

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton)
Power and Light Company for A Finding That) Case No. 20-680-EL-UNC
Its Current Electric Security Plan Passes The)
Significantly Excessive Earnings Test And)
More Favorable In The Aggregate Test In R.C.)
4928.143(E))

**MOTION TO INTERVENE
OF THE CITY OF DAYTON**

Pursuant to Ohio Revised Code § 4903.221 and O.A.C. 4901-1-11, the City of Dayton (“Dayton”) hereby moves to intervene in the above-captioned case. Dayton has real and substantial interests in this proceeding and its interests, which may be prejudiced by the results of this proceeding, are not adequately represented by existing parties. Thus, as set forth more fully in the attached memorandum in support, Dayton respectfully requests that the Commission grant this timely request to intervene.

Respectfully submitted,

/s/ N. Trevor Alexander

Steven D. Lesser (0020242)

N. Trevor Alexander (0080713)

Mark T. Keaney (095318)

Kari D. Hehmeyer (0096284)

CALFEE, HALTER & GRISWOLD LLP

41 S. High St., 1200 Huntington Center

Columbus OH 43215

Telephone: (614) 621-1500

Email: slessen@calfee.com

Email: talexander@calfee.com

Email: mkeaney@calfee.com

Email: khehmeyer@calfee.com

Will accept service via email

ATTORNEYS FOR THE CITY OF DAYTON

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**MEMORANDUM IN SUPPORT OF THE MOTION TO INTERVENE
OF THE CITY OF DAYTON**

I. Introduction

In Dayton Power and Light Company's ("DP&L") currently operative electric security plan, Case No 08-1094-EL-SSO ("ESP I"), Dayton and Honda argued that the Commission should conduct its four-year review of ESP I. The Commission agreed with Dayton/Honda in its December 18, 2019 Finding and Order, ¶ 41 and required DP&L to file this case.¹ The Commission's decision in this case will have a significant impact on customers through, among other things, a determination of DP&L's rates.

As a large customer and the largest municipality in DP&L's service territory, the City of Dayton ("Dayton") has real and substantial interests in this proceeding on behalf of itself as a customer and on behalf of its residents. The Commission's disposition of this proceeding may impair or impede Dayton's ability to protect those interests. Thus, Dayton respectfully requests that the Commission grant its Motion to Intervene ("Motion") in the above-captioned cases.

¹ "We agree with the issue raised by Dayton/Honda that R.C. 4928.143(E) requires the Commission to periodically test an ESP if the term exceeds three years and that the term of ESP I has cumulatively exceeded the three years specified in the statute. Accordingly, we direct DP&L to open a docket, no later than April 1, 2020, in which the Commission will conduct both the ESP v. MRO Test and the prospective significantly excessive earnings test specified in R.C. 4928.143(E)."

II. Legal Standard

R.C. § 4903.221 provides that any “person who may be adversely affected by a public utilities commission proceeding” may intervene in the proceeding. The Commission’s rules reinforce the right to intervene:

Upon timely motion, any person *shall be* permitted to intervene in a proceeding upon a showing that . . . [t]he person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person’s interest is adequately represented by existing parties.

O.A.C. 4901-1-11(A) (emphasis added). “The regulation’s text is very similar to Civ. R. 24 – the rule governing intervention in civil cases in Ohio – which is generally liberally construed in favor of intervention.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 387 (2006) (internal quotations omitted). In considering a motion to intervene, the Commission’s rule directs that the Commission should consider: the nature and extent of the intervenor’s interest; the legal position advanced by the intervenor and its probable relation to the merits of the case; whether intervention will unduly prolong or delay the proceedings; whether the intervenor will significantly contribute to full development and equitable resolution of the factual issues; and the extent to which the intervenor’s interest is represented by existing parties. *See* O.A.C. 4901-1-11(B)(1)-(5); *see also* R.C. § 4903.221(B)(1)-(4). Dayton’s Motion satisfies each of these factors.

III. Argument

A. The Nature And Extent Of Dayton's Interests

Dayton is directly affected by the Application as a large customer in DP&L's service territory. In addition, Dayton is impacted by the Application on behalf of its 140,000+ residents, who are all customers in DP&L's service territory. As such, Dayton has a substantial interest in the outcome of this proceeding and in ensuring that the rates and charges imposed on customers are established appropriately. That interest cannot be represented by any other party to this proceeding, as no other party to this proceeding represents Dayton's interests as a customer and on behalf of its residents.

The issues in this case include, among other things, the \$76 million/year Rate Stabilization Charge ("RSC") as part of the determination of whether ESP I is more favorable in the aggregate than an MRO. The case will also address whether DP&L's earnings are significantly excessive. Those issues will have a material impact on all of DP&L's customers.

B. The Legal Position Asserted By Dayton

Dayton anticipates addressing R.C. 4928.143(E) in this proceeding. Among other things, Dayton anticipates discussing whether ESP I remains more favorable in the aggregate than an MRO, including raising many of the same issues regarding the ongoing validity regarding Rider RSC which it has previously raised in the ESP I proceeding.² Dayton also anticipates examining whether DP&L's earnings are projected to be significantly excessive

² See, e.g. Comments Regarding Dayton Power & Light Company's Proposed Tariffs filed December 4, 2019.

C. Dayton's Intervention Will Not Unduly Prolong Or Delay The Proceeding

The Application was filed on April 1, 2020. The Attorney Examiner has established a June 15, 2020 deadline for intervention. As a result, Dayton's Motion is timely and will not prejudice any existing parties or unduly prolong or delay the proceedings.³

D. Dayton Will Contribute To The Full Development Of Factual Issues And Dayton's Interests Are Not Already Represented By Existing Parties.

Dayton is the largest municipality and a large customer with extensive operations in DP&L's service territory; as a result, Dayton is uniquely situated to contribute to the full development of factual issues in this case. Dayton has substantial experience in Commission proceedings, experience which may benefit the Commission's review of the Application.⁴ Dayton's participation will significantly contribute to the full development and resolution of the issues raised by the Application. Dayton's interests are not already represented by existing parties, as no other party currently involved in this proceeding represents Dayton's interests as a customer or Dayton's interests regarding its 140,000+ residents.

³ See O.A.C. 4901:1-11(E) (providing that a motion to intervene "will not be considered timely if it is filed later than five days prior to the scheduled date of hearing or any specific deadline established by order of the commission for purposes of a particular proceeding").

⁴ See, e.g., Case No. 19-0162-EL-RDR; 18-298-GA-AIR; Case No. 16-395-EL-SSO; Case No. 15-1830-EL-AIR; 12-426-EL-SSO; Case No. 08-1094-EL-SSO.

IV. Conclusion

WHEREFORE, Dayton respectfully requests that the Commission grant this Motion to Intervene and allow Dayton to be made a party of record to this proceeding.

Respectfully submitted,

/s/ N. Trevor Alexander

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Email: talexander@calfee.com

Email: mkeaney@calfee.com

Email: khehmeyer@calfee.com

ATTORNEYS FOR THE CITY OF DAYTON

CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 24rd day of April, 2020. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ N. Trevor Alexander
One of the Attorneys for The City of Dayton

This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 20-0680-EL-UNC

Summary: Motion to Intervene electronically filed by Mr. Trevor Alexander on behalf of City of Dayton