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 a Reasonable Arrangement to Incorporate Customer Participation in PJM's Demand Response Programs into DP&L's Demand Reduction Program	)))))))	Case No. 09-1701-EL-EEC

REPLY TO APPLETON PAPERS, INC. MEMORANDUM CONTRA
MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

The Office of the Ohio Consumers' Counsel ("OCC") files this Reply to Appleton Papers, Inc.'s ("Appleton" or "Applicant") memorandum contra OCC's motion to intervene. OCC filed a motion to intervene on behalf of DP&L's approximately 460,000 residential consumers on February 3, 2010 and Appleton filed a Memorandum Contra on February 12, 2010. OCC is filing this Reply in accordance with Rule 4901-1-12(B)(2), Ohio Administrative Code ("Ohio Adm. Code"). OCC will focus on the issues that are important for Ohioans as the Commission and other participants in the regulatory process implement the energy policy in Senate Bill 221--and OCC will avoid rejoining the counter-productive *ad hominem* harangue in Appleton's filing.

I. INTRODUCTION

Appleton Papers, Inc., seeks approval of its application for a reasonable arrangement ("Application") with the Dayton Power and Light Company ("DP&L" or "Company") under Ohio Revised Code ("R.C.") Sections 4928.66(A)(2) and 4905.31, and under Ohio Adm.

Code Sections 4901:1-39-05 and 4901:1-39-08. Approval of this arrangement would allow the Applicant to receive, in exchange for commitment of its demand response capabilities, an exemption from DP&L's energy efficiency rider. Approval would also allow DP&L to attribute the energy reductions associated with Appleton's demand response capabilities to the peak demand reduction requirements DP&L must comply with under R.C. 4928.66(A)(1)(b).

Among other arguments presented in their Memorandum Contra, the Applicants claim that "OCC does not meet the criteria for intervention in this proceeding,"[1] that residential customers are not impacted in any way by the special arrangement proposed by DP&L and Appleton,[2] that OCC erroneously claims that Appleton will be compensated twice for their capabilities,[3] and intervention by OCC will unduly prolong or delay the case.[4]

II. ARGUMENT

A. OCC Meets The Test For Intervention Under R.C. 4903.221 Because Residential Customers May Be Adversely Affected Economically And Otherwise If The Special Arrangement By The Applicant Does Not Result In An Actual Demand Reduction.

The Applicant's contention that OCC failed to meet the test for intervention in this case demonstrates a selective and incomplete presentation of the law. Appleton contends that OCC's use of language such as "may be adversely impacted" and "could

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[1] *In the Matter of the Joint Application of the Dayton Power and Light Company and Appleton Papers, Inc. for Approval of a Reasonable Arrangement to Incorporate Customer Participation in PJM's Demand Response Programs into DP&L's Demand Reduction Program*, Memorandum Contra at 3 (February 12, 2010).

[2] Id. at 4.

[3] Id. at 5.

[4] Id. at 8.

result in a significant impact on residential customers" is insufficient to show "a real and substantial interest that is required by Rule 4901-1-11(A)(2), O.AC."[5] Here the Applicant's argument ignores the express, statutory test for intervention that the Ohio General Assembly set forth in R.C. 4903.221, which provides, in part, that any person "who may be adversely affected" by a PUCO proceeding is entitled to seek intervention in that proceeding.[6] This is a simple and fundamental application of the specific statutory language by OCC. As presented in OCC's Motion to Intervene, there are real and substantial interests that will adversely affect residential consumers and other customers if ill-crafted arrangements like the one proposed here are approved by the Commission.

OCC meets the test set forth in R.C. 4903.221 because the interests of Ohio's residential consumers may be adversely affected if the proposed arrangement between Appleton and DP&L fails to result in actual peak demand reduction. Such a failure to reduce DP&L's peak demand could result in a significant economic impact on customers, because reducing peak demand through actual peak reduction efforts allows electric utilities to avoid building expensive new peak generation facilities or having to purchase peak power through a bilateral contract or from the wholesale market. 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.

The Applicant points out that R.C. 4918.66(A)(1)(b) requires electric distribution utilities to implement peak demand reduction programs "designed to achieve" a specific

[5] Id. at 3-4.

[6] R.C. 4903.221.

amount of reduction.[7] However, it is unclear whether this arrangement is an effort designed to actually achieve the intended statutory requirements, which provide the benefits of avoided generation as described above, or whether the proposal simply allows DP&L to conveniently provide the appearance of compliance.[8] The real and substantial interests of customers in all classes, including residential customers, are at stake in these cases. Therefore, OCC's intervention in this case is proper.

Further, and as stated in OCC's Motion to Intervene, the Commission has already prohibited participation by customers in both a PJM demand response program and in a special arrangement resulting in discounted rates.[9] In that case, the utility wanted customers to withdraw from PJM demand response programs in order to have the customers commit their demand response capabilities to the utility. The Commission refused to preclude customers from participation in a PJM demand response program, but at the same time prohibited customers who had special arrangements with a utility, like the arrangement proposed here, from concurrently participating in PJM peak demand reduction programs. The reason for this prohibition was "In further consideration of the need to balance the potential benefits to PJM DRP participants and the costs to AEP-Ohio ratepayers…."[10]

[7] R.C. 4928.66(A)(2)(b).

[8] Furthermore, Appleton could have entered into a reasonable arrangement with DP&L and committed their peak load reductions to DP&L directly and not have participated in PJM's program. The latter arrangement would have allowed DP&L to 1) either reduce their capacity commitments to PJM or 2) contract directly with PJM the Appleton committed load in the RPM incremental auctions and reduce DP&L's locational reliability charges to PJM, either action benefiting all its customers (and at the same time supporting the peak demand reduction compliance benchmark in Ohio).

[9] *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).

[10] Id. at 41.

Here, the Applicant, in a weak attempt to diminish a ruling clearly adverse to its case, turns this Commission ruling upside down by stating that in this instance, while it *is* a participant in a PJM program, it is not *currently* in a reasonable arrangement with the utility. The flawed conclusion then proffered by Appleton is that because the situation is reversed, "this particular arrangement has not yet been considered by the Commission."[11] However, the result (simultaneous participation in PJM programs and a customer enjoying a special arrangement with the utility) would be the same. Thus, in consideration of customer costs, this dual participation has been prohibited by the Commission.

B. The Applicant's Attempt To Be Compensated Twice For The Same Demand Response Capabilities Should Be Rejected By The Commission, In Order To Prevent Residential Customers From Being Further Adversely Affected Economically By Paying For A Portion Of PJM's Peak Load Reduction Programs That Is Later Paid For By Other DP&L Customers.

Appleton states that OCC's assertion that it will be compensated twice for its capabilities is "wrong."[12] The Applicant then presents, in its Memorandum Contra, exactly how it will be compensated twice for the same capabilities. Further, part of that compensation is collected from residential customers.

First, the Applicant erroneously and disingenuously states that the "allegation that Appleton is being compensated twice for its demand response capabilities is… false and misleading."[13] Appleton then states that the Application "only seeks approval of the rider

[11] Memorandum Contra at 6 (February 12, 2010).

[12] *In the Matter of the Joint Application of the Dayton Power and Light Company and Appleton Papers, Inc. for Approval of a Reasonable Arrangement to Incorporate Customer Participation in PJM's Demand Response Programs into DP&L's Demand Reduction Program*, Memorandum Contra at 5 (February 12, 2010).

[13] Id. at 6.

exemption in exchange for Appleton's commitment of its capabilities to DP&L."[14] This rider exemption is certainly compensation, as the rider exemption allows the Applicant to avoid paying a share of costs that would only increase as the Company establishes its energy efficiency and demand response programs.

Finally, the Applicant states that "the *only cash payment* Appleton actually receives for its demand reduction capabilities comes from PJM (funded by all participants in PJM's multi-state area and *not just DP&L's customers*)."[15] Thus, in this final statement, Appleton reveals that the Company, despite its vehement and fallacious statement to the contrary, is being compensated twice for the same capabilities--first, through the rider exemption, and again through a "cash payment" from PJM. Further, residential customers in DP&L's territory are indeed paying a portion of this "cash payment" the Applicant receives from PJM. Thus, Appleton's own statements in the Memorandum Contra reveal the proposed arrangement sets up dual compensation for the same capabilities, part of which is collected from DP&L's residential customers. OCC objects to this arrangement as presented, and does so through its proper intervention in the case.

C. OCC's Intervention Will Not Unduly Prolong Or Delay The Proceeding.

The Applicant presents the antagonistic claim, with the kind of wording that OCC will not visit upon this Honorable Commission, that OCC "has no real and substantial interest" and that OCC's "mere participation" will cause "an unnecessary delay."[16] In

[14] Id. at 7.

[15] (Emphasis added) Memorandum Contra at 7.

[16] Id. at 8.

addition, Appleton warns the Commission that the effect of OCC's participation will be to "dissuade mercantile customers from seeking ways to contribute their customer-sited capabilities to Ohio's efforts to reduce the energy intensity of its economy"[17]

As demonstrated above and in its Motion to Intervene, residential customers have a real and substantial interest in this case, principally because the improper treatment of the demand reduction issue could significantly impact residential customers through higher rates. Thus, OCC's participation is crucial to this proceeding and Appleton's outrageous claim is both uncalled for and unfounded. Rather, 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.

The Commission has repeatedly stated that it will not grant an intervention to a party concerned with precedent rather than the outcome of the case.[18] Nor should the Commission deny an intervention on the Appleton's claim that such intervention would establish some sort of negative precedent that would depress customer participation in utility programs. Most important, these wholly unsubstantiated speculations are irrelevant to the test for intervention set out in R.C. 4903.221(B) and counter-productive to implementing Senate Bill 221 in the interest of all Ohioans.

[17] Id. at 8.

[18] *In re Complaint of Dominion Retail v. the FirstEnergy EDUs*, Case No. 00-2526-EL-CSS, Entry at 2 (April 19, 2001).

D. OCC's Intervention Is Necessary To Provide For The Full Development Of The Issues In This Case.

OCC—on behalf of residential consumers—has an interest in seeing effective demand reduction programs implemented through a proceeding taking no longer than necessary and appropriate. Given the opportunity to intervene, OCC intends to contribute the benefit of its experience in this subject area without unduly prolonging or delaying the proceeding, in accordance with R.C. 4903.221(B)(3). OCC will 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.

OCC will further advocate that actually reducing all customers' demand, through effective demand reduction efforts directed at industrial, commercial or residential demand, will benefit residential customers through the reduced demand for electricity, which 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 demonstrates that OCC's positions are directly related to the merits of the proposed agreement between DP&L and Appleton.

The Company fails to recognize that OCC will have a different role in this case than the Applicants, the Commission, and its Staff. For example, OCC's role will include presenting arguments and information on behalf of residential consumers regarding the proper methodology to be used and relied upon to determine demand reduction under S.B. 221. OCC may provide suggestions and offer

alternatives to the methodologies proposed by the Commission, the Staff or the Applicants. These special arrangement cases are new for the Commission and all interested parties. This case provides much opportunity for the Applicants, the Commission, the Staff and OCC to learn about existing and potential demand reduction programs and the challenges and benefits of various approaches to demand reduction. Allowing OCC to participate will better ensure that the intended demand reduction benefits accrue to all customers. Thus, OCC's intervention will significantly contribute to fully developing and equitably resolving the factual and legal issues, and will not unduly delay this proceeding.

III. CONCLUSION

OCC has demonstrated that it has the authority, jurisdiction, and interest under Ohio law and PUCO rule to warrant its intervention in this proceeding on behalf of the residential customers of DP&L. Moreover, the Supreme Court of Ohio has upheld OCC's legal right to intervene in PUCO cases, on behalf of consumers.[19] Those residential consumers should be represented and protected, and OCC is uniquely qualified and statutorily designated to do so. OCC looks forward to actively assisting in the resolution of the issues in this case. Accordingly, the Commission should grant OCC's Motion to Intervene.

[19] *Ohio Consumers' Counsel v. Public Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940 at paragraphs 18-20.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Reply* was served on the persons stated below via electronic transmission (hard copy available upon request) this 19th day of February, 2010.

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Summary: Reply Reply to Appleton Papers, Inc. Memorandum Contra 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.