

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Dayton Power and Light Company for)	Case No. 13-0893-EL-AIS
Authority to Issue and Sell an Amount)	
Not to Exceed \$490 Million of First)	
Mortgage Bonds, Debentures, Notes, or)	
Other Evidences of Indebtedness or)	
Unsecured Notes.)	

**REPLY TO DP&L’S MEMORANDUM CONTRA OCC’S MOTION TO
INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Supreme Court of Ohio has consistently held that “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.”¹ In the “absence of some evidence in the record calling those claims into doubt or showing that intervention would unduly prolong or delay the proceedings, intervention should [be] granted.”² DP&L failed to present any evidence that OCC has no real or substantial interest and/or would delay this proceeding. Therefore, OCC should be granted intervention in this case.

Opposing OCC’s Motion to Intervene in this matter, DP&L takes a novel approach. It argues that the Utility and its residential customers share the same interests.³ To the contrary, DP&L has a fiduciary duty to its stockholders, which is not necessarily aligned with the residential customers’ interest in attaining the lowest amount of

¹ *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶20 (2006) (Emphasis added).

² *Id.*

³ Memorandum of Applicant, The Dayton Power and Light Company Opposing Motion to Intervene by Ohio Consumers’ Counsel (“DP&L Memo Opp”), at 2 (June 10, 2013).

financing and costs consistent with market conditions. OCC should be granted intervention to help ensure that DP&L's stated objective of "securing financing at the best possible rate, and under the best possible terms"⁴ is indeed achieved. Moreover, intervention would permit OCC to ensure that customers are not overpaying for financing mechanisms such as redemption costs.

DP&L argues that the "redemption costs are just and reasonable,"⁵ but has provided no facts or basis to support this assertion. Nothing in the Application explains or itemizes the nearly \$14 million that the Utility seeks to collect in "Redemption Costs." It was not until the Memorandum in Opposition that DP&L even described some of the basic components, claiming that they allegedly include: "(1) the costs of calling or tendering the existing First Mortgage Bonds; (2) legal fees; (3) audit fees; (4) rating agency fees; and (5) marketing costs."⁶ Some of these general categories, such as "rating agency fees" or "marketing costs," are typically incurred in the process of selling new debt securities. Those type of fees and costs, however, are not related to the redemption of existing mortgage bonds and are not appropriately considered redemption costs. DP&L's attempt to improperly collect the so-called "redemption costs" demonstrates exactly why the interests of OCC and DP&L's residential customers are different from the Utility's. Moreover, DP&L implicitly recognizes that customers could be adversely impacted by the capital costs, but attempts to downplay the impact by asserting it will be spread out over the term of the new bonds.⁷

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id. at 2-3.

Finally, while DP&L argues that OCC's intervention will delay and prolong the proceedings and "actually disadvantage residential customers,"⁸ it is DP&L that has delayed this proceeding. DP&L filed an incomplete Application on April 16, 2013, failing to include a balance sheet and income statement as required by R.C. 4905.41(A)(4). It took the Utility forty-four days to fix this error when it filed an Amended Application on May 30, 2013. However, the Amended Application still lacks basic but essential information such as the breakdown of "Redemption Costs" and "Commissions." OCC on the other hand, has done nothing to delay these proceedings. Moreover, nothing, certainly not OCC's intervention, is preventing DP&L from proceeding with financing negotiations.

This Commission has allowed OCC's intervention in Applications to Reissue Stocks or Securities ("AIS") cases in the past. In Brainard Gas Corporation, Northeast Ohio Natural Gas Corporation and Orwell Natural Gas Company's ("Northeast/Orwell") AIS case, the gas utility similarly argued that OCC's participation would unduly prolong or delay the resolution of the case.⁹ Northeast/Orwell also argued that the OCC did not have sufficient interests to intervene after the utility had engaged in over 3 months of negotiations with the PUCO Staff.¹⁰ In that case, however, the Commission granted OCC's Motion to Intervene on behalf of Ohio's residential customers.¹¹

⁸ Id. at 3.

⁹ *In the Matter of the Joint Application of Brainard Gas Corporation, Northeast Ohio Natural Gas Corporation and Orwell Natural Gas Company for Approval of Long Term Financing Arrangements and for Expedited Consideration*, Case No. 10-2330-GA-AIS, Memorandum in Opposition to Motion to Intervene by The Office of the Ohio Consumers' Counsel at 1 (Jan. 31, 2011).

¹⁰ Id. at 2.

¹¹ *In the Matter of the Joint Application of Brainard Gas Corporation, Northeast Ohio Natural Gas Corporation and Orwell Natural Gas Company for Approval of Long Term Financing Arrangements and for Expedited Consideration*, Case No. 10-2330-GA-AIS, Finding and Order at 3 (Mar. 30, 2011).

For the reasons set forth in this Reply and the Motion for Intervention, 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 and this Commission. On behalf of Ohio residential customers, the Commission should grant OCC's Motion to Intervene.

Respectfully submitted,

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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 electronic transmission this 17th day of June 2013.

/s/ Michael J. Schuler

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Summary: Reply Reply to DP&L's Memorandum Contra OCC's Motion to Intervene by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Schuler, Michael J.