

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the Dayton)
Power and Light Company's Alternative) Case No. 20-553-EL-RDR
Energy Rider.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene where the PUCO is conducting its phase two management/performance audit of DP&L's¹ alternative energy charge mechanism ("AER" or "charge"). The AER collects money from consumers for DP&L's compliance with the renewable mandates required by Ohio's 2008 energy law. The PUCO previously approved DP&L's request to separately identify renewable mandate compliance charges through an alternative energy component of the standard offer rate.² However, collection of these compliance charges from consumers through the standard offer rate remain subject to PUCO Audit.³

¹ The Dayton Power and Light Company dba AES Ohio.

² Case No. 19-841-EL-RDR, Finding and Order at ¶7, ¶10 (May 29, 2019).

³ *Id.* at ¶7 ("...pursuant to the ESP III Case, the proposed SOR rates include an alternative energy rate (AER) component, a reconciliation component, and an unbilled fuel component"); ¶10 (...tariffs already provide Staff with the flexibility to complete the audit of the reconciliation component after the approval of the updated rates and to complete the audit of the AER component in the future. The SOR will still be subject to reconciliation, including refunds, based upon the results of the audits, and the results of these audits would not be considered to be out of the audit period simply because the Commission has approved the annual update of the SOR rates. Nonetheless, we do agree with Staff's recommendation that the Company provide Staff with quarterly updates regarding the balances collected under the rider, and we direct the Company to provide such updates going forward").

PUCO Staff filed the phase one audit report covering the AER charges to consumers from June 1, 2016 through May 31, 2020 on December 3, 2020. This phase two audit covers AER charges to consumers from June 1, 2020 through May 31, 2021.

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. Wilson
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MEMORANDUM IN SUPPORT

The PUCO is auditing DP&L's charges to consumers for its compliance with the 2008 energy law's renewable energy requirements. The PUCO previously determined that DP&L could separately identify renewable mandate compliance charges through an alternative energy component of the standard offer rate.⁴ But the amounts collected from consumers remain subject to PUCO audit.⁵ OCC moves to intervene where consumers could overpay for DP&L's compliance with renewable energy mandates as a result of audit findings. OCC has authority under law to represent the interests of all 465,000 residential utility customers of DP&L 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 Ohio's residential customers may be "adversely affected" by this case, especially if the customers were unrepresented in a proceeding where DP&L's charges to consumers—through the standard offer rate—are being approved (through tariff filings) and audited by the PUCO.

⁴ See Note 3, *supra*.

⁵ *Id.*

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 DP&L in this case involving the PUCO's audit of DP&L's renewable energy compliance charges to consumers. 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 customers' rates must be just and reasonable. 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 the residential customers it represents could be required to pay too much for DP&L's compliance with renewable energy requirements.

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.⁶

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,

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Ohio Consumers' Counsel

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⁶ 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 19th day of May 2021.

/s/ Ambrosia E. Wilson
Ambrosia E. Wilson
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 Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Wilson, Ambrosia E.