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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Dayton Power and Light Company for)
Certification as an Eligible Ohio) Case No. 09-891-EL-REN
Renewable Energy Resource Generating)
Facility)

In the Matter of the Application of)
Dayton Power and Light Company for) Case No. 09-892-EL-REN
Certification as an Eligible Ohio)
Renewable Energy Resource Generating)
Facility)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene¹ and files comments in these cases in which Dayton Power and Light Company ("Applicant" or "DP&L" or "Company") seeks a certification of the Killen Station ("Killen") as an eligible Ohio renewable energy resource generating facility under R.C. 4928.01(A)(35).² The granting of this certificate would allow Killen to register the power production of its facilities as a renewable energy resource and to produce and sell renewable energy credits ("RECs") under R.C. 4928.65. Electric distribution utilities or electric services companies that need RECs to meet their renewable energy benchmarks under R.C. 4928.64 can purchase these RECs from certified renewable energy resources. OCC is

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

² Case No. 09-891-EL-REN relates to cellulose pellet as a partial source of fuel and Case No. 09-892-EL-REN relates to biodiesel as a partial source of fuel.

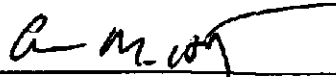
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filing on behalf of the residential utility consumers in Ohio. The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion to Intervene ("Motion") are further set forth in the attached Memorandum in Support.

Additionally, the Commission should not grant DP&L's applications for certification of the Killen Plant as a renewable energy source because Killen's in-service date was before that permitted under law. Moreover DP&L's applications are not complete because DP&L has not revealed what percentage of fuel used at Killen would be renewable and what percentage would be nonrenewable.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
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MEMORANDUM IN SUPPORT

I. INTRODUCTION

This case involves the review of the reasonableness and lawfulness of the Applicant's request for approval of its application filed under R.C.4928.01(A)(35) and R.C. 4928.65. OCC has authority under law to represent the interests of the Ohio residential utility customers pursuant to R.C. Chapter 4911. Additionally, OCC files comments addressing some missing information in the applications.

II. INTERVENTION

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 these cases, especially if the consumers were unrepresented in a proceeding that results in the certification of a power generating facility as an eligible renewable energy resource when it may not meet the requirements under R.C. 4928.01(A)(35) and R.C. 4928.65. Such a certification would

result in residential electric customers paying the extra costs of a renewable resource without receiving the benefits of renewable resources as contemplated under R.C. 4928.01(A)(35) and R.C. 4928.65.

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 representing the residential consumers of Ohio to ensure that if they pay a premium for a renewable resource, that renewable resource will provide the benefits contemplated under R.C. 4928.65 and R.C. 4928.01(A)(35). This interest is different than that of any other party, and especially different than that of the Applicant or utility whose advocacy includes their financial interests.

Second, OCC's advocacy for consumers will include advancing the position that residential customers should not have to pay a premium for renewable energy resources that do not provide the benefits contemplated under R.C. 4928.01(A)(35). In the long run renewable sources should provide a reduction in costs for customers, but if the renewable energy resources are not legitimate, then the long run benefit will not accrue. This position ensues from the requirement that utilities must meet specific benchmarks in

using renewable resources and the fact that renewable resources are limited in supply and the fact that renewable resources are limited in supply. The position results from the likelihood that utilities will have to pay a premium for power from those resources and will collect the premium from all customers, including residential customers for a long run benefit. In other words, residential customers should pay rates that are no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law.³ OCC's position is therefore directly related to the merits of these cases that are pending before the PUCO, the authority with regulatory control of the terms under which public utilities provide their services.

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, consistent with any matters that OCC determines to be issues for PUCO consideration and for 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 rates for service to residential customers are at issue.

³ R.C. 4905.22

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

III. COMMENTS

A. Certification Application Case No. 09-891-EL-REN

In DP&L’s first application, Case No. 09-891-EL-REN, for certification of the Killen Generating Station as an eligible Ohio renewable energy resource generating facility, DP&L states that it will be relying upon wood cellulose pellet⁵ under Section G.7a and also coal but it does not identify the percentage of each that will be used. DP&L should be required to identify the percentage of the wood cellulose pellet that will

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

⁵ The wood cellulose pellet is 92% wood and 89% cellulose. See application at G.7a.

be used at the facility because as the application states:

If co-firing an electric generating facility with a biomass energy resource, the proportion of fuel input attributable to the biomass energy resource shall dictate the proportion of electricity output from the facility that can be considered biomass energy.

Accordingly, the Commission should not approve this application for certification until DP&L reveals what proportion of the fuel in the plant will actually be renewable versus non-renewable.

Additionally, R.C. 4928.64(A)(1) requires that a renewable energy resource have a placed-in-service date of January 1, 1998 or after. The Killen plant does not qualify as a renewable energy source because DP&L states in its application that the Killen plant has a placed-in-service date of before January 1, 1998. DP&L does not indicate that modifications or retrofits have been made to the Killen plant that would render it eligible for consideration as a qualified renewable energy resource.⁶ For this reason the Commission should not approve this application.

B. Certification Application Case No. 09-892-EL-REN

In DP&L's second application, Case No. 09-892-EL-REN, for certification of the Killen Generating Station as an eligible Ohio renewable energy resource generating facility, DP&L states that it will be relying upon a mix of 20% biodiesel and 80% No. 2 diesel fuel oil with coal under G.7a but it does not identify the percentage of coal to diesel that will be used. DP&L should be required to identify the percentage of diesel to coal

⁶ See Item H. Certification Criteria 3: Placed in Service Date (Sec. 4928.64 (A)(1) O.R.C.)

that will be used at the facility because as the application states:

If co-firing an electric generating facility with a biomass energy resource, the proportion of fuel input attributable to the biomass energy resource shall dictate the proportion of electricity output from the facility that can be considered biomass energy.

Accordingly, the Commission should not approve this application for certification until DP&L reveals what proportion of the fuel in the plant will actually be renewable versus non-renewable.

Additionally, R.C. 4928.64(A)(1) requires that a renewable energy resource have a placed-in-service date of January 1, 1998 or after. DP&L does not indicate that modifications or retrofits have been made to the Killen plant that would render it eligible for consideration as a qualified renewable energy resource.⁷ The Killen plant does not qualify as a renewable energy source because DP&L states in its application that the Killen plant has a placed-in-service date of before January 1, 1998. For this reason the Commission should not approve this application.

IV. CONCLUSION

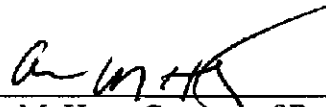
OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of residential consumers, the Commission should grant OCC's Motion to Intervene. Moreover, the Commission should not grant certification to DP&L for the Killen station as a renewable energy source because its in-service date is earlier than allowed by law.

⁷ See Item H. Certification Criteria 3: Placed in Service Date (Sec. 4928.64 (A)(1) O.R.C.)

Additionally, DP&L did not complete the applications by indicating what percentage of the fuel to be burned in the Killen station would be renewable and what percentage would not.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Intervene by the Office of the Ohio Consumers' Counsel*, was served on the persons stated below by regular U.S. Mail, postage prepaid, on this 21st day of October 2009.



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