rule violation.²¹ The Office of the Ohio Consumers' Counsel ("OCC"), a fellow consumer advocate, sought to intervene in those cases.²² The PUCO not only granted OCC's motion to intervene but also issued a procedural schedule allowing time for discovery and providing for an evidentiary hearing.²³ The PUCO should follow its recent precedent which preserves consumer advocates' role in the process by allowing for intervention, discovery and an evidentiary hearing.

The Settlement presents several concerns which could be detrimental for residential consumers, including the following:

- The Settlement provides for a third-party audit of Duke's backbillings which used estimated meter readings.²⁴ However, the auditor will be hired by Duke instead of by the PUCO. This is inconsistent with the PUCO's regulatory principles and practices, which provide for the PUCO to hire third-party auditors and direct the audit process.
- The Settlement does not provide for the third-party audit report to be filed in a docket or shared with other interested parties.²⁵ This would impair the Consumer Parties' ability to represent residential consumers.
- The Settlement provides for a \$450,000 forfeiture before the third-party audit has been completed.²⁶ The full scope of Duke's rules violations

²¹ *In the Matter of The Commission's Investigation into AES Ohio's Compliance with the Ohio Administrative Code and Potential Remedial Action*, Case No. 21-1220-EL-UNC, Entry on Rehearing (Feb. 7, 2024) and Entry (March 14, 2024); *In the Matter of Inspire Energy Holdings, LLC*, Case No. 23-720-GE-UNC, Entry on Rehearing (Feb. 7, 2024) and Entry (Feb. 13, 2024).

²² *Id.*

²³ *Id.*

²⁴ Stipulation at 5.

²⁵ *Id.*

²⁶ *Id.* at p. 6.

won't be known until the audit is completed. It makes no sense to decide on a forfeiture amount without knowing the full extent of Duke's rules violations.

- The Settlement provides for Duke to pay the \$450,000 forfeiture to the PUCO but does not specify how the money will be used.²⁷ There are no protections to ensure the funds will be used in a way that benefits consumers.

The PUCO should grant the Consumer Parties' intervention in this case.²⁸ And consistent with the PUCO's ruling in the Inspire Energy compliance case²⁹ and to ensure a fair and transparent process, the PUCO should also:

1. Establish a procedural schedule with discovery so that the Consumer Parties can review the Settlement between the PUCO Staff and Duke;
2. Re-open settlement negotiations so that the Consumer Parties have the opportunity to participate in the settlement negotiations;
3. Order the filing of testimony of at least one signatory party that supports the Settlement as required by O.A.C. 4901-1-30(D);
4. Schedule an evidentiary hearing where evidence is properly submitted and examined and parties that do not join the Settlement may offer evidence and/or argument in opposition and may cross-examine witnesses who support the Settlement;
5. Allow for public testimony on the Settlement at the hearing as required by O.A.C. 4901-1-27(C); and
6. Conduct a thorough examination of the evidence and legal arguments.³⁰

²⁷ *Id.*

²⁸ See *In the Matter of the Commission's Consideration of a Settlement Agreement Between Inspire Energy Holdings, LLC and the Commission's Staff (Inspire Energy)*, Case N. 23-720-GE-UNC, Entry on Rehearing (Feb. 7, 2024) at ¶14 and 17.

²⁹ This case and the *Inspire Energy* case are compliance cases initiated by the PUCO under O.A.C. 4901:1-34-05(A).

³⁰ *Id.*

III. CONCLUSION

The Consumer Parties meet 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. The PUCO should grant the Consumer Parties' Motion to Intervene, and the further relief requested.

Respectfully Submitted,

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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 20th day of June 2024.

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/s/ Michael Walters
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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 Joint Motion To Intervene And Motion To Establish Procedural Schedule Including A Reasonable Time Period For Discovery And An Evidentiary Hearing By ProSeniors, Inc. And Legal Aid Society Of Southwest Ohio, LLC. electronically filed by Denise Walters on behalf of Legal Aid Society of Southwest Ohio LLC and Stephanie Moes.