

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the) Case No. 15-1830-EL-AIR
Dayton Power and Light Company for)
an Increase in Electric Distribution)
Rates.)

In the Matter of the Application of the) Case No. 15-1831-EL-AAM
Dayton Power and Light Company for)
Approval to Change Accounting)
Methods.)

In the Matter of the Application of the) Case No. 15-1832-EL-ATA
Dayton Power and Light Company for)
Tariff Approval.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in these cases involving the electric distribution charges that Dayton Power and Light Company ("DP&L" or the "Utility") proposes to collect from residential customers.¹ OCC is filing on behalf of all of DP&L's approximately 456,000 residential utility customers. 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.

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

Respectfully submitted,

BRUCE J. WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Ajay Kumar

Jodi Bair, (0062921) Counsel of Record
Assistant Consumers' Counsel
Ajay Kumar (0092208)
Staff Attorney

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: Bair – (614) 466-9559

Telephone: Kumar – (614) 466-1292

Jodi.bair@occ.ohio.gov

(will accept service via email)

Ajay.kumar@occ.ohio.gov

(will accept service via email)

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the) Case No. 15-1830-EL-AIR
Dayton Power and Light Company for)
an Increase in Electric Distribution)
Rates.)

In the Matter of the Application of the) Case No. 15-1831-EL-AAM
Dayton Power and Light Company for)
Approval to Change Accounting)
Methods.)

In the Matter of the Application of the) Case No. 15-1832-EL-ATA
Dayton Power and Light Company for)
Tariff Approval.)

MEMORANDUM IN SUPPORT

On October 30, 2015, DP&L docketed at the PUCO a Notice of Intent to file for an increase in electric distribution rates, an application for tariff approval for its electric distribution service and an application for approval of a change in accounting methods. OCC has authority under law to represent the interests of all DP&L's approximately 456,000 residential utility customers, under 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 Ohio's residential customers may be "adversely affected" by these cases, especially if the customers were unrepresented in proceedings where the utility seeks to increase rates to customers for distribution service. 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 to represent the residential customers of DP&L in these cases where DP&L seeks to increase rates charged to customers for distribution service. 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 rates should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. OCC's position is therefore directly related to the merits of these cases that are pending before the PUCO, which is 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 cases 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 these cases where DP&L seeks to increase the rates it charges to residential customers for distribution service.

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

² See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20 (2006).

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 (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Ajay Kumar
Jodi Bair, (0062921) Counsel of Record
Assistant Consumers' Counsel
Ajay Kumar (0092208)
Staff Attorney

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: Bair – (614) 466-9559
Telephone: Kumar – (614) 466-1292
Jodi.bair@occ.ohio.gov
(will accept service via email)
Ajay.kumar@occ.ohio.gov
(will accept service via email)

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 13th day of November 2015.

/s/ Ajay Kumar _____

Ajay Kumar
Staff Attorney

SERVICE LIST

Thomas McNamee
Natalia Messenger
Public Utilities Commission of Ohio
180 E. Broad St., 12th Fl.
Columbus, OH 43215
Thomas.mcnamee@puc.state.oh.us
Natalia.messenger@puc.state.oh.us

Frank P. Darr
Matthew R. Pritchard
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
fdarr@mwncmh.com
mpritchard@mwncmh.com

Attorneys For Industrial Energy Users-
Ohio

Michael J. Schuler
The Dayton Power & Light Company
1065 Woodman Drive
Dayton, OH 45432
Michael.schuler@aes.com

Charles J. Faruki
D. Jeffrey Ireland
Jeffrey S. Sharkey
Faruki Ireland & Cox P.L.L.
500 Courthouse Plaza, S.W.
10 North Ludlow Street
Dayton, OH 45402
cfaruki@ficlaw.com
djireland@ficlaw.com
jsharkey@ficlaw.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/13/2015 4:45:13 PM

in

Case No(s). 15-1830-EL-AIR, 15-1831-EL-AAM, 15-1832-EL-ATA

Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Kumar, Ajay K. Mr.