**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Commission’s Review of the Distribution Investment Rider Work Plan for 2024 of The Dayton Power and Light Company d/b/a AES Ohio. | ))) )) | Case No. 23-1176-EL-RDR |

**MOTION TO INTERVENE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

AES Ohio seeks to charge its consumers over $137 million dollars under its Distribution Investment Rider (“DIR”)[[1]](#footnote-2) over the course of 2024. That amount is $100 million more than what it was permitted to charge consumers by PUCO Order dated August 9, 2023 in Case No. 22-900-EL-SSO, et al.[[2]](#footnote-3) And though AES Ohio claims the DIR is “part of AES Ohio's strategic focus on reliability”[[3]](#footnote-4) $73 million would be charged to existing DP&L consumers for distribution and transformer investment to support economic development or accommodate new growth customers in the territory.[[4]](#footnote-5) Ironically, this is the company who hasn’t been able to supply reliable service to its existing consumers over the past four years, but wants to roll out the red carpet for new consumers, with existing customers paying more. That problem aside, DP&L’s Work plan lists lots of project that do not event have a budget assigned to them. This spells trouble for DP&L consumers who would have to pay for it all.

It is imperative that AES Ohio’s 2024 proposed DIR spending is thoroughly reviewed to protect consumers from excessive or misdirected spending which does not resolve the repeated service reliability shortfalls that AES Ohio has subjected them to over the last several years. The PUCO’s review should confirm that any proposed DIR charges to consumers are just, reasonable, do not exceed the PUCO set caps, and will result in meaningful and measurable improvements in electric service reliability. The PUCO’s review should also include an assessment of cost responsibility for the various projects, including economic development projects which represent more than half of the DIR expenditures the utility wants to charge its consumers. The review should also confirm that AES Ohio is providing a service to its consumers that is adequate and, in all respects, just and reasonable, as required by R.C. 4905.22.

 OCC is moving to intervene[[5]](#footnote-6) on behalf of AES Ohio’s approximately 479,000 residential electric consumers. The reasons the 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/ John Finnigan*

John Finnigan (0018689)

Counsel of Record

Thomas Brodbeck (0093920)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers' Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone: [Finnigan] (614) 466-9585

Telephone [Brodbeck] (614) 466-9565

john.finnigan@occ.ohio.gov

Thomas.broadbeck@occ.ohio.gov

(willing to accept service by e-mail)

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## MEMORANDUM IN SUPPORT

Ohio law (R.C. 4905.22) guarantees consumers adequate utility service at just and reasonable rates. In this matter, the PUCO will review AES Ohio’s proposed 2024 DIR spending. AES Ohio claims the DIR is “part of AES Ohio's strategic focus on reliability and will address recovery related to specific distribution assets through charges to consumers.[[6]](#footnote-7) All of this so-called reliability related spending is charged to consumers through the DIR.

 It is imperative that this proposed spending be thoroughly reviewed to protect consumers from excessive or misdirected spending and to ensure progress towards the resolution of AES Ohio’s repeated service reliability shortfalls. OCC seeks consumer protection for AES Ohio’s approximately 479,000 residential electric consumers by intervening in this proceeding. The PUCO’s review should also include an assessment of cost responsibility for the various projects, including economic development projects which represent more than half of the DIR expenditures the utility wants to charge its 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 AES Ohio’s residential consumers may be “adversely affected” by this case where AES Ohio’s proposed spending under the DIR is being reviewed, potentially dramatically increased, and will be charged directly to consumers. Thus, this element of the 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 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; and

(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 AES Ohio’s residential utility consumers where AES Ohio’s proposed spending under the DIR is being reviewed, potentially dramatically increased, and will be charged directly to consumers. This interest includes confirming through the review that consumers are not being overcharged under the DIR, and the proposed charges benefit the consumers who must fund them – including through improved service reliability. Additionally, OCC has an interest in assuring that the utility is properly assigning cost responsibility for the charges under the DIR, which include $73 million for distribution and transformer investment to support economic development or accommodate new growth customers in the territory.[[7]](#footnote-8) 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. OCC was one of the few, if not the only, parties who opposed the ESP settlement that allowed for, among other things, increased DIR spending.

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. This is especially important here, as AES Ohio has failed to meet its service reliability obligations to consumers for 4 of the last five years[[8]](#footnote-9), highlighting the critical need for consumer advocacy in this matter.

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.

OCC is promptly seeking leave to intervene. The case has not progressed beyond the filing of AES Ohio’s work plan. The PUCO has not yet set a procedural schedule for review of the work plan. No hearing has been scheduled such that granting intervention would delay that. The PUCO has not issued any dispositive rulings.

OCC will simply be exercising its discovery that it is entitled to under law and PUCO rules. OCC will attempt to avoid duplicative discovery in this proceeding. OCC will also use its best efforts to comply with the procedural schedule that the PUCO adopts for this proceeding.

Given the vast amount of money that DP&L seeks from its consumers, the PUCO should not consider the normal discovery that parties are entitled to under R.C. 4903.082 as contributing to “undue” delay. Rather the expectation is and should be that when vast amounts of money are sought from utility consumers, the utility must expect some delay while parties explore the soundness of the utility’s case.

 In addition, 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 has been permitted to intervene in other cases regarding AES Ohio’s DIR.[[9]](#footnote-10)

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 evaluating whether AES Ohio’s distribution investment spending is just and reasonable, accurately accounted for, properly allocated, prudent, in compliance with governing requirements. OCC will also be evaluating whether the work plan will resolve AES’s continued inability to meet service reliability obligations to 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 O.A.C. 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 Ohio’s proposed spending under the DIR is being reviewed, potentially dramatically increased, and will be collected directly from consumers.

In addition, OCC meets the criteria of O.A.C. 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) which OCC has addressed above and satisfied.

O.A.C. 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.[[10]](#footnote-11)

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/ John Finnigan*

John Finnigan (0018689)

Counsel of Record

Thomas Brodbeck (0093920)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers' Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone: [Finnigan] (614) 466-9585

Telephone [Brodbeck] (614) 466-9565

john.finnigan@occ.ohio.gov

Thomas.broadbeck@occ.ohio.gov

(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 18th day of January 2024.

 */s/ John Finnigan*

 John Finnigan

 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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| --- | --- |
| Attorney Examiners:Gregory.price@puco.ohio.govPatricia.Schabo@puco.ohio.gov | Christopher.Hollon@aes.com |

1. *In the Matter of the Commission’s Review of the Distribution Investment Rider Work Plan for 2024 of the Dayton Power and Light Company d/b/a AES Ohio*, Case No. 23-1176-EL-RDR, Notice of AES Ohio’s Annual Work Plan for its Distribution Investment Rider (December 29, 2023) (“Notice”) at p.3 of attachment titled “AES Ohio 2024 DIR Work Plan” (“Work Plan”). [↑](#footnote-ref-2)
2. *In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Approval of Its Electric Security Plan*, Case No. 22-900-EL-SSO, et al. Order and Opinion at 26 (August 9, 2023). [↑](#footnote-ref-3)
3. *In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Approval of Its Electric Security Plan*, Case No. 22-900-EL-SSO, et al. Direct Testimony of Robert J. Adams (September 27, 2022) at p.3:2-12. [↑](#footnote-ref-4)
4. AES Work Plan. [↑](#footnote-ref-5)
5. *See* R.C. Chapter 4911, R.C. 4903.221 and O.A.C. 4901-1-11. [↑](#footnote-ref-6)
6. *In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Approval of Its Electric Security Plan*, Case No. 22-900-EL-SSO, et al. Direct Testimony of Robert J. Adams (September 27, 2022) at p.3:2-12. [↑](#footnote-ref-7)
7. AES Work Plan. [↑](#footnote-ref-8)
8. *See In the matter of the Annual Report of Electric Distribution System Reliability Pursuant to Rule 4901:1- 10-10(C)*, Case No. 22-995-EL-ESS, Annual Reliability Report for 2021 (March 31, 2022); *See* *In the Matter of the Annual Report of Electric Distribution System Reliability Pursuant to Rule 4901:1-10-10(C)*, Case No. 23-995-EL-ESS, Electric Service and Safety Standards Annual Report of the Dayton Power and Light Company d/b/a AES Ohio (March 31, 2023). [↑](#footnote-ref-9)
9. *See In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Approval of Its Electric Security Plan*, Case No. 22-900-EL-SSO, et al.; *In the Matter of the 2018 Review of the Distribution Investment Rider Contained in the Tariff of Dayton Power and Light Company*, Case No. 19-439-EL-RDR; *In the Matter of the Application of the Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*,Case No. 16-395-EL-SSO; and *In the Matter of the Application of the Dayton Power and Light Company for an Increase in its Electric Distribution Rates*, Case No. 15-1830-EL-AIR. [↑](#footnote-ref-10)
10. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. [↑](#footnote-ref-11)