BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company For Authority to Amend Its Corporate Separation Plan.	))))	Case No. 13-2442-EL-UNC

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where Dayton Power & Light Company ("DP&L" or "Utility") has proposed a corporate separation plan that is subject to regulatory review for preventing both unfair competitive advantage to DP&L's affiliates and negative impacts on the generation rates that customers pay.

The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's Motion to Intervene are further set forth in the attached Memorandum in Support.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Edmund "Tad" Berger
Edmund Berger, Counsel of Record
Maureen R. Grady
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (Berger) (614) 466-1292
Telephone: (Grady) (614) 466-9567
edmund.berger@occ.ohio.gov
maureen.grady@occ.ohio.gov

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company For Authority to Amend Its Corporate Separation Plan.	))))	Case No. 13-2442-EL-UNC

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Dayton Power & Light Company's ("DP&L" or "Utility") has filed an application for approval of DP&L's Fourth Amended Corporate Separation Plan ("Fourth Amended plan"). DP&L's Fourth Amended plan includes revisions to account for a new affiliate services corporation ("AES US Services, LLC") and otherwise continues DP&L's functional separation of the generation portion of its business pending DP&L's sale or transfer of its generating assets at Case No. 13-2420-EL-UNC.

R.C. 4928.17(A) provides that corporate separation plans must be consistent with the policy specified in R.C. 4928.02 and must achieve specified requirements. In particular, corporate separation plans must prevent unfair competitive advantage and the abuse of market power.[1] They must also be sufficient to ensure that the utility does not extend undue preference or advantage to an affiliate or business division.[2] Under R.C. 4928.17(C), a utility may propose to utilize functional separation, for an interim period, in lieu of providing competitive retail services through a fully separated affiliate as required by R.C. 4928.17(A)(1). However, the approval of such interim measure must be

[1] R.C. 4928.17(A)(2).

[2] R.C. 4928.17(A)(3).

"for good cause shown" and must prevent competitive advantage and otherwise adhere to the policies specified in R.C. 4928.02.

The changes proposed by DP&L in its Fourth Amended plan require review and approval to ensure adherence with these policies and to prevent harm to customers. Residential customers of DP&L may be adversely affected by the resolution of some or all of these issues.

II. SUPPORT FOR OCC'S INTERVENTION

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 DP&L's application, in that the PUCO will be considering whether DP&L's proposed corporate separation plan prevents unfair competitive advantage and abuse of market power. Unfair competitive advantage or abuse of market power by the utility or its affiliates could adversely affect the rates and terms of service that customers shopping in the competitive market would be required to pay.

Residential customers may, therefore, be adversely affected by PUCO action in this proceeding. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the PUCO 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.

Additionally, R.C. 4928.17(B) provides that any person having a "real and substantial interest" in a corporate separation plan may file specific objections to the plan and propose specific responses to issues raised in objections of other parties.[3] As explained below, OCC has this real and substantial interest for protecting residential consumers.

First, the nature and extent of OCC's interest is representing the residential customers of DP&L who will be affected by DP&L's Fourth Amended plan. OCC seeks, among other things, to ensure that DP&L does not provide an unfair competitive advantage to any supplier of competitive generation services (or nonelectric product or service) and that it does not abuse its market power. OCC also seeks to ensure that, under DP&L's continued functional separation, it appropriately allocates costs between Transmission & Distribution services and generation services, so that residential customers pay only the legal and reasonable charges associated with providing the specified service to them. OCC's interest is different than that of any other party and especially different than that of DP&L whose advocacy includes the financial interest of its stockholders.

Second, OCC's advocacy for residential customers will, among other things, include advancing the position that DP&L's residential customers should not be harmed

[3] R.C. 4928.17(B).

by any unfair competitive advantage or abuse of market power, or any undue preference that might be given to an affiliate or business division, by DP&L. The rates and terms and conditions offered by competitive generation suppliers could be impacted if DP&L were to favor any competitive generation supplier, including its own affiliates or business division. OCC's position is therefore directly related to the review by the PUCO, the authority with regulatory control of public utilities' rates and service obligations 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 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, inter alia, DP&L's Fourth Amended plan is being evaluated.

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.[4]

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 PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Edmund "Tad" Berger
Edmund Berger, Counsel of Record
Maureen R. Grady
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (Berger) (614) 466-1292
Telephone: (Grady) (614) 466-9567
edmund.berger@occ.ohio.gov
maureen.grady@occ.ohio.gov

[4] *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 to the persons listed below, this 30th day of January, 2014.

/s/ Edmund "Tad" Berger
Edmund "Tad" Berger
Assistant Consumers' Counsel

SERVICE LIST

Thomas McNamee
Attorney General's Office
Public Utilities Commission of Ohio
180 E. Broad St., 6th Fl.
Columbus, OH 43215
thomas.mcnamee@puc.state.oh.us

Attorney Examiners:
Bryce.mckenney@puc.state.oh.us
Gregory.price@puc.state.oh.us

Judi L. Sobecki
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, OH 45432
Judi.sobecki@dplinc.com

Charles J. Faruki
Jeffrey S. Sharkey
Faruki Ireland & Cox PLL
500 Courthouse Plaza, S.W.
10 North Ludlow St.
Dayton, OH 45402
cfaruki@ficlaw.com
ssharkey@ficlaw.com