

In the Matter of the Review of the)
Reconciliation Rider of The Dayton) Case No. 20-165-EL-RDR
Power and Light Company.)

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene¹ in the Public Utilities Commission of Ohio's ("PUCO") audit of the rate Dayton Power & Light Company ("DP&L") will collect from customers through its reconciliation rider ("OVEC Rider"). The OVEC Rider is the charge that has required customers to subsidize DP&L's share of two 60-year-old power plants (one in Indiana, one in Ohio) owned by the Ohio Valley Electric Corporation ("OVEC"). OCC is filing on behalf of DP&L's 460,000 residential utility customers. The reasons the 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/ William J. Michael

William J. Michael (0070921)
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 43215-4213

Telephone [Michael]: (614) 466-1291

Telephone [Botschner O'Brien]: (614) 466-9575

william.michael@occ.ohio.gov

amy.botschner.obrien@occ.ohio.gov

(willing to accept service by e-mail)

In the Matter of the Review of the)
Reconciliation Rider of the Dayton) Case No. 20-165-EL-RDR
Power and Light Company.)

Money that DP&L has collected from customers through the OVEC Rider has been used to subsidize DP&L's interest in two old power plants owned by OVEC.² The annual audit of DP&L's OVEC Rider for the period of November 1, 2018, through December 31, 2019³ relates to the OVEC power plant charges that DP&L's 460,000 residential utility customers have subsidized through the rider. OCC has authority under law to represent the interests of all of DP&L's 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 customers were unrepresented in a proceeding reviewing the above-market subsidy charges they pay through DP&L’s OVEC Rider. 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:

² See Case No. 16-395-EL-SSO, Amended Stipulation and Recommendation (March 13, 2017).

³ *In the Matter of the Review of the Reconciliation Rider of the Dayton Power and Light Company*, Entry at 3 (January 29, 2020).

- (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 involving above-market subsidies they paid for the supposed financial hedge provided by the power produced by two old uneconomic power plants. 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 its shareholders.

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'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 real and substantial interest in this case determining the charges consumers pay through DP&L’s OVEC Rider.

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.⁴

⁴ 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 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/ William J. Michael

William J. Michael (0070921)

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 43215-4213

Telephone [Michael]: (614) 466-1291

Telephone [Botschner O'Brien]: (614) 466-9575

william.michael@occ.ohio.gov

amy.botschner.obrien@occ.ohio.gov

(willing to accept service by e-mail)

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 17th day of March 2020.

/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:

SERVICE LIST

john.jones@ohioattorneygeneral.gov

michael.schuler@aes.com

Attorney Examiners:

patricia.schabo@puco.ohio.gov

michael.williams@puco.ohio.gov

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/17/2020 4:47:27 PM

in

Case No(s). 20-0165-EL-RDR

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.