

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
The Dayton Power and Light Company)	Case No. 10-826-EL-ATA
To Establish a Market-Based Generation)	
Tariff.)	

**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 on behalf of all the approximately 456,000 residential utility consumers of The Dayton Power and Light Company ("DP&L"). DP&L's Application to establish a market-based generation tariff has the potential to unfairly and unjustly subject customers (who were formerly served by a governmental aggregation program and who elected not to pay the Rate Stabilization Charge ("RSC")) to additional cost components over and above the fair market price.¹ The reasons the Public Utilities Commission of Ohio ("PUCO" or "Commission") should grant the OCC's intervention in the above-captioned case are further set forth in the attached Memorandum in Support.

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

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On June 30, 2010, The Dayton Power and Light Company filed an Application that initiated the above-captioned case. The Application requests the approval of a proposed market-based generation tariff pursuant to the February 24, 2009 Stipulation and Recommendation and the related Entry of June 24, 2009, in PUCO Case No. 08-1094-EL-SSO, et al. The proposed tariff would be applicable to customers who were served by a government aggregation program and elected not to pay the Rate Stabilization Charge (“RSC”). The Application proposes market-based generation charges that consist of an energy charge, capacity charge, transmission charges, a risk premium, a program administrative charge and additional riders--all to be provided under specific terms and conditions. This market-based rate and the proposed terms and conditions must be consistent with R.C. 4928.20(J) and the February 24, 2009 Stipulation in PUCO Case No. 08-1094-EL-SSO.

The OCC moves to intervene in the interest of all of DP&L’s residential utility customers, pursuant to its authority under R.C. Chapter 4911 and for the following reasons.

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 this case, especially if the consumers were unrepresented in a proceeding regarding the establishment of a market-based tariff with terms and conditions that could unfairly and unjustly subject customers (who were formerly served by a governmental aggregation program and who elected not to pay the RSC) to additional cost components over and above the fair market price. 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 in this case where an approach and methodology to determine prices are being determined. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC’s advocacy for consumers will include advancing the position that electric rates should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. 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 establishment of a market-based tariff is under review by the Commission.

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.² That interest is different from, and not represented by, any other entity in Ohio.

² R.C. Chapter 4911.

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.³

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11 as well as the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential consumers, the Commission should grant OCC's Motion to Intervene.

III. CONCLUSION

As set forth herein, OCC satisfies the criteria set forth in R.C. 4903.221 and the Commission's rules for intervention. Therefore, on behalf of the over 456,000 residential electric customers of DP&L, OCC respectfully requests that the Commission grant OCC's Motion to Intervene in the above-captioned proceeding. OCC's participation will contribute to a just resolution of the issues involved in this proceeding and will not cause undue delay.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

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

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below via electronic transmission this 26th day of July 2010.

/s/ Michael E. Idzkowski
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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 Mr. Michael E. Idzkowski