

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Application of)
The Dayton Power and Light Company)
and Appleton Papers, Inc. for Approval of) Case No. 09-1701-EL-EEC
a Reasonable Arrangement to Incorporate)
Customer Participation in PJM's Demand)
Response Programs into DP&L's Demand)
Reduction Program)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where a reasonable arrangement will dilute the effect of statutory peak demand reduction benchmarks intended to benefit consumers and will result in a mercantile customer being compensated by two different entities for the same capabilities.¹ Dayton Power and Light Company ("DP&L" or "Company") and Appleton Papers, Inc. ("Appleton"), (collectively, "Applicants"), jointly request approval of a reasonable arrangement under Ohio Revised Code ("R.C.") Sections 4928.66(A)(2) and 4905.31, and under Ohio Administrative Code ("Ohio Adm. Code") Sections 4901:1-39-05 and 4901:1-39-08. OCC is filing on behalf of all the approximately 460,000 residential utility consumers of DP&L.

The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

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

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

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MEMORANDUM IN SUPPORT

This case involves the review of the reasonableness and lawfulness of Applicants' request for approval of a reasonable arrangement under R.C. 4928.66(A)(2) and 4905.31, and Ohio Adm. Code 4901:1-39-05 and 4901:1-39-08. This arrangement would allow Appleton, in exchange for payment,² to use the demand response capabilities resulting from participation in the PJM demand response program for the benefit of the DP&L demand reduction program. The arrangement, if approved, would also allow DP&L to count any peak demand reductions generated by Appleton's demand response capabilities towards DP&L's peak demand requirements in R.C. 4928.66(A)(1)(b). This arrangement would result in the Applicant being compensated twice for these capabilities.

Simultaneous participation in a reasonable arrangement of this kind and in a PJM demand-response program has been prohibited by the Commission in other cases.³ OCC has authority under law to represent the interests of all the approximately 460,000 residential utility customers of DP&L, pursuant to R.C. Chapter 4911.

² Payment would come in the form of an exemption from the Energy Efficiency Rider. *Id.*

³ See *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan*, Case No. 08-917-EL-SSO, et al, Entry on Rehearing at 41 (July 23, 2009).

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 where an agreement between DP&L and Appleton could result in the failure of DP&L to reduce actual peak demand, contrary to the purpose of R.C. 4928.66(A)(1)(b). Failure to reduce actual peak demand undermines the statutory benchmarks imposed by Ohio law and consumers could be significantly and negatively impacted. Thus, this element of the intervention standard in R.C. 4903.221 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 representing the residential consumers of DP&L and to ensure a sufficient opportunity to review all the facts of this proposed arrangement. This review is crucial in order for the OCC to protect customers from bearing any potential future costs of generation or third-party electric purchases that result from any unrealized actual peak reductions by DP&L. This interest is different than

that of any other party and especially different than that of the Applicants, whose advocacy includes their own financial interests.

Second, OCC's advocacy for consumers will include advancing the position that DP&L may not reduce actual peak demand under the proposed reasonable arrangement with Appleton because the agreement allows Appleton to, at its discretion, circumvent potential demand reductions by paying financial penalties.⁴ 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 residential utility consumer advocate, OCC has a very real and substantial interest in this case where the development of cost-effective alternatives to expensive future generation costs for customers is at stake.

⁴ *Id.* at PJM Demand Response Integration Agreement Page 2, Section 8 (entitled "Penalty").

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.⁵

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. 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.

⁵ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below via regular U.S. Mail Service, postage prepaid, this 3rd day of February 2010.

/s/ Christopher J. Allwein

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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Allwein, Christopher J. Mr.