

**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. 22-477-EL-RDR  
AES Ohio to Implement its Infrastructure       )  
Investment Rider.                                )

---

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

---

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene where AES seeks to increase charges to residential customers under its Infrastructure Investment Rider ("Infrastructure Charge").<sup>1</sup> Under the Infrastructure Charge, AES seeks to collect from consumers a return on and of certain investments and costs for distribution infrastructure outside of a base rate case. OCC is filing on behalf of the approximately 460,000 residential utility consumers of AES. The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's motion are further set forth in the attached memorandum in support.

---

<sup>1</sup> AES estimates that a typical residential consumer using 1,000 kWh will pay an additional \$.55 per month. See AES's Application at Exhibit 4, Line 7.

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

/s/ John Finnigan

John Finnigan (0018689)  
Counsel of Record  
Assistant Consumers' Counsel  
Angela D. O'Brien (0097579)  
Deputy Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

65 East State Street, Suite 700  
Columbus, Ohio 43215  
Telephone: [Finnigan]: (614) 466-9585  
Telephone: [O'Brien]: (614) 466-9531  
[john.finnigan@occ.ohio.gov](mailto:john.finnigan@occ.ohio.gov)  
[angela.obrien@occ.ohio.gov](mailto:angela.obrien@occ.ohio.gov)  
(willing to accept service by e-mail)

**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. 22-477-EL-RDR  
AES Ohio to Implement its Infrastructure       )  
Investment Rider.                                )

---

**MEMORANDUM IN SUPPORT**

---

AES seeks to increase charges to each of its approximately 460,000 residential customers under its Infrastructure Charge. These charges relate to distribution infrastructure investments that AES has made over and above base distribution rates and other charges that customers currently pay for. OCC has authority under law to represent the interests of all the approximately 460,000 residential utility customers of AES, 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,” especially if the customers are unrepresented in a proceeding where AES seeks to charge them more for their electric utility service. 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; and
- (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 AES involving proposed charges for AES's infrastructure investments. 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 rates should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. 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 O.A.C. 4901-1-11(A)(2). As the advocate for residential utility customers, OCC has a very real and

substantial interest in this case where AES seeks to charge every residential customer more money under its Infrastructure Charge.

In addition, OCC meets the criteria of O.A.C. 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.

O.A.C. 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.<sup>2</sup>

OCC meets the criteria set forth in R.C. 4903.221, O.A.C. 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.

---

<sup>2</sup> See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20.

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

/s/ John Finnigan

John Finnigan (0018689)  
Counsel of Record  
Assistant Consumers' Counsel  
Angela D. O'Brien (0097579)  
Deputy Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

65 East State Street, Suite 700  
Columbus, Ohio 43215  
Telephone: [Finnigan]: (614) 466-9585  
Telephone: [O'Brien]: (614) 466-9531  
[john.finnigan@occ.ohio.gov](mailto:john.finnigan@occ.ohio.gov)  
[angela.obrien@occ.ohio.gov](mailto:angela.obrien@occ.ohio.gov)  
(willing to accept service by e-mail)

### **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 9th day of June 2023.

/s/ John Finnigan

John Finnigan

Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

### **SERVICE LIST**

[shaun.lyons@ohioago.gov](mailto:shaun.lyons@ohioago.gov)  
[janet.gregory@ohioago.gov](mailto:janet.gregory@ohioago.gov)

[christopher.hollon@aes.com](mailto:christopher.hollon@aes.com)

Attorney Examiners:

[greg.price@puco.ohio.gov](mailto:greg.price@puco.ohio.gov)  
[patricia.schabo@puco.ohio.gov](mailto:patricia.schabo@puco.ohio.gov)

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**6/9/2023 9:37:11 AM**

**in**

**Case No(s). 22-0477-EL-RDR**

Summary: Motion Motion to Intervene by Office of the Ohio Consumers' Counsel  
electronically filed by Mrs. Tracy J. Greene on behalf of Finnigan, John.