**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Establishing New Reliability Standards. | )))) | Case No. 21-956-EL-ESS |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

AES, a utility that has charged its consumers hundreds of millions of dollars in subsidies over the years and that has a rate increase case pending, seeks to *lower* its reliability standards so it can provide a lesser quality of service for its 590,000 Dayton-area consumers.[[1]](#footnote-2) Reliability performance standards are the metrics the PUCO uses to determine whether a utility is providing reliable service to its consumers. Adequate utility service is required by R.C. 4905.22. The reliability metrics commonly include the System Average Interruption Frequency Index ("SAIFI") (how often consumers lose service) and the Customer Average Interruption Duration Index ("CAIDI") (how long the service interruption lasts).

 OCC is moving to intervene on behalf of AES’s residential electric consumers. The reasons the Public Utilities Commission of Ohio (“PUCO”) should grant OCC’s Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

Bruce Weston (0016973)

 Ohio Consumers’ Counsel

*/s/ William J. Michael*

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## MEMORANDUM IN SUPPORT

AES seeks to establish new distribution reliability performance standards that are much less protective for consumers than those currently in place.[[2]](#footnote-3) These standards include the System Average Interruption Frequency Index ("SAIFI") (how often consumers lose service) and the Customer Average Interruption Duration Index ("CAIDI") (how long the service interruption lasts). AES seeks to increase SAIFI from 0.88 to 1.14 and CAIDI from 125.04 to 139.82 minutes. This means AES would be allowed to have more frequent outages and longer duration outages, thus providing lesser quality service to its consumers.

OCC seeks consumer protection for AES’s approximately 590,000 residential electric consumers.

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 residential consumers may be “adversely affected” by this case. That would be especially so if the consumers were unrepresented in a proceeding where AES seeks to lower the thresholds for its reliability performance standards. DP&L’s application would enable it to provide lesser quality service for its consumers, without violating the PUCO’s reliability standards. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Public Utilities Commission of Ohio (“PUCO”) 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 proceedings;

(4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

First, the nature and extent of OCC’s interest is representing Ohio’s residential utility consumers in this case where AES wants to provide lesser quality of service to its consumers. 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 consumers will include advancing the position that consumers are entitled to safe, reliable and adequate service at a reasonable price. OCC’s position is therefore directly related to the merits of this case that is before the PUCO.

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

Fourth, OCC’s intervention will significantly contribute to 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. This includes advocating that AES should not be permitted to lower its reliability standards, that would allow it to provide a lesser quality of service to its consumers.

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 statutory advocate for residential utility consumers, OCC has a very real and substantial interest in this case where AES seeks to provide service to its consumers with less reliability.

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 the Consumer Parties satisfy.

Ohio Adm. Code 4901-1-11(B)(5) states that the PUCO 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 OCC has been uniquely designated as the state representative of the interests of Ohio’s residential utility consumers. OCC’s interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio (“Court”) 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.[[3]](#footnote-4)

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 PUCO should grant OCC’s Motion to Intervene.

Respectfully Submitted,

Bruce Weston (0016973)

 Ohio Consumers’ Counsel

*/s/ William J. Michael*

William J. Michael (0070921)

Counsel of Record

Ambrosia E. Wilson (0096598)

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(willing to accept service by e-mail)

**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 19th day of November 2021.

 */s/ William J. Michael*

 William J. Michael

 Counsel of Record

 Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

**SERVICE LIST**

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1. Application at 5-6 [↑](#footnote-ref-2)
2. Application at 5-6. [↑](#footnote-ref-3)
3. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20. [↑](#footnote-ref-4)