

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Dayton Power and Light Company for a)	Case No. 09-1987-EL-EEC
Finding That DP&L's Peak Demand)	
Reduction Benchmark Has Been Met or in)	
the Alternative, Application to Amend)	
DP&L's Peak Demand Reduction)	
Benchmark.)	

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where the Public Utilities Commission of Ohio ("Commission" or "PUCO") will consider whether The Dayton Power and Light Company ("DP&L" or "Company") has satisfied the Commission's peak demand reduction benchmark for 2009. DP&L has asked the Commission to either find that the Company has met the benchmark or reduce the benchmark to zero. OCC is filing on behalf of all the approximately 460,000 residential utility consumers of DP&L,¹ who could be significantly affected by this case. The reasons the Commission should grant OCC's Motion are further set forth in the attached Memorandum in Support.

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

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
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MEMORANDUM IN SUPPORT

This case involves consideration of the Peak Demand Reduction benchmark that DP&L was required to meet in 2009. OCC has authority under law to represent the interests of all the approximately 467,000 Ohio residential utility customers of DP&L, pursuant to R.C. Chapter 4911.

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 this case, especially if these consumers were unrepresented in a proceeding evaluating demand response programs. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission 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 the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is representing all residential consumers of DP&L, in order to protect the interests of all of DP&L's residential customers. This interest is different from that of any other party and especially different from that of the utility, whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for consumers will include advancing the position that the energy efficiency and peak demand reduction benchmarks must be met in a manner which comports with the letter and intent of S.B. 221, and that the Commission must ensure that rates that include program costs are reasonable. The Commission's decision could impact the quality of programs by which the Company intends to meet the peak demand reduction benchmarks required under R.C. 4928.66, thus affecting the reliability of supply to DP&L's residential customers. OCC's position is that DP&L may only be deemed in compliance with R.C. 4928.66(A)(1)(b) if it can prove that it has implemented "peak demand reduction programs designed to achieve a one percent reduction in peak demand in 2009 and an additional seventy-five hundredths of one per cent reduction each year through 2018." The focus of this proceeding, then, is on whether reductions in peak demand for 2009 were attributable to the reduction programs implemented by DP&L, and not attributable to other circumstances. OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case 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, OCC has a very real and substantial interest in this case where residential programs and residential rates for customers served by the Company are at stake.

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.²

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 Ohio residential consumers, the Commission should grant OCC's Motion to Intervene.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Terry L. Etter

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² See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20 (2006).

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below by regular U.S. Mail, postage prepaid, on this 4th day of February 2010.

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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Mrs. Mary V. Edwards on behalf of Etter, Terry L. and Office of the Ohio Consumers' Counsel