

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton Power and Light Company for Approval of its Market Rate Offer.)	Case No. 12-426-EL-SSO
)	
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.)	Case No. 12-427-EL-ATA
)	
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority.)	Case No. 12-428-EL-AAM
)	
In the Matter of the Application of The Dayton Power and Light Company for Waiver of Certain Commission Rules.)	Case No. 12-429-EL-WVR
)	
In the Matter of the Application of The Dayton Power and Light Company to Establish Tariff Riders.)	Case No. 12-672-EL-RDR
)	

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in these cases where, among other matters, there might be increases in standard service offer ("SSO") rates for residential customers located in Southwestern Ohio. The OCC files on behalf of all the approximately 515,000 residential utility customers of the Dayton Power & Light Company ("DP&L" or "Company"). 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.

Respectfully submitted,

BRUCE J. WESTON

/s/ Joseph P. Serio

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MEMORANDUM IN SUPPORT

The above-captioned cases involve a proposed market rate offer (“MRO”) and associated matters that would, among other matters, set SSO rates for residential customers during a rate plan period and likely set the stage for later rate plans that similarly set rates for residential customers. The OCC has authority under law to represent the interests of all the approximately 515,000 residential 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 sets rates (and other matters) those residential customers would pay. 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 the OCC's interest is representing the residential customers of DP&L in these cases involving the determination of SSO rates and associated matters. 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, the 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. The OCC's position is therefore directly related to the merits of these cases that are pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio.

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.

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 these cases 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 these cases where SSO rates and associated matters would be determined.

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 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 the OCC's right to intervene in PUCO proceedings, in deciding 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.¹

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.

Respectfully submitted,

BRUCE J. WESTON

/s/ Joseph P. Serio

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¹ See *Ohio Consumers' Counsel v. Public 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 regular U.S. Mail Service, postage prepaid, this 16th day of April 2012.

/s/ Joseph P. Serio

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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 Serio, Joseph P. Mr.