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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)
Dayton Power and Light Company for)
Authority to Modify Its Accounting) Case No. 08-1332-EL-AAM
Procedure for Certain Storm-Related)
Service Restoration Costs.)

**MOTION TO INTERVENE AND COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where the Applicant¹ is seeking approval for accounting authority to defer, with carrying costs, an undisclosed amount of Operation and Maintenance ("O&M") expenses that are claimed to be associated with restoring electric service to customers as a result of the windstorms of September 2008. The request of Dayton Power and Light Company ("DP&L," "Applicant" or "Company"), if granted, will result in rate increases for Ohio customers.

OCC is filing on behalf of all 456,000 residential utility consumers of DP&L.² OCC's comments include that the Application should not be granted as filed nor granted without an open and transparent proceeding that provides due process for parties and a complete record for decision-making pursuant to R.C. 4903.09. The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion to

¹ The Applicant is The Dayton Power and Light Company.

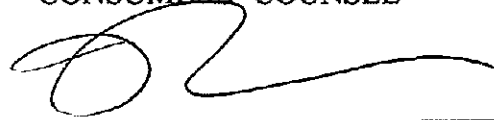
² See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

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Intervene and approve OCC's recommendations are further set forth in the attached
Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On December 26, 2008, The Dayton Power and Light Company ("Applicant," "DP&L" or "Company") filed its Application for approval to defer certain Operation and Maintenance ("O&M") expenses it claims are associated with the windstorms of September 14, 2008.³ Approval of the Company's Application will permit the Company to increase rates paid by the Company's 456,000 plus residential utility customers by an undisclosed amount. The Office of Ohio Consumers' Counsel ("OCC") is the state agency that represents Ohio's residential utility customers. The Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion to Intervene in these proceedings so that OCC can fully participate in the proceedings and protect the interests of the Company's residential utility customers.

³ *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify Its Accounting Procedure for Certain Storm-Related Service Restoration Costs*, Case No. 08-1332-EL-AAM, Application at ¶2 (December 26, 2008).

II. INTERVENTION

This Application involves the review of the reasonableness and lawfulness of issues related to its proposed accounting deferrals, the determination of the Company's actual cost of debt, and possible future recovery of authorized deferrals for storm related expenses. OCC has authority under law to represent the interests of all 456,000 residential customers of the Company, pursuant to R.C. Chapter 4911.

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 consumers may be "adversely affected" by this case, especially if the consumers were unrepresented in a proceeding in which the Commission considers the deferral of significant O&M expenses, determines the Company's actual cost of debt, and authorizes the deferral of extraordinary storm damage repair, which, if authorized, will affect the rates paid by these residential customers. Thus, this element of the intervention standard in R.C. is satisfied.

R.C. 4903.221(B) requires the Commission 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 in representing the residential consumers of the Applicant in order to review each requested deferral and present the affects, if any, of these requests on rates paid by the Company's 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 consumers will include advancing the position that the Company's request in this case – specifically recovery for storm damage which may include an authorized interest rate – should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. OCC's position is therefore directly related to the merits of the Application 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 of the Application. 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 residential utility consumer advocate, OCC has a very real

and substantial interest in this case where the rates of the Company's residential utility customers could be affected through the allowance or disallowance of a deferral and wherein the Company's authorized interest rate for deferrals will be determined by the Commission through an analysis of the Company's actual cost of long-term debt.

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 OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission 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 consumers. That 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 ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC's intervention and that OCC should have been granted intervention.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 Commission should grant OCC's Motion to Intervene.

⁴ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

III. COMMENTS

The Company alleges that the “[P]resent application is consistent with the Commission-approved application in Case No. 05-1090-EL-ATA.” (“05-1090”)⁵ In 05-1090, DP&L applied for recovery of storm-related expenses. In its Order, the PUCO stated, “The Commission finds the application seeks recovery of incremental costs, which are over and above the costs normally incurred to repair storm damage , based upon a three-year average from 2001- 2003.”⁶

Admittedly, similarities do exist between the present Application and 05-1090; however, numerous distinguishing factors exist between the two. First, DP&L has not provided detailed information in this Application of its storm damage expense. In 05-1090 the Company initially provided detailed information relating to the O&M and capital costs incurred as a result of certain storms.⁷ In the current Application, the Company has merely provided a generalized and non-specific account of the number of individuals deployed to restore service, the number of distribution poles, cross arms, cutouts/arrestors, insulators, and transformers damaged, and the approximate miles of wire and cable damaged.⁸ The Applicant failed to provide a detailed accounting and records supporting the expenses it seeks to defer for potential future recovery.

⁵ Application at ¶4.

⁶ *In the Matter of the Application of The Dayton Power and Light Company for Approval of Tariff Changes Associated with Request to Implement a Storm Cost Recovery Rider*, Case No. 05-1090-EL-ATA, Order at 14 (July 12, 2006).

⁷ *In the Matter of the Application of The Dayton Power and Light Company for Approval of Tariff Changes Associated with Request to Implement a Storm Cost Recovery Rider*, Case No. 05-1090-EL-ATA, Application at Schedule 1, Lines 1 – 4 (September 2, 2005).

⁸ Application at ¶6.

Second, in 05-1090 in that the Commission, prior to any approval, required the Company in 05-1090 to provide its "Major Storm Cost" for 2001 through 2005.⁹ In this Application, the Company has only provided information specifically related to the windstorms of September 14, 2008. No historical cost information was provided, as required in 05-1090.¹⁰ Without this historical information, the Commission and the Company's customers are deprived of the data necessary to determine a baseline with which to determine the incremental costs and expenses which the Company seeks to defer.

Third, in 05-1090 the Commission only considered the Company's Application for the "recovery of incremental costs, which are over and above the costs normally incurred to repair storm damage..."¹¹ In this Application, the Company seeks "to defer as regulatory assets the portion of its Operation and Maintenance (O&M) expenses associated with...wind storm beginning on September 14, 2008."¹² It is clear that the Company is not seeking authorization to defer only those incremental costs, but deferral of all O&M expenses associated with the windstorm. This request to recover all vs. incremental costs above the Company's three-year average storm expense is inconsistent with 05-1090.¹³

⁹ DP&L Application for Approval of Tariff Changes, Supplement to Application at Schedule 2.1, Lines 1, 3, 5, and 7 (February 22, 2006).

¹⁰ DP&L Application for Approval of Tariff Changes, Finding and Order at ¶5 and ¶14 (July 12, 2006).

¹¹ DP&L Application for Approval of Tariff Changes, Finding and Order at ¶14 (July 12, 2006).

¹² Application at ¶2.

¹³ DP&L Application for Approval of Tariff Changes, Finding and Order at ¶5 and ¶14 (July 12, 2006).

This Application may also be distinguished from the application submitted in the previous case by noting the circumstances of its submission. The Company's currently effective rates run through December 31, 2010. At present, the Company is in the midst of an Electric Security Plan ("ESP") proceeding.¹⁴ The ESP proceeding will establish possible adjustments to the Company's current rates, which could include adjustments related to this filing. Given the timing of the windstorm (over three months ago)¹⁵ and that the Company's ESP case would be decided shortly,¹⁶ it seems reasonable for the Commission to withhold disposition on this Application until the ESP decision is rendered.

OCC and other public advocates recently requested that the Commission conduct an investigation into the practices of the Company in maintaining its facilities and equipment.¹⁷ The parties requesting the investigation described some of the specific problems the Company has had and may still be experiencing with vegetation management and other practices, which may have contributed to the duration and breadth of outages experienced by the Company's customers.¹⁸ Such Company practices might ultimately be determined by the Commission to have caused the costs and expenses the Company seeks authorization to defer for future recovery. At the very least, the

¹⁴ *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan*, Case No. 08-1094-EL-SSO (October 10, 2008).

¹⁵ *Application* at ¶6.

¹⁶ R.C. 4928.143(C)(1).

¹⁷ *In the Matter of a Commission Investigation into the Reliability of the Electric Distribution Service Provided by Ohio's Investor Owned Electric Companies*, Case No. 08-1299-EL-UNC, Application (December 15, 2008).

¹⁸ *Commission Investigation* at 18-22.

documentation provided in the investigation request should be part of the record considered in this Application and OCC should be granted intervention in order to present it.

Finally, the Company is seeking authorization to apply a carrying charge, “based on its actual cost of debt of 5.86% as filed” in the Company’s ESP proceeding, on any “unrecovered deferral balance and defer such carrying charge for future recovery.”¹⁹ Because the Commission has yet to rule on the disposition of the Company’s ESP proceeding, it seems premature and unreasonable to authorize a carrying charge rate based on the Company’s ESP-proposed actual cost of debt. As the Commission stated, “the Commission required the Companies, on a going forward basis, to utilize the interest rate that reflects the Companies’ actual cost of debt when calculating carrying costs.”²⁰ Further, the Commission stated, “the interest rate previously authorized in Case No. 08-1202-EL-UNC should be applicable for calculating carrying charges on all deferred amounts”.²¹ The Commission unambiguously established two requirements which shall be met before it will approve an interest rate that will be used in calculating carrying charges for deferrals: (1) the Company’s “actual cost of debt” is required to be used when calculating carrying charges, and (2) that the “interest rate” used must be “authorized”.²²

¹⁹ *Application* at ¶2.

²⁰ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Modify Their Accounting Procedure for Certain Storm-Related Services Restoration Costs*, Case No. 08-1202-EL-UNC, Finding and Order at ¶6 (December 19, 2008).

²¹ CSP and OPCO Application for Authority to Modify Accounting Procedure, Finding and Order at ¶7 (December 19, 2008).

²² CSP and OPCO Application for Authority to Modify Accounting Procedure, Finding and Order at ¶6 and ¶7 (December 19, 2008).

The rate being proposed by the Company in this Application is not an interest rate “authorized” by the Commission as an established “actual cost of debt.” such rate should not be allowed until the Commission has conducted a thorough review of the Company’s actual cost of debt.

IV. CONCLUSION

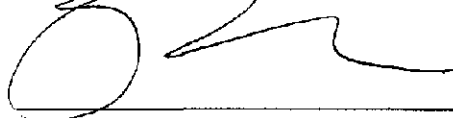
OCC should be granted intervention in this case. The expenses the Company seeks to defer may adversely affect the residential customers who will be asked to pay for the expenses, along with associated carrying charges.

The PUCO should not approve the Application unless the Company can meet its burden of proof, in an open and transparent proceeding with due process for all parties, that the Application: (1) is allowed under the terms of Case No. 99-1687-EL-ETP, Case No. 02-2779-EL-ATA, Case No. 05-276-EL-AIR, and any other applicable cases, stipulations, orders, or agreements, (2) the alleged expenses were lawfully, reasonably, and prudently incurred, and (3) the interest rate which will be used to calculate the Company’s carrying charge is an “authorized” rate approved by the Commission representing the Company’s “actual cost of debt”. The process for the Applications should include ample discovery under R.C. 4903.082 with the opportunity for developing a record for the PUCO to consider under R.C. 4903.09.

Therefore, the PUCO should grant intervention for OCC and allow for a transparent and public record to be fully developed regarding the facts and circumstances of this case.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

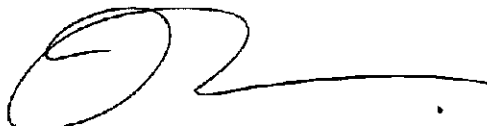


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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene and Comments* was served on the persons stated below via electronic service and regular U.S. Mail Service, postage prepaid, this 13th day of January, 2009.



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