

RECEIVED-DOCKETING DIV

IN THE SUPREME COURT OF OHIO

2025 MAY -5 PM 2: 33

In the Matter of the Review of Duke  
Energy Ohio, Inc.'s Distribution Capital  
Investment Rider.

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Case No. 2025-\_\_\_\_\_ PUCO  
Appeal from the Public Utilities  
Commission of Ohio  
Pub. Util. Comm. Case No. 23-549-  
EL-RDR

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NOTICE OF APPEAL

BY

OFFICE OF THE OHIO CONSUMERS' COUNSEL

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Maureen R. Willis  
(Reg. No. 0020847)  
Ohio Consumers' Counsel

David A. Yost  
(Reg. No. 0056290)  
Attorney General of Ohio

John Finnigan  
(Reg. No. 0018689)  
Counsel of Record  
Assistant Consumers' Counsel

John H. Jones  
(Reg. No. 0051913)  
Section Chief, Public Utilities Section

Thomas E. Zuehlke  
(Reg. No. 0104876)  
Assistant Consumers' Counsel

Thomas Lindgren  
(Reg. No. 0039210)

Ambrosia Wilson  
(Reg. No. 0096598)

Office of the Ohio Consumers' Counsel  
65 East State Street, Suite 700  
Columbus, Ohio 43215  
Telephone [Finnigan]: (614) 466-9585  
Telephone [Zuehlke]: (614) 466-9569  
john.finnigan@occ.ohio.gov  
thomas.zuehlke@occ.ohio.gov

Assistant Attorneys General  
Public Utilities Section  
30 East Broad Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43215  
(614) 466-4397 - Telephone  
(614) 644-8764 - Facsimile  
john.jones@ohioattorneygeneral.gov  
thomas.lindgren@ohioago.gov  
ambrosia.wilson@ohioago.gov

*Attorneys for Appellant,  
Office of the Ohio Consumers' Counsel*

*Attorneys for Appellee,  
Public Utilities Commission of Ohio*

May 5, 2025

## NOTICE OF APPEAL

Appellant, the Office of the Ohio Consumers' Counsel ("OCC" or "Appellant"), consistent with R.C. 4903.11 and 4903.13, and S.Ct.Prac.R. 3.11(B)(2), 3.11(D)(2), and 10.02, gives notice to this Court and to the Public Utilities Commission of Ohio ("PUCO") of this appeal.

The decisions being appealed are the PUCO's Opinion and Order entered in its journal on January 8, 2025 (Attachment A) and its March 5, 2025 Entry on Rehearing (Attachment B). These orders approved a settlement between Duke Energy Ohio, Inc. ("Duke") and the PUCO Staff that allows Duke to fix and retroactively charge consumers for a \$14 million math error Duke made in its last base rate case. The case concerns a rider called the Distribution Capital Investment ("DCI") Rider. The settlement approved by the PUCO improperly allows Duke to retroactively collect Rider DCI costs for spending that occurred before June 30, 2021, the date certain in Duke's last base rate case. The PUCO's decisions violate the law against retroactive ratemaking and the filed rate doctrine. The PUCO's independent auditor recommended against it. The PUCO ignored the independent auditor's recommendation and approved it anyway.

The PUCO's rulings are unlawful and unreasonable in the following respects, all of which were raised in OCC's Application for Rehearing filed February 7, 2025:

1. The PUCO erred by approving a settlement agreement that provides for retroactive ratemaking in violation of R.C. 4905.22 and R.C. 4905.32 and this Court's precedent in *Keco Indus. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254 (1957) (OCC Assignment of Error No. 2, OCC Application for Rehearing (Feb. 7, 2025)).
2. The PUCO erred by approving a settlement agreement that violates the filed rate doctrine, which arises under R.C. 4905.30 and R.C. 4905.32, and which prohibits a public utility from charging rates for utility services other than those specified in its schedule with the PUCO which is in effect at the time (OCC Assignment of Error No. 3, OCC Application for Rehearing (Feb. 7, 2025)).

OCC respectfully requests that the Court reverse the PUCO's orders and vacate its findings. The Court should also issue a remand to the PUCO with specific instructions to prospectively reduce consumers' Distribution Capital Investment Rider rates by \$14,088,731, with interest.

Respectfully submitted,

Maureen R. Willis (0020847)  
Ohio Consumers' Counsel

/s/ John Finnigan

John Finnigan (0018689)  
Counsel of Record  
Thomas E. Zuehlke (0104876)  
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel  
65 East State Street, Suite 700  
Columbus, Ohio 43215  
Telephone [Finnigan]: (614) 466-9585  
Telephone [Zuehlke]: (614) 466-9569  
john.finnigan@occ.ohio.gov  
thomas.zuehlke@occ.ohio.gov

*Attorneys for Appellant,  
Office of the Ohio Consumers' Counsel*

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Notice of Appeal by Office of the Ohio Consumers' Counsel was served upon the Chair of the Public Utilities Commission of Ohio by leaving a copy at the Office of the Chair in Columbus and upon all parties of record via electronic transmission this 5<sup>th</sup> day of May 2025.

/s/ John Finnigan

John Finnigan

Assistant Consumers' Counsel

COMMISSION REPRESENTATIVES  
AND PARTIES OF RECORD

john.jones@ohioattorneygeneral.gov  
thomas.lindgren@ohioAGO.gov  
ambrosia.wilson@ohioAGO.gov

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

Administrative Law Judges:

matthew.sandor@puco.ohio.gov  
nicholas.walstra@puco.ohio.gov  
clint.white@puco.ohio.gov

CERTIFICATE OF FILING

I hereby certify that a Notice of Appeal by Office of the Ohio Consumers' Counsel was filed with the docketing division of the Public Utilities Commission of Ohio as required by O.A.C. 4901-1-02(A) and 4901-1-36.

/s/ John Finnigan

John Finnigan

Assistant Consumers' Counsel

*Attorney for Appellant,*

*Office of the Ohio Consumers' Counsel*