

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Dayton Power and Light Company for)	Case No. 13-0893-EL-AIS
Authority to Issue and Sell an Amount)	
Not to Exceed \$490 Million of First)	
Mortgage Bonds, Debentures, Notes, or)	
Other Evidences of Indebtedness or)	
Unsecured Notes.)	

**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 "Utility") is seeking authority to issue and sell debt in the form of bonds, debentures and notes, for terms not to exceed 30 years, in order to refinance outstanding First Mortgage Bonds and to pay for the costs of the issuance of the new bonds.¹ OCC is filing on behalf of all the approximately 455,000 residential utility customers of DP&L customers in the state of Ohio. The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

¹ Application at 1 (April 16, 2013).

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

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MEMORANDUM IN SUPPORT

In this proceeding, DP&L is requesting authority “to issue and sell . . . up to \$490 million principal amount of First Mortgage Bonds, debentures, notes and/or other evidences of indebtedness,” in order to “refinance outstanding First Mortgage Bonds.”² This request to issue such a significant amount of mostly long-term debt to finance the Utility, with terms up to thirty years, has the potential to significantly affect DP&L’s residential customers. The potential to affect customers is exponentially greater given the impact this case may have upon Case No. 12-426-EL-SSO, which is currently pending before the Commission.³ Therefore, pursuant to R.C. Chapter 4911,⁴ OCC has authority to represent the interests of the approximately 455,000 residential utility customers of DP&L.

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

² See, Application at 1.

³ DP&L’s effort to refinance debt is directly related to Case No. 12-426-EL-SSO where the Company has claimed that its financial integrity will be impaired absent hundreds of millions of dollars of increases to customers. The fact that the Company is able to refinance its debt at this time, draws into question the validity of its claims of diminished financial integrity.

⁴ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

Ohio's residential customers may be "adversely affected" by this case, especially if the customers were unrepresented in a proceeding where DP&L is seeking to refinance \$470 million of exiting long-term debt plus \$20 million in additional redemption and issuance costs. 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 the residential customers of DP&L in an attempt to eliminate any potential adverse impact those customers may suffer as a result of the Utility's request to secure \$490 million in long-term financing arrangements. 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 residential customers will include advancing the position that the PUCO should ensure that customers are not harmed now or in the future by financing arrangements for terms as long as thirty years. Specifically, OCC will advocate that no unjust or unreasonable costs should be incurred or passed onto DP&L's residential customers as a result of the Utility's requested refinancing plan, either in this

case or in DP&L's Application for an Electric Security Plan, Case No. 12-426-EL-SSO or in any other matter. This is of particular concern where the amount of "Redemption Costs" appears to exceed a just and reasonable amount when the existing First Mortgage Bonds Series is due in late 2013.⁵ 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 advocate for residential utility customers, OCC has a very real and substantial interest in ensuring that the request to issue and sell \$490 million worth of long-term debt will not result in residential customers bearing unjust or unreasonable costs over the next thirty years.

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.

⁵ Application at 7.

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 customers. 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 deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying OCC’s interventions and that OCC should have been granted intervention in both proceedings.⁶

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 customers, the Commission should grant OCC’s Motion to Intervene.

Respectfully submitted,

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⁶ 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 electronic transmission this 6th day of June 2013.

/s/ Michael J. Schuler

Michael J. Schuler

Assistant Consumers' Counsel

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/6/2013 12:32:07 PM

in

Case No(s). 13-0893-EL-AIS

Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Schuler, Michael J.