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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

|   |                       |                         |
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| In the Matter of the Application of<br>The Dayton Power and Light Company<br>for Approval of Its Electric Security Plan   | )<br>)<br>)           | Case No. 08-1094-EL-SSO |
| In the Matter of the Application of<br>The Dayton Power and Light Company<br>for Approval of Revised Tariffs  | )<br>)<br>)           | Case No. 08-1095-EL-ATA |
| In the Matter of the Application of<br>The Dayton Power and Light Company<br>for Approval of Certain Accounting<br>Authority Pursuant to Ohio Rev. Code<br>§4905.13 | )<br>)<br>)<br>)<br>) | Case No. 08-1096-EL-AAM |
| In the Matter of the Application of<br>The Dayton Power and Light Company<br>for Approval of Its Amended Corporate<br>Separation Plan                               | )<br>)<br>)<br>)      | Case No. 08-1097-EL-UNC |

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

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On behalf of all the approximately 460,000 residential utility customers of Dayton Power and Light Company, the Office of the Ohio Consumers' Counsel ("OCC"), moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in these proceedings that will affect the rates that consumers pay for electricity service. Pursuant to the requirements of SB 221,<sup>1</sup> Dayton Power and Light Company ("DP&L") filed for the approval of its proposed Electric Security Plan ("ESP" or "Plan"). If

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<sup>1</sup> See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

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approved, the Plan would result in a rate increase for its customers.<sup>2</sup> OCC's Motion should be granted because OCC meets the legal standards for intervention, as explained in detail in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



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<sup>2</sup> Id.

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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|--|---|-------------------------|
| In the Matter of the Application of        | ) |                         |
| The Dayton Power and Light Company         | ) | Case No. 08-1094-EL-SSO |
| for Approval of Its Electric Security Plan | ) |                         |

|                                     |   |                         |
|-------------------------------------|---|-------------------------|
| In the Matter of the Application of | ) |                         |
| The Dayton Power and Light Company  | ) | Case No. 08-1095-EL-ATA |
| for Approval of Revised Tariffs     | ) |                         |

|                                      |   |                         |
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| The Dayton Power and Light Company   | ) | Case No. 08-1096-EL-AAM |
| for Approval of Certain Accounting   | ) |                         |
| Authority Pursuant to Ohio Rev. Code | ) |                         |
| §4905.13                             | ) |                         |

|                                       |   |                         |
|---------------------------------------|---|-------------------------|
| In the Matter of the Application of   | ) |                         |
| The Dayton Power and Light Company    | ) | Case No. 08-1097-EL-UNC |
| for Approval of Its Amended Corporate | ) |                         |
| Separation Plan                       | ) |                         |

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

On October 10, 2008, Dayton Power and Light Company filed its application ("Application") for the approval of its proposed Electric Security Plan, along with applications in cases associated with the ESP. The approval of the Application would allow DP&L to raise rates paid by DP&L's approximately 4660,000 residential customers. OCC is the state agency that represents Ohio's residential utility customers. The Commission should grant OCC's Motion to Intervene in these proceedings so that OCC can fully participate in the proceedings and protect the interests of DP&L's residential customers.

## **II. INTERVENTION**

Pursuant to R.C. Chapter 4911, the OCC moves to intervene under its legislative authority to represent residential utility customers of Ohio. OCC meets the standards for intervention found in Ohio's statutes and the PUCO's rules.

The interests of residential electric customers in areas served by DP&L are "adversely affected" by these cases, pursuant to the intervention standard in R.C. 4903.221. 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 these proceedings, especially if the customers are unrepresented in proceedings where DP&L is seeking to increase rates paid by its customers. Thus, OCC satisfies the intervention standard in R.C. 4903.221.

OCC also meets the criteria for intervention in R.C. 4903.221(B), which requires the PUCO, in ruling on motions to intervene, to consider the following:

- (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 the full development and equitable resolution of the factual issues.

First, the nature and extent of the OCC's interest is to represent the residential customers of DP&L regarding rates paid by residential customers, terms for service and the service quality provided by DP&L, among other issues. This interest is different than

that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's legal positions include, without limitation, that the rates paid by residential customers should be reasonable and lawful, and the service provided for those rates should be adequate and lawful. This legal position directly relates to the merits of the cases.

Third, OCC's intervention will not unduly prolong or delay the proceedings, but should provide insights that will expedite the PUCO's effective treatment of the cases. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the proceedings with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. These cases significantly relate to the recent enactment of Sub. S.B. 221, about which OCC has extensive knowledge. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the cases 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 Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate for the State of Ohio, OCC has a real and substantial interest in these proceedings where the outcome will have an effect on the service rates paid by residential consumers.

In addition, OCC meets the criteria of Ohio Adm. Code 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.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission 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 ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC’s intervention and that OCC should have been granted intervention.<sup>3</sup>

### **III. CONCLUSION**

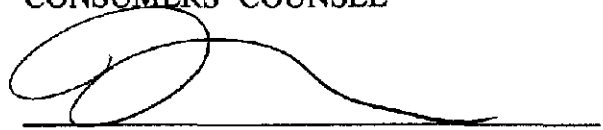
OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of all of DP&L’s residential consumers, the Commission should grant OCC’s Motion to Intervene.

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<sup>3</sup> *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶13-20 (2006).

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 first class regular U.S. Mail, postage prepaid, this 27th day of October, 2008.



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