

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The)	
Dayton Power and Light Company for)	Case No. 19-2144-EL-UNC
Approval of a Future Seamless Move)	
Operational Plan.)	

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene where The Dayton Power and Light Company ("DP&L") is proposing its plan to address what happens when a marketer customer terminates service at one address and commences service at a new address in DP&L's service territory. OCC is filing on behalf of the 465,000 residential utility customers of DP&L. The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Ambrosia E. Logsdon
Ambrosia E. Logsdon (0096598)
Counsel of Record
Amy Botschner O'Brien (0074423)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215
Telephone [Logsdon]: (614) 466-1292
Telephone: [Botschner O'Brien]: (614) 466-9571
ambrosia.logsdon@occ.ohio.gov
amy.botschner.obrien@occ.ohio.gov
(willing to accept service by e-mail)

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MEMORANDUM IN SUPPORT

As a result of the PUCO’s investigation into the health, strength, and vitality of Ohio’s competitive electricity market, the PUCO issued a Finding and Order that adopted the implementation of a “seamless move mechanism” as a statewide standard for what happens when a marketer customer moves.¹ DP&L filed this application in response to the PUCO’s Order.

A seamless move mechanism is the coordination process and electronic interfaces that are necessary to enable marketers to continue providing service to customers participating in an electric marketer program when they end electric service at one address and initiate service at a new address within the same electric utility service territory. During the investigation case, OCC expressed concerns with a seamless move implementation including the need for adequate consumer protections, the cost

¹ *In re the Commission’s Investigation of Ohio’s Retail Electric Service Market*, Case No. 12-3151-EL-COI, Finding and Order at 2-3 (February 7, 2018); *In re the Market Development Working Group*, Case No. 14-2074-EL-EDI, Finding and Order at 2-3 (February 7, 2018) (“Finding and Order”).

effectiveness of the “seamless move mechanism,” and the process and manner in which the costs will be allocated.²

Recognizing that the details of the seamless move implementation and cost issues have yet to be fully addressed, the PUCO required each electric distribution utility (“EDU”) to file operational plans where these issues could be further considered.³ DP&L and the other electric utilities⁴ fully participated in the PUCO’s investigation into Ohio’s retail electric service market and provided several sets of comments.

In DP&L’s comments, it recommended that “[a]bsent a full cost-benefit analysis with evidence that customers benefit from this mechanism, costs should be borne by the [marketers] who have developed this mechanism for their own benefit.”⁵ DP&L also commented that less than 1% of the customers in DP&L’s service territory would be eligible to take advantage of a seamless move.⁶

DP&L’s proposed plan recommends that it fully collect the costs from the marketers, unless and until the program is discontinued.⁷ However, if it is discontinued,

² *Id.*, Comments by the Office of the Ohio Consumers’ Counsel at 3-4 (March 9, 2018) (Marketers should be allocated the full cost of implementing seamless move. Consumers did not request seamless move nor is there any analysis that consumers will benefit from it, and consumers should be held harmless. Marketers are the sole beneficiary and single advocate for seamless move and the marketers who see an opportunity to avoid marketing and enrollment costs that otherwise would be incurred to re-enroll customers at new address. Making customers to pay for seamless move would be an anti-competitive subsidy that is prohibited under R.C. 4928.02(H)); OCC’s Application for Rehearing at 2-6 (March 9, 2018).

³ Finding and Order at ¶ 37-38 (February 7, 2018) (The PUCO ordered that Seamless Move should be adopted despite objections by PUCO Staff, OCC, and others).

⁴ Duke Energy Ohio, First Energy, and Ohio Power Company (“AEP”).

⁵ DP&L Comments at 4-5 (March 9, 2018).

⁶ *Id.* at 3.

⁷ Application at 6 (“AEP Ohio plans to recover this cost from all customers that are eligible to take advantage of this service, therefore the approximate cost per eligible seamless move transaction is \$24.02... This amount will be charged to the CRES providers with which eligible customers are under contract through the monthly invoice AEP Ohio currently sends each CRES provider actively serving customers in the Company’s service territory.”).

AEP requests that any remaining costs be collected from consumers through the Power Forward Rider.⁸ OCC does not support this exception—marketers, and not consumers should pay all of the costs. Accordingly, OCC’s intervention will seek to ensure that consumer interests are represented as the operational details are finalized and the implementation costs are properly allocated in accordance with DP&L’s proposal.

OCC has authority under law to represent the interests of the 1.3 million residential utility customers of AEP, 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 PUCO Staff opposed the seamless move process in its Report to the PUCO because it was the costliest option, the most difficult option to implement, would require numerous PUCO rule waivers, and would only be available to 2.2% of all residential shopping customers.⁹ But despite Staff’s opposition, the PUCO adopted the implementation of a seamless move as the statewide standard.¹⁰ As such, the interests of Ohio’s residential customers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding where they could end up paying the costs of implementing the seamless move process, which primarily benefits marketers and where potentially only 2.2% of customers are expected to be able to utilize the seamless move process. If any party should pay the costs of implementing this process, it is the marketers. Additionally, this case could adversely affect consumer protections against slamming, contract rights,

⁸ *Id.*

⁹ Staff Report at 7-9 (July 16, 2015); AEP’s Application for Rehearing at 4 (March 9, 2018) (AEP’s number is grimmer; AEP expects only 0.5% of customers would be eligible.).

¹⁰ *Id.*

advance notification requirements, marketer education, and customer rescission rights if residential customers were not adequately represented. 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 residential customers of AEP in this case involving its seamless move operational plan. This 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 residential customers will include, among other things, 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 that consumers should not have to bear the costs for the implementation of seamless move. OCC's position is therefore directly related to the merits of this case, which 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 customers could shoulder the costs of a process that will provide them no benefit.

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 which 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.¹¹

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/ Ambrosia E. Logsdon
Ambrosia E. Logsdon (0096598)
Counsel of Record
Amy Botschner O’Brien (0074423)
Assistant Consumers’ Counsel

Office of the Ohio Consumers’ Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215
Telephone [Logsdon]: (614) 466-1292
Telephone: [Botschner O’Brien]: (614) 466-9571
ambrosia.logsdon@occ.ohio.gov
amy.botschner.obrien@occ.ohio.gov
(willing to accept service by e-mail)

¹¹ 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 2nd day of March 2020.

/s/ Ambrosia E. Logsdon
Ambrosia E. Logsdon
Assistant Consumers' Counsel

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

SERVICE LIST

john.jones@ohioattorneygeneral.gov

michael.schuler@aes.com

Attorney Examiner:

matthew.sandor@puco.ohio.gov

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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 Logsdon, Ambrosia E.