

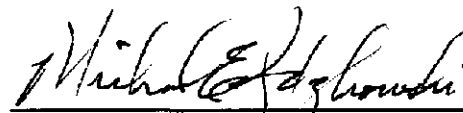


demand reductions associated with Airgas' demand response capabilities to the peak demand reduction requirements DP&L must comply with under R.C. 4928.66(A)(1)(b).

The reasons for granting OCC's motions and request are set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Michael E. Idzkowski", is written over a horizontal line.

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Application of	)	
The Dayton Power and Light Company	)	
and Airgas, Inc. for Approval of a	)	Case No. 09-1700-EL-EEC
Reasonable Arrangement to Incorporate	)	
Customer Participation in PJM's Demand	)	
Response Programs into DP&L's Demand	)	
Reduction Programs.	)	

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

Based on DP&L's letter of September 1, 2009,<sup>1</sup> this case relates to the review of the reasonableness and lawfulness of the Applicants' request for approval of their special arrangement filed under Sections 4928.66(A)(2) and 4905.31 of the Ohio Revised Code ("R.C.") and Ohio Adm. Code 4901:1-39-08(A). Approval of the arrangement requested by the Applicants would permit Airgas, in exchange for a payment of \$46,500.00, to commit its demand-response capabilities for integration into DP&L's demand-reduction program. Approval would also allow DP&L to attribute the energy reductions associated with Airgas' demand-response capabilities to the peak-demand reduction requirements DP&L must comply with under R.C. 4928.66(A)(1)(b).

OCC has authority under law to represent the interests of the approximately 460,000 residential utility customers of DP&L pursuant to R.C. Chapter 4911. OCC's grounds for intervention in this proceeding are further set forth below.

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<sup>1</sup> OCC reserves rights to make any arguments subsequently and if needed regarding the opening of this case.

## **II. ARGUMENT**

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 are unrepresented in a proceeding where a special arrangement DP&L has with Airgas could result in a failure by DP&L to reduce actual peak demand. Such a failure to reduce DP&L’s peak demand ultimately could result in a significant economic impact on customers.

Reducing peak demand through actual peak reduction efforts allows electric utilities to avoid building new peak generation facilities or having to purchase peak power through a bilateral contract or from the wholesale market, thereby saving money for residential customers. On the other hand, an arrangement such as the one at issue in this case could result in no actual peak demand reduction. Under the arrangement, Airgas would pledge to potentially reduce demand, but can later circumvent the demand reductions under the agreement by paying certain financial penalties. Without actual reductions in peak electricity demand, the future need for new generation capacity or third-party electric purchases becomes more likely. Both new generation capacity and third-party electric purchases could impact DP&L’s customers through higher rates. Thus, the economic interests of DP&L’s customers may be adversely affected by the outcome of this case.

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.

OCC's interest in this proceeding is different than that of any other party, and is especially different from that of DP&L and Airgas, whose advocacy includes their own financial interests. The nature and extent of OCC's interest includes ensuring that DP&L's residential customers have the opportunity to review the facts -- all of the facts-- of this arrangement. With such a review and other due process, OCC will be given its opportunity to argue for changes, alterations, or modifications to the arrangement that will protect customers from bearing the potential future costs of generation or third-party electric purchases, should the actual peak demand savings<sup>2</sup> not materialize and should DP&L be forced to acquire additional generation resources, or to pay the costs of purchasing electricity from third parties.

Another OCC concern not shared by DP&L or Airgas is that DP&L's proposed agreement would result in all DP&L customers, including residential customers, paying for PJM's administration of their peak demand reduction programs. The costs to implement and deliver these programs, however, would later be paid for a second time by other DP&L customers<sup>3</sup> (as demonstrated by the \$46,500 cost of this contract), with no

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<sup>2</sup> In AEP ESP Case No. 08-917-EL-SSO, March 18, 2008 Opinion and Order at 46-47, the Commission was specific that only "actual" peak demand reductions will meet the peak demand reduction compliance requirement of SB 221. To the extent that PJM's interruptible peak demand reduction program at a minimum requires only a one hour "test curtailment," that program element may fail to satisfy the Commission's requirement of "actual" interruptions, and may not lead to actual curtailments.

<sup>3</sup> Application at p. 8 states, "PJM's costs to administer these programs are already being charged to DP&L."

additional interruption. This concern is amplified when one considers that DP&L has 160 customer accounts already enrolled to participate in such programs, meaning that customers are at risk of paying for many more arrangements similar to the one at issue in this case.<sup>4</sup> If this specific type of special arrangement were to be allowed, Ohio's residential customers should not have to pay for that portion of PJM's peak load reduction programs that an Ohio mercantile customer commits to an Ohio utility in return for opting out of the energy efficiency and peak demand reduction rider, or for a lump sum or other payment. Otherwise, residential customers would be paying for non-residential DSM programs, which is not allowed per existing DSM riders that charge the cost of DSM programs on a class-specific basis.<sup>5</sup>

OCC's advocacy for consumers will include advancing the position that DP&L's proposed agreement will not result in actual demand reduction or comply with the statutory demand reduction mandates. Thus, OCC's position is directly related to the merits of the proposed agreement in this case.

OCC will also advocate that R.C. 4928.02(D) clarifies that a goal of S.B. 221 in establishing the benchmarks under R.C. 4928.66 is to:

Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, and implementation of advanced metering infrastructure.

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<sup>4</sup> Application at 7.

<sup>5</sup> February 24, 2009 Stipulation and Recommendation in *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan, et al.*, Case No. 08-1094-EL-SSO, section 5 concerning the Energy Efficiency Rider (EER), states that "[c]ost allocation and lost revenue among customer classes will be based upon the cost of programs for the respective customer classes." This stipulation was approved in its entirety by the Commission in its June 24, 2009 Opinion and Order.

Actually reducing all customers' demand, through effective demand reduction efforts directed at industrial, commercial or residential demand, will benefit residential customers because reduced demand for electricity will reduce the price for all customers, including residential customers. The economic effect of demand reduction efforts is a central OCC interest in this case and further demonstrates that OCC's positions are directly related to the merits of the proposed agreement in this case.

OCC's intervention will not unduly prolong or delay the proceeding. 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.

Additionally, OCC's intervention will significantly contribute to fully developing and equitably resolving the factual issues. Allowing OCC to participate will better ensure that the intended demand reduction benefits accrue to all customers. OCC will develop and present lawful and reasonable recommendations for resolving the case.

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 real and substantial interest in this case where the outcome could have the effect of increasing rates paid by residential customers.

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 has already 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 because OCC has been uniquely designated as the statutory representative of the interests of Ohio’s residential utility consumers.<sup>6</sup> That interest is different from, and not represented by, any other entity in Ohio.

Three years ago, 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.<sup>7</sup>

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 DP&L’s residential consumers, the Commission should grant the OCC’s Motion to Intervene.

### **III. CONCLUSION**

For the reasons stated above, the Commission should grant OCC’s Motion to Intervene on behalf of the approximately 460,000 residential customers who have an interest in the outcome of this case. In addition, OCC requests a fair and reasonable amount of time to review the request of DP&L and Airgas before filing comments and potentially participating in a hearing on the matter.

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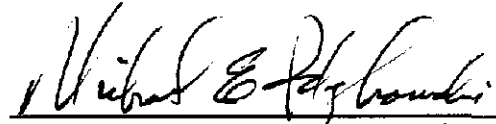
<sup>6</sup> R.C. Chapter 4911.

<sup>7</sup> *Ohio Consumers’ Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, , 2006-Ohio-5853, 856 N.E.2d 940 at ¶18-20.



Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

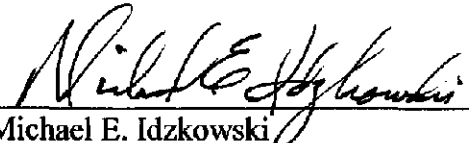
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Intervene has been served upon the below-named persons via regular U.S. Mail Service, postage prepaid, this 16th day of October, 2009.

  
Michael E. Idzkowski  
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