

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application Duke)	
Energy Ohio, Inc. for the Establishment of)	
a Charge Pursuant to Revised code Section)	Case No. 12-2400-EL-UNC
4909.18.)	
)	
In the Matter of the Application of Duke)	Case No. 12-2401-AAM
Energy Ohio, Inc. for Approval to Change)	
Accounting Methods.)	
)	
In the Matter of the Application of Duke)	Case No. 12-2402-EL-ATA
Energy Ohio, Inc. for the Approval of a)	
Tariff for a New Service.)	

**REPLY OF THE DAYTON POWER AND LIGHT COMPANY TO DUKE ENERGY
OHIO'S MEMORANDUM CONTRA
MOTION TO INTERVENE AND
MEMORANDUM IN SUPPORT**

The Dayton Power and Light Company (DP&L) timely moved to intervene in this proceeding pursuant to Section 4903.221 of the Ohio Revised Code (R.C.) and Rule 4901-1-11 of the Ohio Administrative Code (O.A.C). On October 16, 2012, Duke Energy Ohio, Inc. (Duke Energy Ohio) filed a memorandum opposing DP&L's intervention. The issues in this proceeding involve an application to establish the amount of a cost-based charge, pursuant to Ohio's newly adopted state compensation mechanism, for the provision by Duke Energy Ohio of capacity services throughout Duke Energy Ohio's service territory.¹ Since the resolution of the issues in the proceeding will have a direct impact on the strength and viability of the competitive retail and wholesale energy markets in Ohio, as a wholesale energy market participant, DP&L has demonstrated it has a real and substantial interest in this proceeding and its interests are not

¹ *Application of Duke Energy Ohio, Inc.*, PUCO Case No. 12-2400-EL-UNC, at ¶2.

adequately represented by existing parties, and for all of the reasons explained in DP&L's motion to intervene, DP&L it should be permitted to intervene.

Turning to the three specific arguments put forth by Duke Energy Ohio in opposing DP&L's intervention, Duke Energy Ohio first claims that DP&L does not have an interest warranting intervention. DP&L supports its motion to intervene on several grounds, including the fact that the change in capacity pricing sought by Duke Energy Ohio may have a negative impact to the viability and health of competitive markets, and as a wholesale supplier of electricity, DP&L has a real and substantial interest in the outcome of this case, which will impact the vibrancy of the markets. Duke Energy Ohio argues that this does not demonstrate an interest on the part of DP&L warranting intervention.² Curiously, Duke Energy Ohio's own wholesale energy supplier affiliate Duke Energy Commercial Asset Management, Inc. (DCAM), cited to the very same interest as DP&L points to here, in supporting its intervention in a similar proceeding involving another utility and substantially the same issues.³ DP&L's interest warrants intervention in this proceeding.

Duke next argues that DP&L will undeniably be unaffected by the application in this matter.⁴ As an active participant in wholesale energy supply auctions, DP&L has a real and substantial legal and business interest in the outcome of this proceeding, in which the charges for capacity services within Duke Energy Ohio's service territory are at issue. As a winning bidder in Duke's SSO auction, DP&L is currently providing full service requirements for a portion of Duke Energy Ohio's Standard Service Offer load. Duke's proposal here could result in a change

² Memorandum Contra, at p.2.

³ Motion to Intervene by Duke Energy Commercial Asset Management, Inc., March 28, 2012, PUCO Case No. 10-2929-EL-UNC.

⁴ Memorandum Contra, at p.3.

in going-forward capacity rates within Duke's service territory. This potential for unanticipated material changes within the competitive market construct in which DP&L is currently participating undeniably has the potential to impact DP&L's business interests and plans going forward. Duke's argument opposing intervention should be rejected.

Duke finally argues that DP&L's intervention will cause undue delay because "these proceedings seek approval of a tariff to collect for services not previously covered by a tariff and do not seek an increase; thus, no hearing is required under R.C. 4909.18 unless that Application may be unjust or unreasonable."⁵ Based upon Duke's belief that it is "indisputable" that the Application does not require a hearing, it claims that DP&L's intervention can only delay these proceedings.⁶ First, the requirement for a hearing is not indisputable, as demonstrated by the October 3, 2012 Entry by the Attorney Examiner, which sets this case for a hearing to commence April 2, 2013. Second, the Ohio Supreme Court has held "whether or not a hearing is held, intervention ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO."⁷ DP&L's intervention will not cause undue delay and its intervention should be permitted, in order to allow DP&L's interests to be considered by the Commission in these proceedings.

CONCLUSION

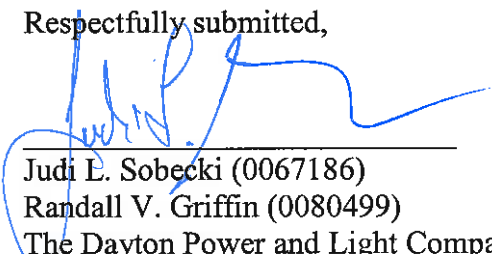
Based on the above, and those arguments set forth in DP&L's Motion to Intervene in this matter, DP&L respectfully requests that the Commission grant DP&L intervention.

⁵ Memorandum Contra, at p.3.

⁶ Id., at p.4.

⁷ *Ohio Consumers' Counsel v. PUC*, 111 Ohio St. 3d 384, 388 (Ohio 2006).

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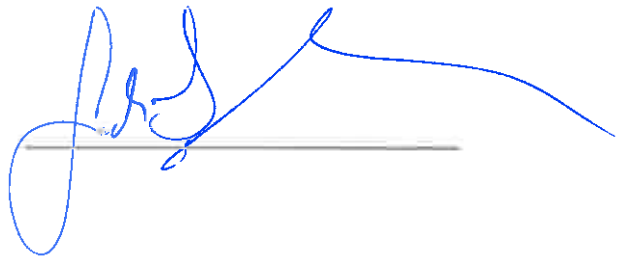
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Summary: Reply To Duke Energy Ohio's Memorandum Contra Motion to Intervene and Memorandum in Support electronically filed by Mrs. Angela N. Hogan on behalf of The Dayton Power and Light Company