

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the)	
Dayton Power & Light Company to)	Case No. 11-6010-EL-POR
Supplement its Energy Efficiency and)	
Peak Demand Reduction Program)	
Portfolio with Additional 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 the Dayton Power and Light Company ("DP&L" or the "Company") seeks approval for partially meeting the energy efficiency and peak demand reduction targets -- that are intended under Ohio law to provide benefits to customers -- though changes to the Company's distribution facilities.¹ The OCC files this Motion to Intervene ("Motion") on behalf of all the approximately 450,000 residential electric utility customers of DP&L. The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant the 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,

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MEMORANDUM IN SUPPORT

On December 20, 2011, DP&L filed an application (“Application”) that sought Commission approval for its “distribution 4 Kilovolt to 12 Kilovolt conversion project . . . as a supplement to DP&L’s energy efficiency and peak demand reduction program portfolio.”² The OCC has authority under Ohio law to represent the interests of all the approximately 450,000 residential electric utility customers of DP&L, pursuant to R.C. Chapter 4911.

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 customers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding that would affect the manner in which DP&L conducts its energy efficiency and peak demand reduction programs that are intended under Ohio law to provide benefits to customers. 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:

² Application at 1.

- (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 the OCC's interest is representing the residential customers of DP&L in this case that involves the Company's proposal to use a kilovolt conversion project related to distribution service as part of its energy efficiency and peak demand reduction program portfolio. The Company states that approval of the Application will result in a later filing that "seek[s] recovery of the cost of the Conversion project. . . ."³ The OCC's involvement in the above-captioned case is important in order for residential customers to be properly represented in a matter that may ultimately determine the rates paid by residential customers. These interests are different than those of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, the OCC's advocacy for residential customers will include advancing the position that cost effective energy efficiency and peak demand reduction programs should be encouraged. This advocacy is only served if proper measurement and verification of program effects are undertaken. The 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.

³ Id.

Third, the OCC's intervention will not unduly prolong or delay the proceedings. The 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 OCC has been extensively involved in cases before the Commission regarding the proper measurement of the effects of transmission and distribution ("T&D") improvements for purpose of satisfying requirements stated in R.C. 4928.66.⁴

Fourth, the OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. The OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

The OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that the 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 advocate for residential utility customers, the OCC has a very real and substantial interest in this case where a utility proposes to add a kilovolt conversion program to its portfolio of energy efficiency and peak demand reduction programs.

In addition, the 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 the OCC already has addressed and that the 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 the OCC

does not concede the lawfulness of this criterion, the OCC satisfies this criterion because it has been uniquely designated as the state representative of the interests of Ohio's residential utility customers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed the OCC's right to intervene in PUCO proceedings when it decided two appeals in which the OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying the OCC's interventions and that the OCC should have been granted intervention in both proceedings.⁵

The 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. On behalf of Ohio residential customers, the Commission should grant the OCC's Motion to Intervene.

⁴ Id. (noting the requirements stated in R.C. 4928.66(A)(1)(a)). An example of another case that involves measurement issues related to the instant case is Case No. 09-512-GE-UNC (concerning Ohio's Technical Reference Manual). The OCC is extensively involved in that pending case.

⁵ See *Ohio Consumers' Counsel v. Public 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 electronic transmission, this 9th day of January 2012.

/s/ Jeffrey L. Small

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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel
electronically filed by Patti Mallarnee on behalf of Small, Jeffrey L Mr.