

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the)
Dayton Power and Light Company for)
Authority to Issue and Assume Liability) Case No. 16-2125-EL-AIS
on Short-Term Notes and Other Evidences)
of Indebtedness Pursuant to Section)
4905.40 and 4905.401 of the Ohio)
Revised Code.)

**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 and Light Company ("DP&L" or "Utility") seek authority to issue and assume liability associated with short term financing arrangements up to \$600 million in 2017. OCC is filing on behalf of the Utility's 450,000 residential utility customers. The PUCO should grant OCC's Motion for the reasons set forth in the attached Memorandum in Support.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Jodi Bair

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

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-3553 (Bair Direct)
Telephone: (614) 4661292 (Kumar Direct)
jodi.bair@occ.ohio.gov
ajay.kumar@occ.ohio.gov
(Both will accept service via email)

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the)
Dayton Power and Light Company for)
Authority to Issue and Assume Liability) Case No. 16-2125-EL-AIS
on Short-Term Notes and Other Evidences)
of Indebtedness Pursuant to Section)
4905.40 and 4905.401 of the Ohio)
Revised Code.)

MEMORANDUM IN SUPPORT

This case involves the review of the reasonableness of the Utility’s request for authority to issue and assume liability on short term financing arrangements. More specifically, the Utility seeks approval for short-term borrowing authority of approximately \$600 million in calendar year 2017 to repay long-term debt and other general corporate purposes.¹ OCC has authority under law to represent the interests of all the approximately 450,000 residential utility customers of the Utility in accordance with 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”, especially if the customers were unrepresented in a proceeding where the Utility is seeking to use \$600 million in short term financing to repay long term debt and for other purposes. This is especially true given that DP&L has recently entered into a six-year \$445 million term loan credit facility (“2016 Credit Agreement”) with an initial interest rate of 4% and an estimated

¹ Application at 1.

annual interest expense of \$17.8 million.² Thus, customers may be adversely affected by any additional short-term borrowings by DP&L in 2017 and the added interest expenses.

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 representing the Utility's residential customers in an attempt to eliminate or limit any potential adverse impact to these customers as a result of the Utility's \$600 million short term financing arrangements in 2017. The level of the requested short term financing -- \$600 million -- could increase DP&L's annual interest payment on top of the estimated \$17.8 million interest payment from the 2016 Credit Agreement. The nature and extent of OCC's 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 customers will include the position that the PUCO should ensure customers are served and not harmed now or in the future by the short term

² See PUCO Case No. 16-563-EL-AIS, Report of Sale at 1-2 (October 5, 2016). The credit arrangement was executed on August 24, 2016 with an adjustable interest rate of Eurodollar Rate plus 325 basis point.

financing arrangements and that any arrangements would result in rates that are just and reasonable. In light of DP&L's recent \$857.1 million fixed-asset impairment³, its planned separation of generation assets⁴, and its request for a credit support rider of \$145 million per year for seven year it its pending electric security plan⁵, DP&L's residential customers may be adversely affected by the \$600 million short term refinancing and related arrangements in light of the alleged current financial condition of DPL, Inc. (DP&L's parent). The residential customers of DP&L may be adversely affected by the proposed issuance of up to \$600 million short term notes and revolving loan agreement⁶ OCC's position is therefore directly related to the merits of these cases that are 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 these cases 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 these cases in the public interest.

³ Application, Exhibit B, p. 2.

⁴ *In the Matter of the Application of The Dayton Power and Light Company for Authority to Transfer or Sell Its Generation Assets*, Case No. 13-2420-EL-UNC, Application (December 30, 2013).

⁵ *In the Matter of the Application of The Dayton Power and Light company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case No. 16-395-EL-SSO, Direct Testimony of R. Jeffrey Malinak, p. 13, line 7 (October 31, 2016).

⁶ Application at 2.

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 residential utility customer advocate, OCC has a very real and substantial interest in these cases where Ohio electric utilities subject to the Commission’s jurisdiction have applied to enter into short term financing arrangements for \$600 million.

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 ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC’s intervention and that OCC should have been granted intervention.⁷

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

⁷ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

of Ohio residential customers, the Commission should grant OCC's Motion to Intervene in this case.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Jodi Bair

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

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-3553 (Bair Direct)
Telephone: (614) 4661292 (Kumar Direct)
jodi.bair@occ.ohio.gov
ajay.kumar@occ.ohio.gov
(Both will accept service via email)

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Intervene by the Office of the Ohio Consumers' Counsel was served on the persons stated below via electronic transmission this 25th day of November, 2016.

/s/ Jodi Bair

Jodi Bair
Assistant Consumers' Counsel

SERVICE LIST

William.wright@ohioattorneygeneral.gov
Brian.hylander@aes.com

Attorney Examiners:

Bryce.mckenney@puc.state.oh.us
Gregory.price@puc.state.oh.us

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/25/2016 10:37:55 AM

in

Case No(s). 16-2125-EL-AIS

Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Bair, Jodi Ms.