

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Dayton Power & Light)	Case No. 09-1987-EL-EEC
Company for a Finding that its Peak Demand)	
Reduction Benchmarks Have Been Met or In)	
the Alternative, Application to Amend its)	
Demand Reduction Benchmarks.)	

**MOTION TO INTERVENE
BY THE
OHIO ENVIRONMENTAL COUNCIL**

The Ohio Environmental Council (“OEC”) hereby moves to intervene in this case in which the Dayton Power & Light Company (“DP&L” or “Company”) requests the Commission to find that it has met its peak demand reduction (“PDR”) benchmarks for 2009. The Company submits three reasons why it has met its load reduction requirements; and in the alternative, the DP&L requests the Commission to grant a waiver of its 2009 requirements pursuant to R.C. 4928.66(A)(2)(b).

As more fully discussed in the accompanying memorandum, the Ohio Environmental Council (“OEC”) has a real and substantial interest in this proceeding, and the disposition of this case may impede its ability to protect that interest. The interests of OEC, Ohio’s largest non-profit environmental advocacy organization, are not currently represented by any existing party, and its participation in this proceeding will contribute to a just and expeditious resolution of the issues involved. OEC is interested in assuring the proper implementation of the energy efficiency and PDR portions of S.B. 221 due to the impact these code sections have on air quality within the state. OEC’s participation will not unduly delay the proceeding

or unjustly prejudice any existing party. Accordingly, OEC hereby moves to intervene in this proceeding pursuant to R.C. 4903.221 and O.A.C. 4901-1-11.

WHEREFORE, OEC respectfully requests that the Commission grant its motion to intervene.

Respectfully Submitted,

/s/ Will Reisinger (Counsel of Record)

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MEMORANDUM IN SUPPORT

R.C. Section 4903.221 provides that any “person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding.” The OEC is a non-profit, charitable organization comprised of a network of over 100 affiliated group members whose mission is to secure a healthier environment for all Ohioans. Throughout its 40-year history, OEC has been a leading advocate for fresh air, clean water, and sustainable land and energy use. OEC was an active participant in the effort that led to the inclusion of demand reduction and energy efficiency requirements in S.B. 221. OEC has a real and substantial interest in assuring that DP&L’s application is sufficient for the Commission to determine that it has satisfied its PDR obligations or, in the alternative, for the Commission to grant a waiver of its 2009 PDR benchmarks. It is not clear from DP&L’s application that its programs satisfy R.C. 4928.66.

R.C. 4903.221(B) outlines four factors that the Commission shall consider when ruling on a motion to intervene in a proceeding. First, pursuant to R.C. 4903.221(B)(1), the Commission shall consider “The nature and extent of the prospective intervenor’s interest.” OEC is interested in ensuring that the energy efficiency and PDR benchmarks are met in a manner which comports with the letter and intent of S.B. 221. OEC, as an environmental

advocacy organization, has a special interest in the outcome of this case because the decision could impact the quality of programs by which the Company intends to meet the PDR benchmarks required under R.C. § 4928.66. Effective PDR programs reduce energy consumption and attendant air pollution.

Second, pursuant to R.C. 4903.221(B)(2), the Commission shall consider “The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.” This case involves the review of the reasonableness and lawfulness of DP&L’s compliance with the PDR benchmarks established by S.B. 221. OEC maintains that the DP&L may only be deemed in compliance with R.C. 4928.66(A)(1)(b) if it can prove that it, in 2009, it implemented “peak demand reduction programs designed to achieve a one percent reduction in peak demand in 2009 and an additional seventy-five hundredths of one per cent reduction each year through 2018.” Therefore, to demonstrate the adequacy of its programs, DP&L must show more than actual reductions in peak demand for 2009.

Third, pursuant to R.C. 4903.221(B)(3), the Commission shall consider “Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.” OEC has significant experience dealing with electric utilities questions before the Commission and will not seek to delay the proceeding. OEC’s intervention will not unduly prolong or delay these proceedings.

Fourth, pursuant to R.C. 4903.221(B)(4), the Commission shall consider “Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.” OEC has actively participated in the implementation of the efficiency, renewable energy, and PDR benchmarks established by S.B. 221 and has added

value to numerous other proceedings.¹ As an active participant in cases before the Commission, the OEC has developed expertise that will contribute to the full development of the legal questions involved in this proceeding.

OEC also satisfies the intervention requirements outlined in the Commission's rules. The criteria for intervention established by O.A.C. 4901-1-11(A) are identical to those provided by R.C. 4903.221, with the exception that the rules add a fifth factor that the Commission shall consider when ruling on a motion to intervene. Pursuant to O.A.C. 4901-1-11(A)(5), the Commission shall consider "The extent to which the [intervenor's] interest is represented by existing parties." OEC's interest is not fully represented by the existing parties. OEC is the leading advocate for Ohio's environment. No other party to this proceeding has the mission of securing healthy air for all Ohioans, and no other party has been a continuous participant in cases before the Commission for the sole purpose of furthering this mission.

Finally, it is the Commission's stated policy "to encourage the broadest possible participation in its proceedings."² The Commission should not apply its intervention criteria in a manner that would favor one environmental or consumer advocate to the exclusion of others.

OEC meets all the criteria established by R.C. 4903.221 and O.A.C. 4901-1-11(A)(5) and therefore should be granted intervenor status in this proceeding.

¹ See Case No. 99-1613-EL-ORD, and the OEC's May 5th 2000 application for rehearing, which include numerous well-sourced recommendations for the implementation of Ohio's environmental disclosure law from other jurisdictions; see Case No. 02-565-EL-ORD and the OEC's May 24th 2002 reply comments which encompassed efforts to create compromise in a Percentage Income Payment Plan Proceeding; and see Case No. 08-935-EL-SS0 and the OEC's submission of the direct testimony of Randy Gunn, on September 29th, 2008, which provided extensive and illuminating analysis on FirstEnergy's initially inadequate energy efficiency program portfolio filing.

² *Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2.

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/s/ Will Reisinger (Counsel of Record)

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by first class and electronic mail this 15th day of January, 2010.

/s/ Will Reisinger

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/15/2010 5:04:12 PM

in

Case No(s). 09-1987-EL-EEC

Summary: Motion Motion to Intervene with Memorandum in Support by the Ohio
Environmental Council electronically filed by Mr. Will Reisinger on behalf of Ohio
Environmental Council