

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of The Dayton Power and        )   Case No. 16-851-EL-POR  
Light Company's Portfolio Status Report.    )

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

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The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case in which residential customers will be affected by the evaluation of the energy efficiency and peak demand reduction ("EE/PDR") programs of the Dayton Power and Light Company ("DP&L"). OCC files this motion on behalf of DP&L's 450,000 million residential electricity customers.<sup>1</sup> The Public Utilities Commission of Ohio ("PUCO") should grant OCC's motion for the reasons set forth in the attached memorandum in support.

Respectfully submitted,

BRUCE J. WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

*/s/ Christopher Healey*

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Christopher Healey (0086027)  
Counsel of Record

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
Telephone: (614) 466-9571 (Healey direct)  
[christopher.healey@occ.ohio.gov](mailto:christopher.healey@occ.ohio.gov)  
(will accept service via email)

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<sup>1</sup> See R.C. Chapter 4911; R.C. 4903.221; Ohio Adm. Code 4901-1-11.

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This case affects residential consumers because it involves the review of the reasonableness and lawfulness of DP&L's EE/PDR portfolio programs, which customers pay for. Ohio law authorizes OCC to represent the interests of all of DP&L's 450,000 residential electricity customers.<sup>2</sup> R.C. 4903.221 provides that any person "who may be adversely affected" by a PUCO proceeding is entitled to intervene in that proceeding. The interests of Ohio's residential consumers may be adversely affected by this case because customers pay all program costs for DP&L's EE/PDR portfolio programs plus profits under DP&L's shared savings mechanism.<sup>3</sup> 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

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<sup>2</sup> See R.C. Chapter 4911.

<sup>3</sup> See Energy Efficiency and Peak Demand Reduction Program Portfolio Status Report to the Public Utilities Commission of Ohio for the Period January 1, 2015 to December 31, 2015, Appendix A: Shared Savings Determination, Case No. 16-941-EL-EEC (May 12, 2016).

- (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 DP&L's residential consumers and ensuring that the rates that they pay are just and reasonable. This interest is different from 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 consumers will include, among other things, advancing the position that DP&L's energy efficiency and peak demand reduction programs must be appropriately accounted for, cost-effective, and must properly maximize opportunities to achieve customer savings, and that DP&L's customers should not pay excessive profit to its shareholders on top of the costs of EE/PDR programs that customers pay.<sup>4</sup> OCC's position is therefore directly related to the merits of this case, which 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.

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<sup>4</sup> See R.C. 4905.22 ("All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission . . .").

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." *See* Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a real and substantial interest in this case involving the millions of dollars that residential customers pay for EE/PDR programs.

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), which OCC already has addressed and which OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the PUCO shall consider the "extent to which the person's interest is represented by existing parties." Although OCC does not concede that the PUCO must consider this factor, OCC satisfies it because OCC has been uniquely designated as the state representative of the interests of Ohio's residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, in deciding two consolidated appeals regarding OCC's right to intervene, the Supreme Court of Ohio has confirmed that "intervention ought to be liberally allowed."<sup>5</sup> In those cases, OCC explained in its motion to intervene that the proceeding could negatively impact residential consumers, and OCC established that the interests of consumers would not be represented by existing parties.<sup>6</sup> Because there was no evidence disputing OCC's position, nor any evidence that OCC's intervention would

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<sup>5</sup> *See Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 2006-Ohio-5853, ¶ 20 (2006).

<sup>6</sup> *Id.* ¶¶ 18-20.

unduly delay the proceedings, the Supreme Court found that the PUCO could not deny OCC the right to intervene.<sup>7</sup>

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 consumers, the PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

BRUCE J. WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

*/s/ Christopher Healey*

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Christopher Healey (0086027)  
Counsel of Record

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
Telephone: (614) 466-9571 (Healey direct)  
[christopher.healey@occ.ohio.gov](mailto:christopher.healey@occ.ohio.gov)  
(willing accept service via email)

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<sup>7</sup> *Id.* ¶¶ 13-20.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below via electric transmission this 13th day of June 2016.

*/s/ Christopher Healey* \_\_\_\_\_  
Christopher Healey  
Assistant Consumers' Counsel

**SERVICE LIST**

Jeremy M. Grayem  
Ice Miller LLP  
250 West Street  
Columbus, OH 43215  
[Jeremy.grayem@icemiller.com](mailto:Jeremy.grayem@icemiller.com)

Counsel for Dayton Power &  
Light Company

William Wright  
Ohio Attorney General's Office  
Public Utilities Commission of Ohio  
30 W. Broad St., 16<sup>th</sup> Fl.  
Columbus, OH 43215  
[William.wright@ohioattorneygeneral.gov](mailto:William.wright@ohioattorneygeneral.gov)

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