

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)
Dayton Power and Light Company d/b/a/) Case No. 21-1234-EL-WVR
AES Ohio for a Limited Waiver of Rule)
4901:1-18-06(A)(2), Ohio Administrative)
Code.)

**MOTIONS TO INTERVENE
BY
ADVOCATES FOR BASIC LEGAL EQUALITY, INC.
OFFICE OF THE OHIO CONSUMERS' COUNSEL
OHIO POVERTY LAW CENTER**

Just in time for the holidays, the cold Ohio winter and the surging pandemic, DP&L wants the PUCO to waive longstanding consumer protections from utility disconnections. DP&L is installing new electric meters (ironically at consumer expense) that enable *remote* disconnection at the push of a button. So now DP&L wants to use its new smart-meter technology against consumers, by eliminating the *personal notice* that the PUCO requires for giving utility consumers a last chance to avoid disconnection. DP&L's proposed injustice comes on the heels of the PUCO's recent rejection of consumer coalition requests to protect consumers from disconnections, particularly in light of the coronavirus pandemic.¹ The consumer groups described those PUCO's rulings as "heartless."² The PUCO ought to stand up for energy justice and consumers by maintaining the consumer protections against disconnections that DP&L would eliminate. If anything, consumer protections against disconnection should be increased, not decreased.

¹ See Case No. 21-548-GE-UNC; Case No. 20-591-AU-UNC.

² *Id.* See Case No. 21-548-GE-UNC, Application for Rehearing by Advocates For Basic Legal Equality, Inc., Legal Aid Society of Southwest Ohio, LLC, Office of the Ohio Consumers' Counsel, Ohio Poverty Law Center, and Pro Seniors, (November 5, 2021).

Advocates for Basic Legal Equality, Inc., the Office of the Ohio Consumers' Counsel, and Ohio Poverty Law Center ("Consumer Parties") jointly file their respective motions to intervene on behalf of utility consumers of DP&L. The PUCO should grant Consumer Parties' respective motions for the reasons set forth in the attached memorandum in support.

Respectfully submitted,

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Ohio Consumers' Counsel

/s/ William J. Michael
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MEMORANDUM IN SUPPORT

The Ohio Administrative Code provides consumers with protections before their essential electric service is disconnected. Consumers are entitled to *personal notice* at their premises before they are disconnected.³ This gives consumers a last opportunity to pay their bill to avoid the despair of disconnection and gives the utility the opportunity to assess if there are any special circumstances (like medical needs) warranting no disconnection. But now that DP&L has begun installing so-called “smart meters” (at consumer expense), it does not want to abide by this consumer protection. Instead, it wants to be able to disconnect consumers from their essential electric service remotely, without personal notice.⁴

Advocates for Basic Legal Equality, Inc. (“ABLE”) is a non-profit legal service provider that provides high quality legal services in civil matters to low-income individuals. The Office of the Ohio Consumers’ Counsel (“OCC”) is the statutory representative of millions of Ohio residential utility consumers, including DP&L’s approximately 500,000 residential utility consumers. The Ohio Poverty Law Center (“OPLC”) works to reduce poverty and increase justice by protecting the legal rights of Ohioans living in poverty.

³ O.A.C. 4901:1-18-06(A)(2).

⁴ See Application.

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 respective consumer interests of Consumer Parties may be “adversely affected” by this case, especially if consumers were unrepresented in a proceeding where DP&L wants a waiver from complying with consumer protections against disconnections. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied for each of the Consumer Parties.

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 Consumer Parties’ respective interests is representing their constituents’ interests in this case involving DP&L’s request to waive consumer protections against unreasonable disconnections of essential electric service. These respective interests are different than that of any other party and especially different than that of DP&L, whose advocacy includes the financial interest of shareholders.

Second, Consumer Parties’ respective advocacy for their constituents will include, among other things, advancing the position that their constituents need consumer protections before being disconnected, such as personal notice. That is particularly needed when coronavirus cases are surging from the Omicron variant and the cold Ohio winter is here. Consumer Parties’ respective positions are 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, Consumer Parties' interventions will not unduly prolong or delay the proceedings. Consumer Parties, with their longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, Consumer Parties' interventions will significantly contribute to full development and equitable resolution of the factual issues. Consumer Parties will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

Consumer Parties also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that Consumer Parties satisfy 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 advocates for their constituents, including residential utility consumers, Consumer Parties have a very real and substantial interest in this case where consumers may be deprived of important protections before being disconnected from their essential electric service.

In addition, the Consumer Parties respectively meet 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 Consumer Parties already have addressed, and which they satisfy.

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." Consumer Parties do not concede the lawfulness of this criterion. But Consumer Parties respectively satisfy this criterion in that they each are uniquely positioned as representing residential utility consumers and at-risk populations. Those interests are 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.⁵

Consumer Parties each meet 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 their consumer constituents, the PUCO should grant the Motions to Intervene for each of the Consumer Parties.

Respectfully submitted,

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/s/ William J. Michael
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⁵ 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 23rd day of December 2021.

/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:

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Summary: Motion Motions to Intervene by Advocates for Basic Legal Equality, Inc.,
Office of the Ohio Consumers' Counsel and Ohio Poverty Law Center electronically
filed by Ms. Deb J. Bingham on behalf of Michael, William J. Mr.