

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Dayton Power and Light Company for)	
Authority to Recover Certain Storm-)	Case No. 12-3062-EL-RDR
Related Service Restoration Costs)	

In the Matter of the Application of The)	
Dayton Power and Light company for)	Case No. 12-3266-EL-AAM
Approval of Certain Accounting)	
Authority.)	

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene¹ in this case where Dayton Power and Light Company ("DP&L" or "Utility") is seeking authority to collect from customers certain storm-related Operation and Maintenance ("O&M") expenses and related capital revenue requirements. DP&L is proposing to charge customers via a Storm Cost Recovery Rider and requests accounting authority to defer O&M expenses until they are recovered through the requested rider. OCC is filing on behalf of the 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.

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

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Melissa R. Yost

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MEMORANDUM IN SUPPORT

In these proceedings, DP&L is requesting that the PUCO grant it the authority to:

(1) charge customers for O&M expenses for all major event storms in 2011 and 2012, and certain 2008 storm O&M expenses; (2) charge customers for related capital revenue requirements for Hurricane Ike (2008) and major storms in 2011 and 2012; (3) implement a Storm Cost Recovery Rider to permit DP&L to charge customers for all costs associated with major storms going forward and requests accounting authority to defer O&M costs until they are recovered; and (4) defer all 2011 major event storm O&M costs with carrying costs equal to the Utility's cost of debt. 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 permission to collect costs, recover capital revenue requirements, create a Storm Cost Recovery Rider, and defer other O&M expenses for future collection from customers.

Having the OCC represent the interests of DP&L's residential consumers where the PUCO could grant such requests 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 DP&L is seeking to collect costs and recover capital revenue requirements from its customers, create a Storm Cost Recovery Rider, and defer other O&M expenses for future collection from customers.

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.²

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.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Melissa R. Yost

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² See *Ohio Consumers' Counsel v. Pub. 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 electronic transmission this 18th day of January 2013.

/s/ Melissa R. Yost
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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Gina L Brigner on behalf of Yost, Melissa Ms.