

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The	)	
Dayton Power and Light Company for	)	Case No. 12-2281-EL-AAM
Authority to Modify its Accounting	)	
Procedures For Certain Storm-Related	)	
Service Restoration Costs.	)	

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene<sup>1</sup> in this case where Dayton Power and Light Company (DP&L) is requesting authority to modify its accounting procedures for certain storm-related service restoration costs. OCC is filing on behalf of approximately 455,000 DP&L residential customers in the state of Ohio. 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.

Respectfully submitted,

BRUCE J. WESTON  
CONSUMERS' COUNSEL

/s/ Melissa R. Yost

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<sup>1</sup>See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

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**MEMORANDUM IN SUPPORT**

The Dayton Power and Light Company (DP&L) is requesting that the PUCO, pursuant to R.C. 4905.13, grant it the authority to defer costs that were incurred as a result of the damage caused by the storms that occurred in the last weekend of June 2012. OCC has authority under law to represent the interests of DP&L’s residential customers, 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 DP&L’s residential customers may be “adversely affected” by this case, especially if residential customers were unrepresented in a proceeding where DP&L is requesting to defer collection of operation and maintenance expenses for future collection from customers. Having the OCC represent the interests of DP&L’s residential consumers where the PUCO could grant such a deferral will help protect the interests of consumers. 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 all of DP&L residential customers in this case involving storm costs. 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 DP&L's residential customers should not have to pay any more than what is just and reasonable for their electric service. 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 PUCO is potentially granting a deferral to DP&L.

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>2</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>2</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  
CONSUMERS' COUNSEL

/s/ *Melissa R. Yost*

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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 30th day of August 2012.

/s/ Melissa R. Yost

Melissa R. Yost

Assistant Consumers' Counsel

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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 Yost, Melissa Ms.