

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of The Dayton Power and Light Company to Increase Its Rates for Electric Distribution</b>	) ) <b>Case No. 15-1830-EL-AIR</b> ) )
<b>In the Matter of the Application of The Dayton Power and Light Company for Accounting Authority</b>	) ) <b>Case No. 15-1831-EL-AAM</b> ) )
<b>In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs</b>	) ) <b>Case No. 15-1832-EL-ATA</b> )

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**MOTION TO INTERVENE  
BY THE NATURAL RESOURCES DEFENSE COUNCIL**

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For the reasons set forth in the accompanying Memorandum in Support, the Natural Resources Defense Council ("NRDC") moves the Public Utilities Commission of Ohio for leave to intervene in the above-captioned case pursuant to Ohio Revised Code 4903.221 and Ohio Administrative Code 4901-1-11, and to grant to the NRDC the full powers and rights specifically authorized by statute or by the provisions of the Ohio Administrative Code. Additionally, the interests of NRDC are not adequately represented by any other party to this matter, and its participation in this proceeding will contribute to a just and expeditious resolution of the issues and questions presented. Further, NRDC's participation will not unduly delay the proceeding or prejudice any other party.

NRDC respectfully requests that this Commission grant its motion to intervene for these reasons and those set forth in more detail in the attached Memorandum in Support.

Dated: January 15, 2016

Respectfully submitted,

/s/Robert Dove

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**MEMORANDUM IN SUPPORT OF THE MOTION TO INTERVENE  
BY THE NATURAL RESOURCES DEFENSE COUNCIL**

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**I. Introduction**

Ohio Revised Code (“ORC”) § 4903.221 states that “[a]ny other person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding” provided the Public Utilities Commission of Ohio (“Commission”) makes certain determinations. The Natural Resources Defense Council (“NRDC”) seeks intervention in this proceeding where Dayton Power and Light (“DP&L” or “the Company”) on October 30, 2015, filed a notice of intent to file an application for approval of an increase in electric rates, which was then filed on November 30, 2015 (“Application”). NRDC is a national, non-profit environmental organization with more than 10,600 members in Ohio. Many of those members reside within DP&L's service territory. NRDC's and its members' interests are not adequately represented by any other

parties in this proceeding. As such, NRDC is entitled to intervene in the above captioned proceeding.

## **II. Legal Standard**

Ohio law states that a party may intervene in a Commission proceeding if that party “may be adversely affected by a public utilities commission proceeding.”<sup>1</sup> In the determination of whether a party may be adversely affected for purposes of intervention, the Commission is required to evaluate:

- (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 proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.<sup>2</sup>

The Commission’s rules similarly provide that any person may intervene where “[t]he person has a real and substantial interest in the proceeding.”<sup>3</sup> The PUCO regulations set forth the same four standards that are established in Ohio Revised Code 4903.221(B) for determining whether a party may be “adversely affected,” and also purport to add a fifth factor regarding “the extent to which the person’s interest is represented by existing parties.”<sup>4</sup>

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<sup>1</sup> R.C. 4903.221.

<sup>2</sup> R.C. 4903.221(B).

<sup>3</sup> Ohio Adm. Code 4901-1-11(A)(2).

<sup>4</sup> Ohio Adm. Code 4901-1-11(B).

As the Ohio Supreme Court recently held, intervention in Commission proceedings “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 [Commission].”<sup>5</sup> The Commission has consistently maintained a policy to “encourage the broadest possible participation” in its proceedings, even under extenuating circumstances.<sup>6</sup> NRDC satisfies these liberal intervention standards and respectfully requests that its intervention be granted in these cases.

**III. NRDC is entitled to intervene under §4903.221 because the organization and its members “may be adversely affected” by the outcome of this proceeding.**

NRDC is entitled to intervene in this proceeding because NRDC satisfies each of the four statutory factors demonstrating that the organization and its members “may be adversely affected” by the outcome. First, the nature and extent of NRDC’s interests in the proceeding is real and substantial,<sup>7</sup> as the issues involved herein are directly related to NRDC’s interests in protecting its members' interests within the DP&L service territory. NRDC regularly participates in proceedings before the Commission with an interest in advancing resource choices that minimize or eliminate pollutant emissions and maximize energy efficiency. Because rate determinations have a direct impact on both utility and

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<sup>5</sup> *Ohio Consumers’ Counsel v. Pub. Util Comm’n of Ohio* (2006), 111 Ohio St. 3d 384, 388, 2006 Ohio 5853, 856 N.E.2d 940.

<sup>6</sup> See e.g. *In the Matter of the Application of The Dayton Power and Light Company*, 2009 WL 322883 at 1, Ohio PUC February 5, 2009 (Commission granted motion to intervene in light of policy to encourage participation, despite party’s failure to file within the deadline).

<sup>7</sup> R.C. 4903.221(B)(1).

consumer behavior and investment, NRDC has a real and substantial interest in this proceeding.

In particular, NRDC is a national, non-profit environmental organization that has worked for its 40 year history to, among other things, promote energy efficiency and renewable energy sources and to protect air and water quality. NRDC has more than 10,600 members in Ohio, many of whom reside in DP&L's service area. DP&L's Application seeks to alter its rates, both in design and amount, which could impact the Company's currently available clean energy options. Furthermore, no other Intervenor can adequately represent and protect the interests of NRDC's members within the DP&L territory except for NRDC.

Second<sup>8</sup>, because of the potential impacts on NRDC and its members in Ohio, NRDC wants to ensure that DP&L's Application meets the applicable legal requirements, adequately protects the environment, and promotes environmentally sound policies in Ohio. NRDC intends to present testimony relating to DP&L's proposed fixed charge increase and provide evidence of alternative rate design options that encourage and incentivize energy conservation and renewable energy, as well as affordability.

Third, NRDC's intervention will not unduly prolong or delay the proceeding<sup>9</sup> as this motion is being filed before a deadline has been set for intervention and NRDC is able to comply with all case management deadlines that will be established by the Commission and/or agreed to by the parties.

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<sup>8</sup> R.C. 4903.221(B)(3).

<sup>9</sup> R.C. 4903.221(B)(3).

Fourth, intervention by NRDC will significantly contribute to the full development of the record in this proceeding.<sup>10</sup> NRDC will bring significant expertise to bear in these proceedings. NRDC's staff and consultants have extensive experience in resource planning, analyzing the potential for energy efficiency, and in the laws and regulations related to rate design. Further, NRDC has intervened and/or provided testimony on these issues in similar proceedings in a number of states including Illinois, Minnesota, Wisconsin, New York, Oregon, California, New Jersey, and Iowa, and has been granted intervention in numerous cases before this Commission. NRDC has regularly presented testimony before the U.S. Congress and various state legislatures related to the electric utility industry, including energy efficiency, renewable energy, nuclear energy, and coal generation. As such, NRDC should be permitted to intervene pursuant to Ohio Revised Code §4903.221.

**IV. NRDC may intervene because NRDC and its members have a “real and substantial interest” in the proceeding as presented in Ohio Administrative Code 4901-1-11(B).**

NRDC may also intervene in these proceedings because it satisfies each of the five factors listed in the PUCO rules demonstrating that it has a “real and substantial interest” in these cases.<sup>11</sup> The first four factors are identical to those set forth under §4903.221(B) and, therefore, NRDC should be permitted to intervene for the same reasons as set forth in Section III above.

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<sup>10</sup> R.C. 4903.221(B)(4).

<sup>11</sup> Ohio Adm.Code 4901-1-11(B).

As for the fifth factor, NRDC's interests in these proceedings will not be fully represented by other parties.<sup>12</sup> No other parties can adequately represent NRDC's interests as a national environmental organization with members in Ohio that is interested in environmental protection, clean energy, and the promotion of energy efficiency. Because no other party to these proceedings advocates from a national platform at the intersection of these three issues, and no other party represents the interests of NRDC's 10,600 members in Ohio, no other party can represent NRDC's interests and the interests of its members.

## **V. Conclusion**

For the foregoing reasons, NRDC respectfully request that their Motion to Intervene be granted, and NRDC be authorized to participate as full parties to this proceeding.

Dated: January 15, 2016

Respectfully submitted,

/s/Robert Dove

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<sup>12</sup> Ohio Adm. Code 4901-1-11(B)(5).



**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing *Motion to Intervene* and the *Memorandum in Support of the Motion to Intervene* has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail January 15, 2016.

/s/Robert Dove  
Robert Dove

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Summary: Motion to Intervene electronically filed by Mr. Robert Dove on behalf of The Natural Resources Defense Council