

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
the Dayton Power and Light Company for	)	Case No. 16-0395-EL-SSO
Approval of its Electric Security Plan.	)	

In the Matter of the Application of the	)	
Dayton Power and Light Company for	)	Case No. 16-0396-EL-ATA
Approval of Revised Tariffs.	)	

In the Matter of the Application of the	)	
Dayton Power and Light Company for	)	Case No. 16-0397-EL-AAM
Approval of Certain Accounting Authority	)	
Pursuant to Ohio Rev. Code § 4905.13.	)	

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

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Dayton Power and Light Company (“DP&L”) has proposed a new rate plan that would require customers to subsidize its deregulated power plants. The unlawful subsidy is the latest in a series of Ohio utility re-regulatory proposals to use their customers’ money to fund what are supposed to be power plants operating in the competitive market. At this point in DP&L’s protracted 17-year transition to the competition that is intended to benefit consumers under the 1999 Ohio law, a fully competitive market-rate offer should be implemented. Government regulators’ continued involvement in setting rates through an electric security plan (“ESP”), as DP&L proposes, is not in consumers’ interest.

The Office of the Ohio Consumers’ Counsel (“OCC”) files this Motion to Intervene on behalf of DP&L’s 456,000 residential utility customers because this ESP will affect the

rates they pay for electric service.<sup>1</sup> The reasons why the Public Utilities Commission of Ohio (“PUCO”) should grant OCC’s Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

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OHIO CONSUMERS’ COUNSEL

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

In the Matter of the Application of the Dayton Power and Light Company for Approval of its Electric Security Plan.	) ) )	Case No. 16-0395-EL-SSO
In the Matter of the Application of the Dayton Power and Light Company for Approval of Revised Tariffs.	) ) )	Case No. 16-0396-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. 16-0397-EL-AAM

On February 22, 2016, DP&L filed an ESP for charging a standard service offer to Ohio residential consumers and businesses under R.C. §§ 4928.141 and 4928.143. In its ESP plan, DP&L includes a PPA mechanism. The PPA is a subsidy paid for by captive distribution customers for uneconomic generation in the DP&L fleet. This subsidy interferes with the operation of the competitive market. OCC has statutory authority to represent the interests of DP&L's 456,000 residential utility customers who cannot escape the harm caused by the charges DP&L passes through the Reliability Electric Rider by shopping for an alternative supplier of generation services (e.g. Marketer).<sup>2</sup>

<sup>2</sup> See R.C. Chapter 4911.

<sup>3</sup> R.C. 4903.221.

be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding that sets the rates that they pay for electric service. Thus, this element of the intervention standard is satisfied.

The PUCO is required 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.<sup>4</sup>

First, the nature and extent of OCC’s interest is representing DP&L’s 456,000 residential customers in this case involving an ESP that will set rates residential customers pay for electric service. Also, DP&L’s proposals for subsidizing power plants may be disruptive to the competitive market, further harming consumers. 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 advocacy for residential customers will include advancing the position that the rates consumers pay should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. For example, OCC will analyze whether or not DP&L’s electric security plan will produce reasonable rates

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<sup>4</sup> R.C. 4903.221(B).

for consumers that are consistent with Ohio law and state policies.<sup>5</sup> Therefore, OCC's position is 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."<sup>6</sup> As the advocate for residential utility customers, OCC has a very real and substantial interest in this case because DP&L proposes rates to charge residential customers for electric service.

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.

The PUCO shall consider "[t]he extent to which the person's interest is represented by existing parties."<sup>7</sup> While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state

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<sup>5</sup> See R.C. Chapter 4928; R.C. 4928.02.

<sup>6</sup> Ohio Adm. Code 4901-1-11(A)(2).

<sup>7</sup> Ohio Adm. Code 4901-1-11(B)(5).

representative of the interests of Ohio's residential utility customers. That interest is different from, and not represented by, any other entity in Ohio.

Further, 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.<sup>8</sup>

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 PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

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<sup>8</sup> See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below via electronic transmission, this 18<sup>th</sup> day of March 2016.

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Summary: Motion Motion to Intervene by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Michael, William Mr.