

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

MOTION TO INTERVENE
AND
REQUEST FOR LEAVE TO FILE MOTION TO INTERVENE OUT OF TIME
OF
THE OHIO ENVIRONMENTAL COUNCIL

By the above-styled applications, The Dayton Power and Light Company seeks approval of an electric security plan pursuant to Amended Substitute Senate Bill No. 221 ("SB 221") and certain related measures. As more fully discussed in the accompanying memorandum, The Ohio Environmental Council ("OEC") has a real and substantial interest in this proceeding, and is so situated that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect that interest. Further, OEC's interest in this proceeding is not represented by any existing party, and its participation in this proceeding will contribute to a just and

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expeditious resolution of the issues involved without unduly delaying the proceeding or unjustly prejudicing any existing party. Accordingly, OEC hereby moves to intervene in this proceeding pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code.

OEC recognizes that the procedural entry issued in this proceeding on November 26, 2008 established December 10, 2008 as the due date for motions to intervene. Although OEC has intervened in each of the other SB 221 SSO cases now pending before the Commission, undersigned counsel was heretofore unaware of the November 26, 2008 entry in these dockets. Thus, OEC respectfully requests that the Commission entertain its motion to intervene, notwithstanding that it is filed one day after the specified due date. Granting OEC leave to file its motion to intervene out of time would be consistent with the Commission's policy of encouraging the broadest possible participation in its proceedings (*see, e.g., Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2), and would be consistent with the disposition of similar requests to file motions to intervene out of time in other SSO proceedings [*see Duke Energy Ohio*, Case No. 08-920-EL-SSO (Entry dated September 17, 2008), at 4]. Further, in view of the procedural posture of the case, no party will be prejudiced by granting OEC's request. If its motion to intervene is granted, OEC will, of course, accept the record as it finds it.

WHEREFORE, OEC respectfully requests that the Commission grant its request for leave to file out of time and grant its motion to intervene.

Respectfully submitted,


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**MEMORANDUM IN SUPPORT
OF
MOTION TO INTERVENE
OF
THE OHIO ENVIRONMENTAL COUNCIL**

Section 4903.221, Revised Code, provides that any "person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding." The Ohio Environmental Council ("OEC") is a non-profit, charitable organization comprised of a network of over 100 affiliated group members, whose mission is to secure a healthier environment for all Ohioans. Over its 40-year history, OEC, relying on scientific principles, has been a leading advocate for fresh air, clean water, and sustainable land use before the legislature and administrative agencies, as well as in the courts. In keeping with its mission, OEC was an

active participant in the effort that led to the inclusion of energy efficiency mandates and renewable and alternative energy standards in SB 221, and has a real and substantial interest in assuring that these benchmarks are appropriately recognized in the electric security plan ultimately approved in this case. Thus, there can be no question that OEC may be adversely affected by this proceeding.

Further, not only does OEC satisfy the underlying statutory test, but it also satisfies the standards governing intervention set forth in the Commission's rules.

Rule 4901-1-11(A), Ohio Administrative Code ("OAC"), provides, in pertinent part, as follows:

(A) Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:

(2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his ability to protect that interest, unless the person's interest is adequately represented by existing parties.

OEC plainly has a real and substantial interest in a proceeding that will impact Ohio's environment. Moreover, at this juncture, none of the pending motions to intervene in these cases have been granted. Thus, by definition, no existing parties adequately represent OEC's interest.

Although OEC does not believe this to be a close question, each of the specific considerations that the Commission may, by rule, take into account in applying the Rule 4901-1-11(A)(2), OAC, standard, also fully support granting OEC's motion to intervene. Rule 4901-1-11(B), OAC, provides as follows:

In deciding whether to permit intervention under paragraph (A)(2) of this rule, the commission, the legal director, the deputy legal director, or an attorney examiner shall consider:

(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.
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.
- (5) The extent to which the person's interest is represented by existing parties;

First, as explained above, OEC's interest in the proposals contained in these applications relating to the energy efficiency mandates and renewable and alternative energy standards set forth in SB 221 is obviously direct and substantial. Second, although OEC must necessarily await further developments before determining the specific positions it will adopt with respect to these issues, OEC will certainly advocate that the measures ultimately adopted for meeting these benchmarks be effective and consistent with the legislative intent underlying SB 221. Third, in view of the fact that the proceeding has just commenced, granting OEC's motion to intervene will not unduly delay or prolong the proceeding. Fourth, OEC will bring substantial technical expertise to bear on these issues. Finally, not only are there no existing parties that represent OEC's interest, but it would be inconsistent with the Commission's stated policy "to encourage the broadest possible participation in its proceedings" (*see, e.g., Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2) to apply the Rule 4901-1-11(B)(5) standard in a manner that would favor one environmental advocate over others. Thus, granting OEC intervenor status is consistent with all the considerations set out in Rule 4901-1-11(B), OAC.

WHEREFORE, OEC respectfully requests that the Commission grant its motion to intervene.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by first class mail, postage prepaid, this 11th day of December 2008.



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