**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| --- | --- | --- |
| In the Matter of the Application of The  Dayton Power and Light Company for  Approval of Phase 2 of Its Smart Grid Plan.  In the Matter of the Application of The  Dayton Power and Light Company for  Approval of Certain Accounting Methods. | )  )  )  )  )  )  )  ) | Case No. 24-112-EL-GRD  Case No. 24-113-EL-AAM |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene[[1]](#footnote-2) in this case where The Dayton Power and Light Company d/b/a AES Ohio (“DP&L”) seeks approval to charge its consumers for approximately *$755 million* in capital investments and operation and maintenance costs over ten years[[2]](#footnote-3) through phase two of DP&L’s SmartGrid Plan. This amount is on top of the $654.9 million DP&L has already charged consumers through SmartGrid phase one.[[3]](#footnote-4)

The Ohio Consumer’s Counsel (“OCC”) is an independent state agency that advocates for the interests of residential utility customers in Ohio. OCC is filing on behalf of the 500,000 residential utility consumers of DP&L. 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,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ Robert Eubanks*

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**MEMORANDUM IN SUPPORT**

In this case, DP&L seeks approval to charge its consumers for approximately *$755 million* in capital investments and operation and maintenance costs over ten years[[4]](#footnote-5) through phase two of DP&L’s SmartGrid Plan. This amount is on top of the $654.9 million DP&L has already charged consumers through SmartGrid phase one.[[5]](#footnote-6)

OCC has authority under law to represent the interests of all the 536,000 residential utility consumers of DP&L, under R.C. Chapter 4911.

R.C. 4903.221 provides the standard for permissive intervention – where the PUCO may exercise discretion in ruling upon a party’s motion to intervene. That law 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 the consumers were unrepresented in a proceeding that could increase residential consumers’ rates without providing commensurate benefits. Thus, this element of the permissive intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the PUCO to consider the following criteria in ruling on permissive intervention:

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 consumers of DP&L concerning rate increases and the actual benefits of phase 2 of DP&L’s SmartGrid Plan. Accordingly, OCC has an interest in DP&L’s requests to make approximately $755 million in capital investments and operation and maintenance costs over ten years[[6]](#footnote-7) to be collected in part from DP&L’s 536,000 residential customers. 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 consumers will include, among other things, advancing the following positions:

1. **Cost-Benefit Analysis:** DP&L should demonstrate that the projected benefits to consumers outweigh the costs of the $682.9 million investment,[[7]](#footnote-8) including its potential impact on customer rates.
2. **Consumer Impact:** The Smart Grid Phase 2 investments should deliver tangible benefits to residential consumers by enhancing reliability, reducing costs, and improving the overall customer experience.[[8]](#footnote-9)
3. **Alternative Solutions:** DP&L’s request to charge consumers for SmartGrid costs should be denied to the extent that there are more cost-effective alternatives to achieve the same goals, [[9]](#footnote-10) perhaps through other technological solutions or operational adjustments that could provide similar benefits to customers at a lower cost.
4. **Protection of Low-Income Customers:** The application’s approval should include protections for low-income consumers from burdensome higher rates.

OCC’s position is therefore directly related to the merits of this case, which 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. Delay in and of itself does not mean that intervention should be denied. The key consideration is whether the intervention will cause “undue delay.” Here OCC’s intervention will not cause undue delay. DP&L’s application was just recently filed on February 8, 2024, and has been no procedural schedule set. OCC will investigate and advocate for its concerns through the normal procedural process it routinely and efficiently participates in before the PUCO (discovery, comments, motions, pre-filed testimony, cross-examination, and briefings).

OCC will attempt to avoid duplicative discovery in the proceeding. The issues OCC will raise fall clearly within the scope of the proceeding, which involves scrutinizing the reasonableness of DP&L’s application. In addition, OCC will also use its best efforts to comply with any procedural schedule that the PUCO may adopt for this proceeding.

Further, 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. OCC regularly intervenes and participates in cases regarding smart grid investments, including the proceedings regarding phase one of DP&L’s SmartGrid Plan.[[10]](#footnote-11) There will be no prejudice to the PUCO Staff and DP&L in granting OCC intervention.

Fourth, OCC’s intervention will significantly contribute to the full development and equitable resolution of the factual issues. Again, OCC will investigate and advocate for its concerns efficiently through the normal procedural process it routinely participates in before the PUCO (discovery, comments, motions, pre-filed testimony, cross-examination, and briefings). OCC’s interest in protecting residential consumers will lead it to fully and carefully examine issues regarding the reasonableness of the smart grid investments sought by DP&L and the effect of such investments on residential rates. No other party is solely focused on the needs of residential consumers and thus, there can be no equitable resolution of the factual issues in this case absent OCC’s participation. 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 Ohio Administrative Code Rule 4901-1-11(A) which sets the standard for *intervention as of right*, mirroring Ohio Civil Rule 24(A). Under 4901:1-11(A)(2) a person shall be granted intervention as of right if it has a real and substantial interest in a proceeding and is “so situated that disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person’s interest is adequately represented by existing parties.”

As the statutory advocate for residential utility consumers, OCC has a very real and substantial interest in this case where DP&L requests to make approximately $755 million in capital investments and operation and maintenance costs over ten years[[11]](#footnote-12) to be recovered, in part, through its approximately 536,000 residential customers. Disposition of this proceeding may, as a practical matter, impair or impede OCC’s ability to protect that interest where the interest is not adequately represented by existing parties - the PUCO Staff and the utility. OCC should be granted intervention as of right under O.A.C. 4901-1-11(A)(2).

In addition, OCC meets the permissive intervention criteria of O.A.C. 4901-1-11(B)(1)-(4). These criteria mirror the permissive intervention criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

O.A.C. 4901-1-11(B)(5) states that the PUCO shall consider “(t) 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 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 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.[[12]](#footnote-13)

OCC meets the criteria set forth in R.C. 4903.221, O.A.C. 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,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ Robert Eubanks*

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(Will accept service via email)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Intervene has been served electronically upon those persons listed below this 12th day of March 2024.

*/s/ Robert Eubanks*

Robert Eubanks

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. *See* R.C. Chapter 4911, R.C. 4903.221, and Ohio Adm. Code 4901-1-11. [↑](#footnote-ref-2)
2. *In the Matter of the Application of The Dayton Power and Light Company for Approval of Phase 2 of its Smart Grid Plan*, et al., Case No. 24-112-EL-GRD, Application (February 8, 2024) at ¶ 1. [↑](#footnote-ref-3)
3. *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Plan to Modernize Its Distribution Grid*, et al., Case No. 18-1875-EL-GRD, Opinion and Order (June 16, 2021) at ¶ 26. [↑](#footnote-ref-4)
4. *In the Matter of the Application of The Dayton Power and Light Company for Approval of Phase 2 of its Smart Grid Plan*, et al., Case No. 24-112-EL-GRD, Application (February 8, 2024) at ¶ 1. [↑](#footnote-ref-5)
5. *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Plan to Modernize Its Distribution Grid*, et al., Case No. 18-1875-EL-GRD, Opinion and Order (June 16, 2021) at ¶ 26. [↑](#footnote-ref-6)
6. Application at p. 1. [↑](#footnote-ref-7)
7. Application at ¶ 2. [↑](#footnote-ref-8)
8. See Application at ¶ 5 – DP&L asserts that cost savings and improved reliability were achieved from its Phase 1 Smart Grid Plan; the same standards should apply to its Phase 2 Smart Grid Plan. [↑](#footnote-ref-9)
9. See Application at ¶ 1 – DP&L should be bound to its assertion that “the planned investments are the least-cost way to respond to significant changes that are and will continue to affect AES Ohio's distribution grid.” [↑](#footnote-ref-10)
10. *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Ohio Site Deployment of the Smart Grid Modernization Initiative and Timely Recovery of Associated Costs*, et al., Case No. 09-1821-EL-GRD, Finding and Order at p. 11; *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Plan to Modernize Its Distribution Grid*, et al., Case No. 18-1875-EL-GRD, Entry (October 27, 2020) at ¶ 13. [↑](#footnote-ref-11)
11. *In the Matter of the Application of The Dayton Power and Light Company for Approval of Phase 2 of its Smart Grid Plan*, et al., Case No. 24-112-EL-GRD, Application (February 8, 2024) at p. 1. [↑](#footnote-ref-12)
12. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-13)