

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Market Rate Offer	)	Case Nos. 12-426-EL-SSO
	)	
In the matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs	)	Case Nos. 12-427-EL-ATA
	)	
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority	)	Case Nos. 12-428-EL-AAM
	)	
In the matter of the Application of The Dayton Power and Light Company for the Waiver of Certain Commission Rules	)	Case Nos. 12-429-EL-WVR
	)	
In the matter of the Application of The Dayton Power and Light Company to Establish Tariff Riders.	)	Case Nos. 12-672-EL-RDR
	)	

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**MOTION TO INTERVENE  
OF FIRSTENERGY SOLUTIONS CORP.**

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Pursuant to Ohio Revised Code § 4903.221 and O.A.C. 4901-1-11, FirstEnergy Solutions Corp. (“FES”) moves to intervene in these proceedings. FES has a number of real and substantial interests in these proceedings and its interests, which may be prejudiced by the results of these proceedings, are not adequately represented by existing parties. Thus, as set forth more fully in the attached memorandum in support, FES respectfully requests that the Commission grant this timely request to intervene.

Respectfully submitted,

Dated: April 10, 2012

/s/ Mark A. Hayden

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**MEMORANDUM IN SUPPORT OF THE  
MOTION TO INTERVENE OF FIRSTENERGY SOLUTIONS CORP.**

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**I. Introduction**

In The Application of The Dayton Power and Light Company For Approval of its Market Rate Offer (the “Application”), The Dayton Power and Light Company (“DP&L”) seeks Commission approval pursuant to R.C. § 4928.142 of DP&L’s proposed Market Rate Offer (“MRO”). DP&L’s proposed MRO significantly changes the method in which Standard Service Offer (“SSO”) customers will be served, including new annual auctions to obtain the energy used to serve these customers. The manner in which these auctions are conducted could significantly affect potential bidders and Competitive Retail Electric Service (“CRES”) providers such as FirstEnergy Solutions Corp. (“FES”). FES has a real and substantial interest in this

proceeding, and the Commission's disposition of this proceeding may impair or impede FES's ability to protect that interest. Thus, FES respectfully requests that the Commission grant its motion to intervene in this proceeding.

## **II. Legal Standard**

R.C. § 4903.221 provides that any "person who may be adversely affected by a public utilities commission proceeding" may intervene in the proceeding. The Commission's own rules reinforce the right to intervene:

Upon timely motion, any person *shall be* permitted to intervene in a proceeding upon a showing that . . . [t]he person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

O.A.C. 4901-1-11(A) (emphasis added). "The regulation's text is very similar to Civ. R. 24 – the rule governing intervention in civil cases in Ohio – which is generally liberally construed in favor of intervention." *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 387 (2006) (internal quotations omitted). In considering a motion to intervene, the Commission's rule directs that the Commission should consider: the nature and extent of the intervenor's interest; the legal position advanced by the intervenor and its probable relation to the merits of the case; whether intervention will unduly prolong or delay the proceedings; whether the intervenor will significantly contribute to full development and equitable resolution of the factual issues; and the extent to which the intervenor's interest is represented by existing parties. *See* O.A.C. 4901-1-11(B)(1)-(5); *see also* R.C. § 4903.221(B)(1)-(4). FES's motion to intervene satisfies each of these factors.

### **III. Argument**

#### **A. The Nature And Extent Of FES's Interest**

FES is an owner and operator of electric generating facilities located in Ohio and elsewhere. FES offers a wide range of energy and energy-related products and services, including the generation and sale of electricity and energy planning and procurement, to wholesale and retail customers across Ohio both directly and through governmental aggregation programs. FES currently provides competitive services to customers in DP&L's service territories. The structure and pricing of DP&L's proposed SSO will directly impact FES's ability to provide those competitive services. As such, FES has a substantial interest in the outcome of this proceeding, and that interest cannot be represented by any other party to this proceeding.

#### **B. The Legal Position Asserted By FES**

FES supports DP&L's transition to market-based pricing and a more competitive market which can obtain significant benefits for customers. However, the specific details regarding how the MRO is implemented may have a significant impact on CRES providers operating in DP&L's territory and bidding in the anticipated MRO auctions. As such, FES seeks to intervene to ensure that DP&L's MRO is implemented in an orderly manner consistent with all relevant legal principles.

#### **C. FES's Intervention Will Not Unduly Prolong Or Delay The Proceedings**

The Application was filed on March 30, 2012, and the Commission's scheduling order allows motions to intervene to be filed through April 20, 2012.<sup>1</sup> As a result, FES's Motion to

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<sup>1</sup> See Entry dated April 2, 2012.

Intervene is timely and will not prejudice any existing parties or unduly prolong or delay the proceedings.<sup>2</sup>

**D. FES Will Contribute To The Full Development Of Factual Issues And FES's Interests Are Not Already Represented By Existing Parties.**

FES is uniquely situated to contribute to the full development of factual issues in this case as one of the largest CRES and wholesale providers in the state. FES has substantial experience promoting fair and open competitive markets through participation in Commission proceedings involving SSOs, which experience may benefit the Commission's review of DP&L's proposed MRO.<sup>3</sup> FES's participation will significantly contribute to the full development and resolution of the issues raised by DP&L's proposal because FES has significant experience in the supplier marketplace.

FES's interests are not already represented by existing parties, as no other party currently involved in this proceeding currently represents the interests of FES in serving DP&L's customers on a wholesale and retail basis.

**V. Conclusion**

WHEREFORE, FES respectfully requests that the Commission grant this Motion to Intervene and allow FES to be made a party of record to this proceeding.

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<sup>2</sup>See O.A.C. 4901:1-11(E) (providing that a motion to intervene "will not be considered timely if it is filed later than five days prior to the scheduled date of hearing or any specific deadline established by order of the commission for purposes of a particular proceeding").

<sup>3</sup> See, e.g., *In re Application of Duke Energy Ohio for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply*, Case No. 10-2586-EL-SSO, Mot. to Intervene of FES, filed Nov. 19, 2010; *In re Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply*, Case No. 09-906-EL-SSO, Mot. to Intervene of FES, dated Nov. 25, 2009.

Dated: April 10, 2012

Respectfully submitted,

/s/ Mark A. Hayden

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Intervene of FirstEnergy Solutions Corp.* and *Memorandum in Support* thereof was served this 10th day of April, 2012, via e-mail upon the parties below.

/s/ N. Trevor Alexander  
One of the Attorneys for FirstEnergy Solutions Corp.

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Summary: Motion to Intervene electronically filed by Mr. Nathaniel Trevor Alexander on behalf of FirstEnergy Solutions Corp.