

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)
Dayton Power and Light Company to) Case No. 19-0568-EL-ATA
Establish a Tax Savings Credit Rider)

In the Matter of the Application of The)
Dayton Power and Light Company's)
Implementation of Certain Matters) Case No. 19-0572-EL-UNC
Relating to the Tax Cuts and Jobs Act of)
2017)

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

In an approved settlement signed by the Office of the Ohio Consumers' Counsel ("OCC"), the Dayton Power and Light Company ("DP&L"), and others in DP&L's most recent base rate case, DP&L agreed to file this case to return all remaining benefits of the Tax Cuts and Jobs Act of 2017 to its customers.¹

OCC moves to intervene² to represent the interests of DP&L's 460,000 residential electric utility customers in in this case. The PUCO should grant OCC's motion to intervene for the reasons set forth in the attached memorandum in support.

¹ Case No. 15-1830-EL-AIR, Opinion & Order (Sept. 28, 2018), Stipulation and Recommendation (June 18, 2018).

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

Respectfully submitted,

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Ohio Consumers' Counsel

/s/ Christopher Healey
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MEMORANDUM IN SUPPORT

Customers pay for utility's taxes through their utility bills, so customers deserve to receive all the benefits of lower federal income tax rates under the Tax Cuts and Jobs Act of 2017. As a result of its most recent base rate case, DP&L began passing some—but not all—of those tax benefits to its customers. The current case will determine how any remaining tax savings will be passed back to customers.

OCC has authority under law to represent the interests of DP&L's 460,000 residential utility customers under 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 the DP&L's residential customers may be "adversely affected" by this case, especially if they were unrepresented in a proceeding to determine how customers will receive the remaining benefits of recent federal tax cuts. 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 this case, which considers the reasonableness of DP&L's proposal to pass the remaining tax savings on to its customers. This interest is different from that of any other party, and especially different from that of DP&L, whose advocacy includes the financial interest of shareholders. As a representative of DP&L'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 positions that DP&L should charge its customers no more than what is just and reasonable under Ohio law. OCC's positions are 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 how DP&L will provide the remaining benefits of the federal income tax cuts to its customers.

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.³

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,

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Ohio Consumers' Counsel

/s/ Christopher Healey
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³ 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 25th day of March 2019.

/s/ Christopher Healey

Christopher Healey
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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/25/2019 2:19:34 PM

in

Case No(s). 19-0568-EL-ATA, 19-0572-EL-UNC

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.