

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of	:	
The Dayton Power and Light Company for	:	Case No. 08-1094-EL-SSO
Approval of Its Electric Security Plan	:	
	:	
In the Matter of the Application of	:	
The Dayton Power and Light Company for	:	Case No. 08-1095-EL-ATA
Approval of Revised Tariffs	:	
	:	
In the Matter of the Application of	:	
The Dayton Power and Light Company for	:	Case No. 08-1096-EL-AAM
Approval of Certain Accounting Authority	:	
Pursuant to Ohio Rev. Code § 4905.13	:	
	:	
In the Matter of the Application of	:	
The Dayton Power and Light Company for	:	Case No. 08-1097-EL-UNC
Approval of Its Amended Corporate	:	
Separation Plan	:	

MOTION TO INTERVENE OF THE CITY OF DAYTON

The City of Dayton (“Dayton” or “City”) on behalf of itself and its residential and commercial citizens hereby moves to intervene as a full party of record in the above captioned proceedings pursuant to Ohio Revised Code (“R.C.”) Section 4903.221 and Ohio Administrative Code (“OAC”) Rule 4901-1-11. As set forth in the attached Memorandum in Support, Dayton submits that it has a real and substantial interest in these proceedings, that its interests cannot be adequately represented by any other party, and that the Public Utility Commission of Ohio’s (“Commission”) disposition of the proceedings will impair or impede its ability to protect those interests. Dayton further submits that the legal positions and issues that it will advance are relevant to the merits of the proceedings and that it intends to contribute in a unique manner to the full development and equitable resolution of the proceedings. Finally, Dayton submits that

granting this Motion will not unduly delay the proceedings or unjustly prejudice any existing party.

Respectfully Submitted,

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**MEMORANDUM IN SUPPORT OF THE
MOTION TO INTERVENE OF THE CITY OF DAYTON**

I. INTRODUCTION

Amended Substitute Senate Bill 221 (“SB 221”) became effective on July 31, 2008. Among other things, SB 221 amended chapter 4928 of the Ohio Revised Code (“R.C.”) to require that an electric utility company establish a standard service offer (“SSO”) in accordance with either R.C. 4928.142, which provides for SSO’s via a market rate offer, or in accordance with R.C. 4928.143, which provides for SSO’s via an electric security plan (“ESP”).

On October 10, 2008, the above captioned proceedings were initiated by Dayton Power and Light (“DP&L”). DP&L initiated the filings in order to obtain Commission review and approval its proposed ESP, revised tariffs, certain accounting authority for deferred costs, and amendment of its corporate separation plan (“Applications”). According to the DP&L ESP application, the current DP&L Rate Stabilization Plan (“RSP”) will remain effective through December 2010. However, the Applications describe several new initiatives and changes for consideration and approval by the Commission.

This motion is being filed pursuant to the Commission’s Entry dated November 26, 2008, by which the Commission established a procedural schedule for testimony, discovery, a technical conference, the commencement of an evidentiary hearing, as well as a December 10, 2008, deadline by which parties must motions to intervene in these proceedings.

II. BASIS FOR INTERVENTION

a. Standard of Review

R.C. section 4903.221 and OAC Rule 4901-1-11 set forth the standards pursuant to which Dayton may intervene in the above-captioned Commission proceedings. R.C. section 4903.221

confers the statutory right to intervene in a Commission proceeding to any party “who may be adversely affected by a proceeding.” Additionally, OAC Rule 4901-1-11 provides that:

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.

Upon filing a timely motion demonstrating a real and substantial interest and upon demonstrating that the proceeding will impair or impede the ability to protect the interest, a party is entitled to an Order granting its intervention request. In determining whether a party is entitled to intervene, the Commission shall consider:

- (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; and
- (5) the extent to which the person’s interest is represented by existing parties.

(See R.C. 4903.221(B) and OAC 4901-1-11(B)). Accordingly, the following facts should be considered in light of the foregoing statutory and administrative rules.

b. Dayton Is Entitled To Intervention Because The Applications Adversely Impact The City And Its Citizens.

The Applications have a real, substantial and adverse impact on Dayton. Currently, Dayton utilizes electric service from DP&L to illuminate municipal traffic signals, a number of proprietary street lights, as well as to power certain municipal buildings and facilities. On an annual basis, the City spends well over Six Hundred Thousand Dollars (US\$600,000.00) with

DP&L on just the first two aforementioned electric uses. Additionally, Dayton uses DP&L exclusively to provide electric service to power and operate all of its municipally owned buildings and facilities. Annual expenditures for those applications are still currently being reviewed and calculated. The City is certain that the results of that internal review will reveal that the additional buildings and facilities electric service expenditures for those items are quite significant. Thus, Dayton is an extremely large user of DP&L services and this proceeding and the results thereof will have a significant impact on the cost and manner in which Dayton continues to obtain and pay for its electric service.

The above captioned proceedings will also have a real, substantial, and adverse impact on Dayton residential customers. Almost the entirety of Dayton residential customers rely upon DP&L for electric service. Similar to residents in many Ohio cities and metropolitan areas, Dayton residential customers are currently dealing with high unemployment rates and low wages. The City has a special interest, if not a duty, to ensure that the electricity requirements of its residents are continually served by readily available dependable electric service which is attainable at reasonable prices which are affordable to its economically challenged population.

In addition to the impact on the City and on residential customers, the proceedings will also have a real, substantial, and adverse impact on Dayton's commercial citizens using DP&L's electric service. Any proposed cost increases and service modifications will have an economic development and job retention impact on a local economy that cannot afford to lose current jobs or opportunities for future growth.

Electricity price increases and service modifications caused by the Applications will impact Dayton's budget and citizens both residential and commercial. Additionally, as initially proposed, the Applications materially modify the terms and conditions under which Dayton and

its residents obtain electric service in a manner favoring the interests of DP&L and to the detriment of the City and its residents.

Accordingly, the City will focus its participation in the proceedings on matters specifically impacting the City and its economically challenged residential citizens as well as commercial citizens. Specifically, these matters may include, among other things, the Applications' impact on deferrals, surcharges, and tariffs for economic development, energy efficiency, and alternative energy that particularly impact the City and its citizens.

III. CONCLUSION

For the reasons set forth above, Dayton respectfully requests that the Commission grant its request to intervene in the above-captioned proceedings. Dayton's intervention will not unduly prolong or delay the proceedings. In contrast, Dayton's intervention will contribute to the full development the factual issues to be resolved in the proceedings. Finally, no other party to the proceedings is capable of representing the interests of Dayton as well as its residential and commercial citizens.

Respectfully Submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Motion to Intervene of the City of Dayton was served via electronic mail to the parties listed below on the 10th day of December, 2008.

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Summary: Motion to Intervene of the City of Dayton electronically filed by Ms. Nell B Chambers on behalf of The City of Dayton