

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Dayton Power and Light Company for a)	
Finding That DP&L's Energy Efficiency)	Case No. 09-1988-EL-EEC
Benchmark Has Been Met or in the)	
Alternative, Application to Amend)	
DP&L's Energy Efficiency 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 Dayton Power and Light Company ("DP&L" or "Company") asks the Public Utilities Commission of Ohio ("Commission" or "PUCO") to find that DP&L has satisfied the Peak Demand Reduction Benchmark established in Sub. S.B. 221 ("S.B. 221"). This Benchmark relates to implementing peak demand reduction programs designed to achieve a 1% reduction in peak demand in 2009 and an additional 0.75% each year through 2018. This benefits consumers by reducing energy usage in a cost-efficient manner, which should help to lower rates. In the alternative, DP&L asks the Commission to prorate the benchmark to either December 10, 2009 or June 24, 2009. 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
CONSUMERS' COUNSEL

/s/ Terry L. Etter

Terry L. Etter, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (614) 466-8574

etter@occ.state.oh.us

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Dayton Power and Light Company for a)	
Finding That DP&L's Energy Efficiency)	Case No. 09-1988-EL-EEC
Benchmark Has Been Met or in the)	
Alternative, Application to Amend)	
DP&L's Energy Efficiency Benchmark.)	

MEMORANDUM IN SUPPORT

This case involves consideration of the Energy Efficiency benchmark that DP&L was required to meet in 2009. This benchmark was established in S.B. 221 and requires electric utilities to implement peak demand reduction programs designed to achieve a 1% reduction in peak demand in 2009 and an additional 0.75% each year through 2018. 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 residential energy efficiency 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 this case where their interest in residential energy efficiency programs and residential rates for customers is at issue. 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 consumers should be provided effective and efficient programs for peak demand reduction. The Commission must ensure that rates that include program costs are lawful and reasonable. 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's intervention 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.

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

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Terry L. Etter

Terry L. Etter, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (614) 466-8574

etter@occ.state.oh.us

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 23rd day of February 2010.

/s/ Terry L. Etter

Terry L. Etter

Assistant Consumers' Counsel

SERVICE LIST

DUANE LUCKEY

Assistant Attorney General
Chief, Public Utilities Section
Public Utilities Commission of Ohio
180 E. Broad St., 6th Floor
Columbus, Ohio 43215

JUDI L. SOBECKI

RANDALL V. GRIFFIN

Dayton Power and Light
1065 Woodman Drive
Dayton, Ohio 45432

JOE CLARK

McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215

WILL REISINGER

Ohio Environmental Council
1207 Grandview Avenue
Columbus, Ohio 43212

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/23/2010 3:05:36 PM

in

Case No(s). 09-1988-EL-EEC

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