

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the)
Significantly Excessive Earnings Test under)
Section 4928.143(F), Ohio Revised Code, and) Case No. 20-1041-EL-UNC
Rule 4901:1-35-03(C)(10), Ohio)
Administrative Code for The Dayton Power)
and Light Company.)

**MOTION TO INTERVENE OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

Pursuant to R.C. 4903.221 and Ohio Adm. Code 4901-1-11, the Ohio Manufacturers' Association Energy Group (OMAEG) respectfully moves the Public Utilities Commission of Ohio (Commission) to intervene in this matter with the full powers and rights granted to intervening parties. As demonstrated in the attached Memorandum in Support, OMAEG has a real and substantial interest in this proceeding that may be adversely affected by the outcome herein, and which cannot be adequately represented by any other party. Accordingly, OMAEG satisfies the standard for intervention set forth in Ohio statutes and regulations.

Therefore, OMAEG respectfully requests that the Commission grant this motion to intervene for the reasons stated herein and as more fully set forth in the attached Memorandum in Support. OMAEG also requests that it be made a full party of record in these proceedings.

Respectfully submitted,

/s/ Kimberly W. Bojko
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)

MEMORANDUM IN SUPPORT

On May 15, 2020, Dayton Power & Light Company (DP&L) filed an Application seeking a finding from the Commission that DP&L did not have significantly excessive earnings under R.C. 4928.143(F) for calendar year 2019. DP&L avers that administration of the significantly excessive earnings test (SEET) with respect to its revenues for 2019 should not warrant a refund.¹ But in arriving at this conclusion, DP&L excluded from its SEET calculation charges collected by DP&L under its distribution modernization rider (DMR)² until it was invalidated by the Commission following a decision by the Supreme Court of Ohio that held that R.C. 4928.143 does not authorize DMRs.³ When the Court determined that FirstEnergy's DMR was unlawful, the Court did not immediately mandate the return of previously-collected DMR funds.⁴ Instead, the Court explicitly noted that customers would not be prejudiced by the lack of refunds as the next SEET proceeding would provide the proper venue for customers to address the refund issue and

¹ Application at 1.

² Id.; Direct Testimony of Karin M. Nyhuis, at 4-5 (May 15, 2020).

³ *In re Application of Ohio Edison*, 157 Ohio St.3d 73, 2019-Ohio-2401, ¶ 56; *In the Matter of the Application of the Dayton Power & Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 16-395-EL-SSO et al., Supplemental. Opinion and Order at ¶110 (Nov. 21, 2019).

⁴ *In re Application of Ohio Edison*, 157 Ohio St.3d 73, 2019-Ohio-2401, ¶¶ 32-34 ("Further, utility customers will not be prejudiced by the failure to immediately address the issue. R.C. 4928.143(F) expressly provides for customer refunds if the ESP resulted in significantly excessive earnings, but that determination can be made only in a SEET proceeding.").

potentially receive refunds if the ESP that included the unlawful DMR resulted in significantly excessive earnings.⁵

This proceeding will determine whether or not DP&L has excessively earned and whether customers will receive refunds for any excessive earnings that DP&L collected. As explained in more detail below, given the impact this case could have on consumers, especially manufacturing customers, many of whom are members of OMAEG, OMAEG has a real and substantial interest in the outcome of this proceeding.

R.C. 4903.221 and Ohio Adm. Code 4901-1-11 establish the standard for intervention in the above-captioned proceedings. R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a Commission proceeding is entitled to seek intervention in that proceeding. R.C. 4903.221(B) further requires the Commission to consider the nature and extent of the prospective intervenor’s interest, the legal position advanced by the prospective intervenor and its probable relation to the merits of the case, whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding, and the prospective intervenor’s potential contribution to a just and expeditious resolution of the issues involved.

OMAEG is a non-profit entity that strives to improve business conditions in Ohio and drive down the cost of doing business for Ohio manufacturers. OMAEG members and their representatives work directly with elected officials, regulatory agencies, the judiciary, and the media to provide education and information to energy consumers, regulatory boards and suppliers of energy; advance energy policies to promote an adequate, reliable, and efficient supply of energy at reasonable prices; and advocate in critical cases before the Commission. Here, OMAEG has an interest in ensuring that DP&L is not significantly excessively earning and charging ratepayers

⁵ Id.

excessive amounts. As consumers of significant amounts of energy in DP&L's service territory, OMAEG has been involved in numerous DP&L cases previously.⁶ Moreover, OMAEG has participated in prior proceedings involving DP&L's administration of the SEET review.⁷

For these reasons, OMAEG has a direct, real, and substantial interest in the issues raised in this proceeding and is so situated that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect that interest. It is regularly and actively involved in Commission proceedings and, as in previous proceedings, OMAEG's unique knowledge and perspective will contribute to the full development and equitable resolution of the factual issues in this case. OMAEG's interest will not be adequately represented by other parties and its timely intervention will not unduly delay or prolong these proceedings.

⁶ See, e.g., *In the Matter of the Application of The Dayton Power and Light Company for Extension of Distribution Modernization Rider*, Case No. 19-0162-EL-RDR; *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan*, Case Nos. 16-0395-EL-SSO, et al.; *In the Matter of the Application of The Dayton Power and Light Company for an Increase in its Electric Distribution Rates*, Case Nos. 15-1830-EL-AIR, et al.; *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case Nos. 12-0426-EL-SSO, et al.; *In the Matter of the Application of The Dayton Power and Light Company for Extension of Distribution Modernization Rider*, Case No. 19-0162-EL-RDR; *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan*, Case Nos. 08-1094-EL-SSO, et al.

⁷ See, e.g., *In the matter of the Application The Dayton Power and Light Company's Application for a Finding that Its Current Electric Security Plan Passes the Significantly Excessive Earnings Test and More Favorable in the Aggregate Test in R.C. 4928.143(E)*, Case No. 20-680-EL-UNC, OMAEG's Motion to Intervene (May 13, 2020).

Because OMAEG satisfies the criteria set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11, Ohio law authorizes OMAEG to intervene in this proceeding with the full powers and rights granted by the Commission to intervening parties. OMAEG respectfully requests that the Commission grant this motion for leave to intervene and makes OMAEG a full party of record.

Respectfully submitted,

/s/ Kimberly W. Bojko
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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on July 2, 2020 upon the parties listed below.

/s/ Kimberly W. Bojko
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Summary: Motion to Intervene of The Ohio Manufacturers' Association Energy Group
electronically filed by Mrs. Kimberly W. Bojko on behalf of OMA Energy Group