

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the matter of the Application of The Dayton Power & Light Company to Increase its Rates for Electric Distribution Rates	)	Case No. 20-1651-EL-AIR
	)	
	)	Case No. 20-1652-EL-AAM
In the Matter of the Application of The Dayton Power & Light Company for Accounting Authority	)	
	)	Case No. 20-1653-EL-ATA
	)	
In the Matter of the Application of The Dayton Power & Light Company for Approval of Revised Tariffs.	)	

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**MOTION TO INTERVENE BY THE  
OHIO ENVIRONMENTAL COUNCIL**

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The Ohio Environmental Council (“OEC”) respectfully moves for leave to intervene in the above-captioned cases, filed by the The Dayton Power & Light Company d/b/a AES Ohio (“AES Ohio”). Pursuant to Ohio Revised Code § 4903.221 and Ohio Administrative Code 4901-1-11, and for reasons expressed in the attached Memorandum in Support, the Public Utilities Commission of Ohio (“the Commission”) should grant the OEC’s Motion to Intervene. The OEC has a real and substantial interest in these proceedings, represents interests separate from those of the already existing parties, and will contribute to a just and expeditious resolution of the issues involved in the proceedings without causing undue delay. The OEC has provided a detailed explanation of its intervention in the accompanying Memorandum in Support.

Respectfully Submitted,

August 24, 2021

/s/Miranda Leppla  
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**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE  
BY THE OHIO ENVIRONMENTAL COUNCIL**

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**I. Introduction**

The Ohio Environmental Council (“OEC”) respectfully moves for leave to intervene in the above-captioned case, filed by the The Dayton Power & Light Company d/b/a AES Ohio (“AES Ohio”) pursuant to R.C. 4909.18 and related sections of the Ohio Revised Code, seeks authority to make changes and increases in electric distribution rates, accounting authority, and approval of tariffs within its service territory. As a non-profit environmental advocacy organization that focuses heavily on the environmental impacts of energy usage, the OEC has a special interest in the outcome of these proceedings. Decisions related to the electric distribution rates in AES Ohio’s service territory directly relate to Ohio’s clean energy future. The rates at which AES Ohio collects funds from customers, and how ratepayer funds are spent, will have a significant impact on how efficiently Ohio is able to move toward that future. Accordingly,

OEC's interest in this proceeding arises from the direct and indirect impacts of the Commission's review of AES Ohio's electric distribution rates.

## **II. Ohio law permits intervention of parties in cases before the PUCO.**

The Ohio Revised Code permits parties “who may be adversely affected by a public utilities commission proceeding [to] intervene in such proceeding.” R.C. § 4903.221. Under R.C. § 4903.221(B), as amplified by Ohio Admin. Code 4901-1-11(B), the Commission may permit intervention under a balancing test based on the following five factors:

- (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.
- (5) The extent to which the person's interest is represented by existing parties.

Ohio Admin. Code 4901-1-11(B) (*amplifying* R.C. § 4903.221). The OEC satisfies this balancing test under both R.C. § 4903.221(B) and Ohio Admin. Code 4901-1-11(B).

## **III. The OEC satisfies the PUCO's permissive intervention standard.**

The OEC's mission is to protect Ohio's environment and ensure clean energy for all of the State's citizens, and that interest will assist the Commission decisions made as part of this docket. Further, the Ohio Supreme Court has emphasized that “intervention ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the [Commission].”<sup>1</sup> For the following reasons, the OEC requests that the Commission grant its Motion to Intervene in the above-captioned proceedings.

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<sup>1</sup> *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940, ¶ 20.

**a. The OEC has real and substantial interests related to the merits of the case that may be adversely affected by the outcome of the proceedings.**

The OEC is a not-for-profit organization incorporated in Ohio under Section 501(c)(3) of the U.S. Internal Revenue Code, with thousands of individual and organization members throughout the state of Ohio. Its main office is located at 1145 Chesapeake Avenue, Suite I, Columbus, Ohio 43212. The OEC's principal purpose is to protect the natural resources and environment of the citizens of the State of Ohio. The OEC actively works in Ohio on environmental policies, including smart power, energy waste reduction, climate change, natural gas fracking and sustainable agriculture. The OEC also supports state energy policies that reduce greenhouse gas emissions, supporting efforts to mitigate the causes of climate change. The OEC has intervened in scores of Commission proceedings over the past two decades, including a number of rate cases, electric security plan cases, and energy efficiency and renewable energy cases where AES Ohio was the applicant.

The OEC's members may be adversely affected by the outcome of the Commission's consideration of AES Ohio's electric distribution rates, and further, many of the OEC's members are ratepayers in AES Ohio's territory. Because the OEC protects Ohio's environment by reducing air pollution coming from the electric power sector and ensuring Ohioans' money is spent in a cost-effective manner, it has a real and substantial interest in the issues and outcome of the Commission's review. The OEC's legal position in support of clean energy policy directly relates to the merits of the case, for AES Ohio and other utility companies should be collecting and spending their funds in part to support a clean energy future that mitigates the causes of climate change. The OEC therefore satisfies the first two prongs of the OAC's balancing test for permissive intervention before the Commission.

**b. The intervention of the OEC will not cause undue delay.**

The OEC has timely filed this Motion to Intervene, pursuant to the Attorney Examiner's July 30, 2021 Entry, intending to pursue fair adjudication of the merits of the above-captioned proceedings. The OEC's long time participation in cases and experience in matters before the Commission illustrates its ability to participate without causing undue delay in any type of proceeding. The OEC's intervention will not unduly prolong or delay the proceedings; to the contrary, it will add value to the developments in this case.

**c. The OEC will contribute to a just and expeditious resolution of the issues involved in the proceedings.**

The OEC will contribute to a just and expeditious resolution of the issues involved in the proceedings regarding the Commission's review of AES Ohio's electric distribution rates because of our expertise in presenting relevant factors for the Commission's review of adjudicatory matters. The OEC has consistently contributed to just resolutions in efficiency portfolio cases, rulemakings, electric utility ratemaking cases, grid modernization proceedings, and a host of other docketed cases before the Commission. The OEC's participation and perspective will assist in the just and expeditious resolution of the issues and will not detract or confuse that process.

**d. The OEC has different interests than those of existing parties, and can represent those interests more effectively than existing parties.**

The OEC intervenes in these proceedings with a particular focus on the clean energy and environmental needs of Ohioans, exclusively. The OEC represents different interests and different constituents than those already existing parties, and thus the interests of the OEC are vital to the Commission's adjudication of its review of AES Ohio's electric distribution rates.

The OEC also notes that the Commission’s stated policy encourages “the broadest possible participation in its proceedings.”<sup>2</sup> The Commission should not apply its intervention criteria in a manner that would favor one environmental or consumer advocate to the exclusion of others.

#### **IV. Conclusion**

The OEC respectfully requests that the Commission grant its Motion to Intervene in the Commission’s docketed case reviewing AES Ohio’s electric distribution rates. The OEC has a real and substantial interest in Ohio’s clean energy future, and an important legal perspective in these proceedings. The OEC’s intervention will not cause undue delay in the Commission’s review, and the OEC will contribute to a just and expeditious resolution of the issues involved, while representing its interests more effectively than already-existing parties. Finally, the Ohio Supreme Court has emphasized the liberal nature of the legal standard at play for intervention into Commission proceedings.<sup>3</sup> Because the OEC meets all of the criteria established by R.C. 4903.221 and O.A.C. 4901-1-11, it respectfully requests that the Commission grant its Motion to Intervene in the above-captioned proceedings.

Respectfully Submitted,

August 24, 2021

*/s/Miranda Leppla*  
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*Counsel for the Ohio Environmental Council*

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<sup>2</sup> *Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2.

<sup>3</sup> See *Ohio Consumers’ Council*, at ¶ 20.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing *Motion to Intervene and Memorandum in Support of the Ohio Environmental Council* was served upon all parties of record, via electronic mail, on August 24, 2021.

/s/Trent Dougherty

Trent Dougherty (0079817)

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Summary: Motion Motion to Intervene and Memorandum in Support of the Ohio Environmental Council electronically filed by Mr. Trent A Dougherty on behalf of Ohio Environmental Council