

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton       )  
Power and Light Company to Update its               ) Case No. 19-1776-EL-RDR  
Reconciliation Rider.                                       )

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

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Despite Ohio's 1999 law that deregulated power plants, DP&L has gained PUCO approval to charge its monopoly customers for subsidies to two coal plants (one of which is not even in Ohio (in Indiana). These subsidies elevate monopolies like DP&L over competitive markets for serving consumers. DP&L's subsidy charges put profits before people. The people imposed upon by DP&L include the 33.5% of the population in Dayton that live in poverty but must pay subsidies to their monopoly utility.

On behalf of 465,000 residential customers of Dayton Power & Light Company ("DP&L"), the Office of the Ohio Consumers' Counsel moves to intervene in this case.<sup>1</sup> The Public Utilities Commission of Ohio ("PUCO") will be reviewing DP&L's charges to consumers to subsidize the Ohio Valley Electric Corporation's ("OVEC") generating plants. DP&L seeks to increase the OVEC Subsidy Charge so that a typical residential customer will pay an additional \$0.43 per month or \$1.11 in total per month.<sup>2</sup> Consumers should not have to pay a penny to subsidize these coal plants.

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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> Based on 1,000 kWh per month. See Schedules and Workpaper attached to DP&L's Application.

The reasons that the PUCO should grant OCC's motion are further set forth in the attached memorandum in support.

Respectfully submitted,

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Ohio Consumers' Counsel

/s/ William J. Michael  
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**MEMORANDUM IN SUPPORT**

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On September 16, 2019, DP&L filed an application to update its charge to consumers for subsidizing its interest in the OVEC coal plants. DP&L charges consumers to subsidize its interest in two 1950s-era coal plants, one in Ohio and one in Indiana. The legality of that charge, what DP&L calls the “Reconciliation Rider,” is currently on appeal to the Supreme Court of Ohio (“Court”).<sup>3</sup> DP&L asks the PUCO for authority to increase the OVEC Subsidy Charge so that a typical residential consumer will pay \$.43 more per month for electric service.<sup>4</sup> OCC has authority under law to represent the interests of DP&L’s 465,000 residential electric 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 DP&L’s residential electric utility consumers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding where DP&L asks for authority to increase the charges consumers will pay for coal-fired power plants in Ohio and Indiana. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

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<sup>3</sup> See Court Case No. 2019-0020. Notwithstanding this Motion to Intervene or anything stated herein, OCC believes that the OVEC Subsidy Charge is unlawful. Therefore, consumers should not pay it at all.

<sup>4</sup> Based on 1,000 kWh per month. See Schedules and Workpaper attached to DP&L’s Application.

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; and
- (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 electric utility consumers who will be asked to pay increased charges to subsidize the costs of two coal-fired power plants, one in Ohio and the other in Indiana. The OVEC Subsidy Charge should be just and reasonable. This interest is different from that of any other party and especially different from DP&L, whose advocacy includes the financial interests of stockholders.

Second, OCC's legal position will include, without limitation, advancing the position that a utility cannot levy a charge on consumers unless the charge is lawful, just and reasonable.<sup>5</sup> OCC will seek to determine whether DP&L's charging of consumers for an OVEC Subsidy is just and reasonable.

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.

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<sup>5</sup> 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" according to Ohio Adm. Code 4901-1-11(A)(2). As the advocate for Ohio's residential electric utility consumers, OCC has a very real and substantial interest in this case where the PUCO will review DP&L's request to increase the OVEC Subsidy Charge.

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 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 consumers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the 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.<sup>6</sup>

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 DP&L's residential electric utility consumers, the PUCO should grant OCC's motion to intervene to give consumers a voice in this case.

Respectfully submitted,

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Ohio Consumers' Counsel

/s/ William J. Michael

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<sup>6</sup> See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 13-20 (2006).

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below via electric transmission upon the parties below this 17th day of October 2019.

/s/ William J. Michael

William J. Michael

Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: Motion Motion to Intervene by The Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Michael, William J.