**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 its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2018 through 2020. | )))) | Case No. 17-1398-EL-PORCase No. 17-1399-EL-WVR |

**MOTION TO INTERVENE**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

In this case, the Dayton Power and Light Company ("DP&L" or the "Utility") seeks authority to implement energy efficiency and peak demand reduction programs that could cost residential consumers $31.3 million or more[[1]](#footnote-2) in program costs and a potentially unlimited amount[[2]](#footnote-3) of utility profits (commonly called "shared savings" in Ohio) over three years.

The Office of the Ohio Consumers’ Counsel ("OCC") files this motion on behalf of DP&L's 450,000 residential electric customers. The Public Utilities Commission of Ohio ("PUCO") should grant OCC's motion to intervene for the reasons set forth in the attached memorandum in support.

Respectfully submitted,

BRUCE WESTON (0016973)

OHIO CONSUMERS' COUNSEL

*/s/ Christopher M. Healey*

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**MEMORANDUM IN SUPPORT**

In this proceeding, DP&L seeks authority to implement energy efficiency and peak demand reduction programs for 2018-2020. Customers pay for these programs. Customers also pay "shared savings" to the Utility as a result of these programs. "Shared savings" are a form of Utility profits.

In this case, DP&L seeks to charge residential consumers (a) up to $31.3 over three years for residential energy efficiency and peak demand reduction programs,[[3]](#footnote-4) (b) an unknown portion of an additional $9.4 million for "cross-sector" programs,[[4]](#footnote-5) (c) an unknown portion of an additional $3.2 million for evaluation, measurement, and verification costs,[[5]](#footnote-6) and (d) a potentially unlimited amount for utility profits called "shared savings."[[6]](#footnote-7) Customers could also be charged millions of dollars for so-called "lost revenues" as a result of DP&L's new portfolio plan.[[7]](#footnote-8) And unlike the settlement that DP&L signed in its last portfolio case,[[8]](#footnote-9) the Application in this new case does not provide for an annual cap or limit on the total amount that consumers can be charged for energy efficiency.

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's residential customers may be "adversely affected" by this case, especially if the customers were unrepresented in a proceeding where the Utility seeks to charge residential consumers over $31 million for energy efficiency and peak demand reduction programs plus utility profits. 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 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 DP&L's residential customers in this case where DP&L is seeking to charge customers millions of dollars for energy efficiency programs and utility profits. OCC's 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 for electric service (including charges for energy efficiency) should be no more than what is reasonable and lawful under Ohio law. OCC's position is therefore 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" according to Ohio Adm. Code 4901-1-11(A)(2). As the advocate for residential utility customers, OCC has a real and substantial interest in this case involving the charges that residential customers pay for energy efficiency programs.

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), which OCC already has addressed and which OCC satisfies.

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 it uniquely has been designated as the state representative of the interests of Ohio's residential utility customers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, in deciding two consolidated appeals regarding OCC's right to intervene, the Supreme Court of Ohio has confirmed that "intervention ought to be liberally allowed."[[9]](#footnote-10) In those cases, OCC explained in its motion to intervene that the proceeding could negatively impact residential consumers, and OCC established that the interests of consumers would not be represented by existing parties.[[10]](#footnote-11) Because there was no evidence disputing OCC's position, nor any evidence that OCC's intervention would unduly delay the proceedings, the Supreme Court found that the PUCO could not deny OCC the right to intervene.[[11]](#footnote-12)

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,

BRUCE WESTON (0016973)

OHIO CONSUMERS' COUNSEL

*/s/ Christopher M. Healey*

Christopher M. Healey (0086027)

Counsel of Record

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(Will accept service via email)

**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 23rd day of June 2017.

 */s/ Christopher M. Healey*

 Christopher M. Healey

 Assistant Consumers' Counsel

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1. See Application of The Dayton Power and Light Company for Approval of its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2018 through 2020 (June 15, 2017), Case No. 17-1398-EL-POR (the "Application") at 2018-2020 Portfolio Plan (the "Portfolio Plan"), Table 2. [↑](#footnote-ref-2)
2. See Application at 5-7 (describing DP&L's proposed shared savings mechanism and not providing for any limits on the amount that DP&L can charge its customers for utility profits). [↑](#footnote-ref-3)
3. Portfolio Plan at Table 2. [↑](#footnote-ref-4)
4. Id. [↑](#footnote-ref-5)
5. Id. [↑](#footnote-ref-6)
6. Application at 5. [↑](#footnote-ref-7)
7. See Direct Testimony of Colleen Shutrump (Jan. 30, 2017), Case No. 16-649-EL-POR (explaining that residential customers have paid millions of dollars per year to DP&L for "lost revenues"). [↑](#footnote-ref-8)
8. Stipulation & Recommendation § I.A (Dec. 13, 2016), *In re Application of the Dayton Power and Light Company for Approval of its Energy Efficiency Portfolio Plan,* Case No. 16-649-EL-POR (providing that the total charges to customers for 2017 could not exceed 4% of DP&L's 2015 revenues). [↑](#footnote-ref-9)
9. See Ohio Consumers' Counsel v. Pub. Util. Comm., 111 Ohio St. 3d 384, 2006-Ohio-5853, ¶ 20 (2006). [↑](#footnote-ref-10)
10. Id. ¶¶ 18-20. [↑](#footnote-ref-11)
11. Id. ¶¶ 13-20. [↑](#footnote-ref-12)