

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

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

**THE DAYTON POWER AND LIGHT COMPANY'S MEMORANDUM
IN OPPOSITION TO MOTION TO INTERVENE AND
REQUEST FOR LEAVE TO FILE MOTION TO INTERVENE
OUT OF TIME OF CLASSIC CONNECTORS, INC.**

I. INTRODUCTION AND SUMMARY

The Commission should reject the untimely attempt by Classic Connectors, Inc. to intervene¹ in this proceeding for two separate and independent reasons. First, the corporation is not represented by counsel and can neither participate in propria persona nor appear through an officer or agent who is unlicensed to practice law in Ohio. Union Savings Assn. v. Home Owners Aid, 23 Ohio St. 2d 60, 262 N.E.2d 558 (1970); Ohio Admin. Code § 4901-1-08(A). Second, Classic Connectors, Inc. fails to show good cause and extraordinary circumstances to justify intervention 111 days after the Commission's deadline for motions to intervene and mere weeks before the evidentiary hearing in this proceeding is set to begin. Ohio Rev. Code

¹ Oct. 19, 2016 Motion to Intervene and Request for Leave to File Motion to Intervene Out of Time of Classic Connectors, Inc. ("Motion to Intervene").

§ 4903.221(A) (requiring "good cause" to file an untimely motion to intervene); Ohio Admin. Code § 4901-1-11(F) (separately requiring "extraordinary circumstances" to file an untimely motion to intervene); Apr. 11, 2016 Entry (establishing June 30, 2016 as the deadline for motions to intervene); Oct. 4, 2016 Entry (scheduling the evidentiary hearing to begin December 5, 2016).

II. CLASSIC CONNECTORS, INC. CANNOT INTERVENE WITHOUT REPRESENTATION BY COUNSEL

The Supreme Court of Ohio, which governs the practice of law in this state,² has long held that "[a] corporation cannot maintain litigation *in propria persona*, or appear in court through an officer of the corporation or an appointed agent not admitted to the practice of law." Union Savings at syllabus. Accord: Office of Disciplinary Counsel v. Lawlor, 92 Ohio St.3d 406, 407, 750 N.E.2d 1107 (2001) ("Since Union Savings . . . we have consistently held that a corporation may not maintain an action through an officer who is not a licensed attorney) (emphasis added); Disciplinary Counsel v. Givens, 106 Ohio St.3d 144, 2005-Ohio-4104, 832 N.E.2d 1200, ¶7 ("a nonlawyer may not practice law in defense of a corporate entity merely because he holds some official corporate position"). This rule is rooted in the principle that "[a] corporation is an artificial person, created by the General Assembly and deriving its power, authority and capacity from statutes." Union Savings at 62. The Court applies the rule with equal force to practice before administrative agencies. Cleveland Bar Assn. v. CompManagement, Inc., 111 Ohio St.3d 444, 2006-Ohio-6108, 857 N.E.2d 95, ¶22 ("In regard

² Ohio Constitution, Article IV, Section 2(B)(1)(g) (granting the Supreme Court of Ohio original jurisdiction in "[a]dmission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law"); Ohio Rev. Code 4705.01 ("No person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding in which the person is not a party concerned, either by using or subscribing the person's own name, or the name of another person, unless the person has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules.").

to corporations, a layperson generally may not represent the corporation or take any legal action on behalf of the corporation before a court or administrative agency.") (emphasis added).

In addition, the Commission has codified the Union Savings rule in the Ohio Administrative Code, which expressly provides that "[c]orporations must be represented by an attorney-at-law." Ohio Admin. Code § 4901-1-08(A) (emphasis added). Accord: In the Matter of a Settlement Agreement Between the Staff of the Public Utilities Commission of Ohio, The Office of the Ohio Consumers' Counsel, and Aqua Ohio, Inc., Case No. 08-1125-WW-UNC (Jan. 13, 2009 Entry), p. 3 (holding that "as a corporation, Aqua must be represented by an attorney-at-law for the purpose of this proceeding"); In the Matter of the Commission Staff's Investigation into the Alleged Violations of the Minimum Telephone Service Standards by Buzz Telecom, Corp., Case No. 06-1443-TP-UNC (Jan. 24, 2007 Entry), p. 4 (same).

In this proceeding, the Motion to Intervene was signed and filed with the Commission by Carl Tamm, "Pro Se," in his capacity as President of Classic Connectors, Inc. Motion to Intervene, pp. 2, 5. There is no indication in the Motion to Intervene that Mr. Tamm is an attorney, much less licensed to practice law in Ohio. See Ohio Admin. Code § 4901-1-03(A) (requiring attorneys to include their attorney registration number on "[a]ll pleadings or papers" filed with the Commission). Indeed, given his self-identified "Pro Se" status, he appears to be acting on behalf of Classic Connectors, Inc. as a corporate officer, in violation of Union Savings and Ohio Admin. Code § 4901-1-08(A). For this reason alone, the Motion to Intervene must be denied.

III. CLASSIC CONNECTORS, INC. HAS FAILED TO SHOW EITHER GOOD CAUSE OR EXTRAORDINARY CIRCUMSTANCES TO JUSTIFY ITS LATE ATTEMPT TO INTERVENE

The Commission should deny the Motion to Intervene for the separate and independent reason that Classic Connectors, Inc. has failed to show good cause and extraordinary circumstances to justify intervention in this proceeding 111 days after the Commission's June 30, 2016 deadline for motions to intervene.

Pursuant to Ohio Rev. Code § 4903.221(A), the Commission "may, in its discretion, grant motions to intervene which are filed after [a deadline established by the Commission in a particular proceeding] for good cause shown." (Emphasis added). In addition to that statutory requirement, "[a] motion to intervene which is not timely will be granted only under extraordinary circumstances." Ohio Admin. Code § 4901-1-11(F) (emphasis added).

The Commission has "frequently denied untimely motions to intervene where no extraordinary circumstances were present." In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider, et al., Case No. 14-1693-EL-RDR, et al. (Jan. 7, 2016 Entry), p. 6 (citing In re AEP Ohio, Case No. 10-2376-EL-UNC (Dec. 13, 2011 Opinion and Order), p. 9; In re FirstEnergy, Case No. 11-5201-EL-RDR (Aug. 7, 2013 Opinion and Order), pp. 7-8; In re Greenwich Windpark, Case No. 13-990-EL-BGN (Aug. 25, 2014 Opinion, Order), pp. 3-4).

Moreover, when a prospective intervenor fails to offer any grounds for good cause or extraordinary circumstances, the Commission denies the motion to intervene. In the Matter of the Application of Ohio Power Co. to Adjust Its Economic Development Rider Rate,

Case No. 15-1400-EL-RDR (Nov. 18, 2015 Finding and Order), p. 4, n.1 ("OMAEG, however, offers no extraordinary circumstances or any other explanation that would justify granting its untimely motion. Accordingly, OMAEG's motion to intervene should be denied.") (emphasis added); In the Matter of the Commission-Ordered Investigation of Ameritech Ohio Relative to Its Compliance with Certain Provisions of the Minimum Telephone Service Standards Set Forth in Chapter 4901:1-5, Ohio Administrative Code, Case No. 99-938-TP-COI (Oct. 5, 2000 Entry), p. 4 (same).

Here, Classic Connectors, Inc. fails even to mention "good cause" or "extraordinary circumstances" in its Motion to Intervene. Instead, it argues (pp. 3-4) that its intervention would satisfy factors that parties who file timely motions to intervene must meet. Ohio Rev. Code § 4903.221(B); Ohio Admin. Code § 4901-1-11(A). If Classic Connectors, Inc. were allowed to rely on those factors to justify its late intervention, then the requirements of Ohio Rev. Code § 4903.221(A) and Ohio Admin. Code § 4901-1-11(F) would be rendered meaningless. Thus, the Motion to Intervene should be denied for this reason as well.

For the foregoing reasons, the October 19, 2016 Motion to Intervene and Request for Leave to File Motion to Intervene Out of Time of Classic Connectors, Inc. should be denied, and Classic Connectors, Inc. should not be permitted to intervene in this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing The Dayton Power and Light Company's Memorandum in Opposition to Motion to Intervene and Request for Leave to File Motion to Intervene Out of Time of Classic Connectors, Inc. has been served via electronic mail upon the following counsel of record, this 21st day of October, 2016:

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Summary: Memorandum The Dayton Power and Light Company's Memorandum in Opposition to Motion to Intervene and Request for Leave to File Motion to Intervene Out of Time of Classic Connectors, Inc. electronically filed by Mr. Charles J. Faruki on behalf of The Dayton Power and Light Company