



Respectfully Submitted,

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**Attorneys for the OEC**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of The Dayton Power and            )    Case No. 10-490-EL-ACP  
Light Company’s Ten Year Advanced            )  
Energy and Renewable Benchmark            )  
Compliance Plan.                                    )  
  )

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**MEMORANDUM IN SUPPORT**

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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 the Company’s plans will meet the required benchmarks for the next ten years, and that the plan includes all information necessary to make that determination. If the energy savings prove to be insufficient, there is a danger that DP&L will not meet the energy savings required under R.C. 4928.66. Thus, there can be no question that OEC has an interest in and may be adversely affected by the disposition of this case.

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 demand reduction 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 proposed plan sets forth how DP&L intends to meet the energy efficiency benchmarks required under R.C. § 4928.66.

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 ten year advanced energy and renewable energy benchmark compliance plan, filed pursuant to Ohio Admin. Code 4901:1-40-03(C). OEC intends to review and offer comment on the plan. Failure of any aspect of the Company’s compliance plan to produce the stated energy efficiency savings could result in a failure of the electric distribution utility to comply with the statutory energy efficiency benchmarks. This would create hardship on Ohio’s air quality and on its consumers and economy.

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 peak demand reduction benchmarks established by S.B. 221. 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(B) 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(B)(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" (*see, e.g., Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 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(B)(5) and therefore should be granted intervenor status in this proceeding.

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

Respectfully Submitted,

/s/ Will Reisinger  
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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/or electronic mail this 28<sup>th</sup> day of May, 2010.

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**5/28/2010 1:45:26 PM**

**in**

**Case No(s). 10-0490-EL-ACP**

Summary: Motion Motion to Intervene and Memorandum in Support on behalf of the OEC.  
electronically filed by Ms. Megan De Lisi on behalf of Ohio Environmental Council