

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)
Dayton Power and Light Company for) Case No. 18-1875-EL-GRD
Approval of Its Plan to Modernize Its)
Distribution Grid.)

In the Matter of the Application of The)
Dayton Power and Light Company for) Case No. 18-1876-EL-WVR
Approval of a Limited Waiver of Ohio)
Adm. Code 4901:1-18-06(A)(2).)

In the Matter of the Application of The)
Dayton Power and Light Company for) Case No. 18-1877-EL-AAM
Approval of Certain Accounting Methods.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene to protect Ohioans regarding the amount The Dayton Power and Light Company ("DP&L") wants to charge them for smart meters and other technology. OCC also moves to intervene to protect consumers' rights regarding disconnection of electric service. OCC is filing on behalf of DP&L's 460,000 residential utility customers.¹ The reasons the Public Utilities Commission of Ohio ("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 Weston (0016973)
Ohio Consumers' Counsel

/s/ Terry L. Etter

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MEMORANDUM IN SUPPORT

In its most recent electric security plan case, DP&L committed to propose a plan to deploy smart meters and other technology throughout its service territory.² Consumers will pay for this deployment through a smart grid rider.³ DP&L has submitted this plan in these cases. DP&L has also asked to avoid providing its customers with in-person notice on the day their electric service is to be disconnected for nonpayment, as the PUCO’s rules require.⁴ OCC has authority under law to represent the interests of all of DP&L’s 460,000 residential utility customers, pursuant to 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 this case, especially if the

² Case No. 16-395-EL-SSO, Amended Stipulation and Recommendation (March 14, 2017) at 7-8.

³ *Id.*

⁴ Ohio Adm. Code 4901:1-18-06(A)(2).

customers were unrepresented in proceedings involving charges that will be included on their electric bills and the type of notice they will receive before their service is to be disconnected for nonpayment. 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 proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is representing DP&L's residential customers in these cases involving proposed charges on their electric bill and the type of notice they receive on the day their electric service is to be disconnected for nonpayment. This interest is different from that of any other party and especially different from 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 will also advocate for the protection of customers' rights of proper disconnection notice under the PUCO's rules. OCC's position is therefore directly related to the merits of this case that 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 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" 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 involving proposed charges on customers' electric bills and the notice consumers receive when their electric service is disconnected for nonpayment.

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 PUCO 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 (“Court”) 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.⁵

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 PUCO should grant OCC’s Motion to Intervene.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers’ Counsel

/s/ Terry L. Etter
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⁵ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

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 7th day of February 2019.

/s/ Terry L. Etter _____
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Summary: Motion Motion to Intervene by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Etter, Terry Mr.