

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the	)	
Application of The Dayton Power and	)	Case No. 19-0162-EL-RDR
Light Company for Extension of Its	)	
Distribution Modernization Rider	)	

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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<sup>1</sup> in this proceeding where the Dayton Power and Light Company (the "Utility") seeks to nearly double its charges to customers and extend the charges (by two years) for its so-called Distribution Modernization Rider ("DMR").

OCC represents the interests of over 450,000 of the Utility's residential electric utility customers in Ohio.<sup>2</sup> The PUCO should grant OCC's motion to intervene for the reasons set forth in the attached memorandum in support.

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

<sup>2</sup> *Id.*

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

/s/ Angela O'Brien  
Angela O'Brien (0097579)  
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**MEMORANDUM IN SUPPORT**

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The Utility is seeking authority from the PUCO to extend the currently-authorized DMR charge for two additional years. The Utility is also proposing to almost double its annual DMR collection from \$105 million to \$199 million. The DMR was established to permit the Utility to charge customers millions of dollars to maintain the Utility’s financial integrity and purportedly to facilitate upgrades to the distribution grid. OCC has statutory authority to represent the interests of the Utility’s over 450,000 residential electric utility customers under R.C. Chapter 4911. Considering the complexity of the issues involved, and the effect they will have on the Utility’s customers, it is important that the PUCO scrutinize the requested extension with a skeptical eye.

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 the Utility’s residential customers may be “adversely affected” by this case, especially if they were unrepresented in a proceeding to determine how much they will pay under the Utility’s proposed extended DMR. 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 the Utility's residential customers in this case, which considers the Utility's proposal to extend and increase DMR charges to customers. 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 shareholders. As a representative of the Utility's residential customers who will be affected by the outcome of this case, OCC is an "interested stakeholder."

Second, OCC's advocacy for residential customers will include advancing the position that the Utility should charge its customers no more than what is just and reasonable under Ohio law. 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 this case where the PUCO will determine whether to extend and increase charges to customers under the Utility’s DMR.

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.

Further, the Supreme Court of Ohio (“Court”) affirmed 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.<sup>3</sup>

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<sup>3</sup> See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Court 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/ Angela O'Brien  
Angela O'Brien (0097579)  
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### **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 21<sup>st</sup> day of February 2019.

/s/ Angela O'Brien

Angela O'Brien

Assistant Consumers' Counsel

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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 O'Brien, Angela Ms.