

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)
Dayton Power and Light Company for)
Approval of Its Energy Efficiency and) Case No. 16-1369-EL-WVR
Peak Demand Reduction Program)
Portfolio Plan for 2017 through 2019.)

**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 in which Dayton Power and Light Company ("DP&L" or the "Utility") requests a waiver of the requirement that it file by March 15 each year its annual energy efficiency portfolio status report addressing the performance of its energy efficiency and peak demand reduction programs that customers pay for.¹ OCC files this motion on behalf of DP&L's 450,000 residential electricity customers.² The Public Utilities Commission of Ohio ("PUCO") should grant OCC's motion for the reasons set forth in the attached memorandum in support.³

¹ See Application of the Dayton Power and Light Company for Approval of its Energy Efficiency and Peak Reduction Program Portfolio Plan, Case No. 16-649-EL-POR, 16-1369-EL-WVR (June 15, 2016) (the "Application").

² See R.C. Chapter 4911; R.C. 4903.221; Ohio Adm. Code 4901-1-11.

³ The PUCO has already granted OCC's motion to intervene in Case No. 16-649-EL-POR. See Entry, Case No. 16-649-EL-POR (Apr. 7, 2016). DP&L filed its Application of the Dayton Power and Light Company for Approval of its Energy Efficiency and Peak Reduction Program Portfolio Plan on the docket in both Case No. 16-649-EL-POR and Case No. 16-1369-EL-WVR. OCC files this motion to intervene in Case No. 16-1369-EL-WVR to clarify that it has a right to intervene both with respect to DP&L's energy efficiency and peak demand reduction portfolio and DP&L's waiver request.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

This case relates to DP&L's request for a waiver of the requirement that it file by March 15 each year its annual energy efficiency portfolio status report addressing the performance of its energy efficiency and peak demand reduction programs that customers pay for.⁴ DP&L's proposed portfolio plan includes over \$40 million in program costs paid by residential customers.⁵ The portfolio plan would also require residential customers to pay shared savings profits to the Utility.⁶

Ohio law authorizes OCC to represent the interests of all of DP&L's 450,000 residential electricity customers.⁷ 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 it relates to the Utility's annual portfolio status report. The report is required to address "the performance of all approved energy efficiency and peak-demand reduction programs," which customers pay for. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

⁴ See Application § VII.

⁵ See Application, Exhibit 1 at 9 (the "Portfolio Plan").

⁶ See Application § IV.

⁷ See R.C. Chapter 4911.

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.

First, the nature and extent of OCC's interest is representing Duke'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 Duke's customers should receive adequate service at a reasonable rate under Ohio law.⁸ 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.

⁸ 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 . . .").

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.

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 in which the PUCO must address whether Duke should be permitted to file its annual status report after the March 15 deadline provided by the PUCO rules.

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 the lawfulness of 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."⁹ 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.¹⁰ Because there was no evidence disputing OCC's position, nor any evidence that OCC's intervention would unduly delay the proceedings, the Supreme Court found that the PUCO could not deny OCC the right to intervene.¹¹

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,

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OHIO CONSUMERS' COUNSEL

/s/ Christopher Healey

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⁹ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 2006-Ohio-5853, ¶ 20 (2006).

¹⁰ *Id.* ¶¶ 18-20.

¹¹ *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 18th day of July 2016.

/s/ Christopher Healey
Christopher Healey
Assistant Consumers' Counsel

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/18/2016 4:11:32 PM

in

Case No(s). 16-1369-EL-WVR

Summary: Motion Motion to Intervene by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Healey, Christopher Mr.