

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The                    )  
Dayton Power and Light Company to                    ) Case No. 11-5730-EL-FAC  
Revise its Fuel Adjustment Clause.                    )

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

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The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where Energy Ventures Analysis, Inc. ("EVA") will perform a management/performance and financial audit of aspects The Dayton Power and Light Company's ("DP&L" or "the Company") fuel costs and DP&L's mechanism for collecting fuel costs from customers, for the time period of December 31, 2010, through December 31, 2011. The attorney examiner in this proceeding requested by Entry that EVA submit a draft audit report to the PUCO Staff by April 13, 2012, and file its final audit report by April 27, 2012.<sup>1</sup> 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.

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<sup>1</sup> *In the Matter of the Application of The Dayton Power and Light Company to Revise its Fuel Adjustment Clause*, Case No. 11-5730-EL-FAC, Entry at 1 (February 27, 2012) ("Entry").

Respectfully submitted,

BRUCE J. WESTON

/s/ Kyle L. Kern

Kyle L. Kern, Counsel of Record  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (614) 466-9585

[kern@occ.state.oh.us](mailto:kern@occ.state.oh.us)

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**MEMORANDUM IN SUPPORT**

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In Case Number 09-1012-EL-FAC (“DP&L FAC case”), the Company filed an application seeking to establish a bypassable fuel recovery rider to be effective January 1, 2010.<sup>2</sup> Under the rider, DP&L collects retail fuel and purchased power costs from customers. In the present case, the Commission selected Energy Ventures Analysis, Inc. (“EVA”) to perform an audit on the management, performance, and financial aspects of DP&L’s fuel costs, and its fuel recovery mechanism based on the twelve months ending on December 31, 2011.<sup>3</sup>

An Entry issued on February 27, 2012 states:

EVA shall submit a draft audit report to Staff by April 13, 2012, and shall file its audit report by April 27, 2012. Any conclusions, results, or recommendations formulated by EVA **may be examined by any participant to the proceedings for which the audit report was generated.**”<sup>4</sup>

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<sup>2</sup> See generally, *In the Matter of the Application of The Dayton Power and Light Company to Revise its Fuel Adjustment Clause*, Case No. 09-1012-EL-FAC, Application (October 30, 2009).

<sup>3</sup> See Entry at 1. This is the second of three audits to be conducted on DP&L’s fuel costs and fuel recovery mechanism. The first audit was based on the twelve months ending December 31, 2010. The third audit will be based on the twelve months ending December 31, 2012.

<sup>4</sup> Id. (Emphasis added).

OCC was a party to the underlying DP&L FAC case.<sup>5</sup> However, the February 27, 2012 Entry in the current proceeding does not indicate that parties to the underlying proceeding will be considered **parties** for purposes of this proceeding. Accordingly, OCC files this Motion to Intervene.

OCC has authority under law to represent the interests of the residential utility customers of DP&L, pursuant to R.C. Chapter 4911. In this regard, 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 where the Commission has ordered a management/performance and financial audit of DP&L’s fuel costs and fuel recovery mechanism. 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.

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<sup>5</sup> *In the Matter of the Application of The Dayton Power and Light Company to Revise its Fuel Adjustment Clause*, Case No. 09-1012-EL-FAC, Finding and Order Granting OCC’s Motion to Intervene (December 16, 2009).

First, the nature and extent of OCC's interest is representing the residential customers of DP&L in this case involving the management/performance and financial audit of the Company for the time period of December 31, 2010, through December 31, 2011. 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 residential customers will include advancing the position that 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 advocate for residential utility customers, OCC has a very real and substantial interest in this case where the Commission has ordered a

management/performance and financial audit of DP&L's fuel costs and fuel recovery mechanism.

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 customers. 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 deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying OCC's interventions and that OCC should have been granted intervention in both proceedings.<sup>6</sup>

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 OCC's Motion to Intervene.

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<sup>6</sup> See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

Respectfully submitted,

BRUCE J. WESTON

/s/ Kyle L. Kern

Kyle L. Kern, Counsel of Record  
Assistant Consumers' Counsel

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Columbus, Ohio 43215-3485

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[kern@occ.state.oh.us](mailto:kern@occ.state.oh.us)

### **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 26<sup>th</sup> day of March 2012.

/s/ Kyle L. Kern

Kyle L. Kern

Assistant Consumers' Counsel

### **SERVICE LIST**

William Wright  
Public Utilities Commission of Ohio  
180 E. Broad St., 6<sup>th</sup> Fl.  
Columbus, OH 43215  
[William.wright@puc.state.oh.us](mailto:William.wright@puc.state.oh.us)

Judi L. Sobecki  
Randall V. Griffin  
Dayton Power and Light Company  
1065 Woodman Drive  
Dayton, OH 45432  
[Judi.sobecki@dplinc.com](mailto:Judi.sobecki@dplinc.com)  
[Randall.griffin@dplinc.com](mailto:Randall.griffin@dplinc.com)



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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 Kern, Kyle L.