

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of :
The Dayton Power and Light Company : Case No. 08-1094-EL-SSO
for Approval of Its Electric Security Plan. :

In the Matter of the Application of :
The Dayton Power and Light Company : Case No. 08-1095-EL-ATA
for Approval of Revised Tariffs. :

In the Matter of the Application of :
The Dayton Power and Light Company :
for Approval of Certain Accounting : Case No. 08-1096-EL-AAM
Authority Pursuant to Ohio Rev. Code :
§ 4905.13. :

In the Matter of the Application of :
The Dayton Power and Light Company : Case No. 08-1097-EL-UNC
for Approval of Its Amended Corporate :
Separation Plan. :

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MOTION TO INTERVENE
AND
REQUEST FOR LEAVE TO FILE MOTION TO INTERVENE OUT OF TIME
OF
DOMINION RETAIL, INC.

By the above-styled applications, The Dayton Power and Light Company ("DP&L) seeks approval of an electric security plan pursuant to Amended Substitute Senate Bill No. 221 ("SB 221") and certain related measures. As more fully discussed in the accompanying memorandum, Dominion Retail, Inc. has a real and substantial interest in this proceeding, and is so situated that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect that interest. Further, Dominion Retail's interest in this proceeding is not represented by any existing party, and its participation in this proceeding will contribute to a just and

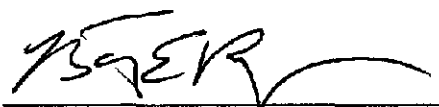
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expeditious resolution of the issues involved without unduly delaying the proceeding or unjustly prejudicing any existing party. Accordingly, Dominion Retail hereby moves to intervene in this proceeding pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code.

Dominion Retail recognizes that the procedural entry issued in this proceeding on November 26, 2008 established December 10, 2008 as the due date for motions to intervene. Although Dominion Retail has intervened in each of the other SB 221 SSO cases now pending before the Commission, undersigned counsel was heretofore unaware of the November 26, 2008 entry in these dockets. Thus, Dominion Retail respectfully requests that the Commission entertain its motion to intervene, notwithstanding that it is filed one day after the specified due date. Granting Dominion Retail leave to file its motion to intervene out of time would be consistent with the Commission's policy of encouraging the broadest possible participation in its proceedings (*see, e.g., Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2), and would be consistent with the disposition of similar requests to file motions to intervene out of time in other SSO proceedings [*see Duke Energy Ohio*, Case No. 08-920-EL-SSO (Entry dated September 17, 2008), at 4]. Further, in view of the procedural posture of the case, no party will be prejudiced by granting Dominion Retail's request. If its motion to intervene is granted, Dominion Retail will, of course, accept the record as it finds it.

WHEREFORE, Dominion Retail respectfully requests that the Commission grant its grant its request for leave to file out of time and grant its motion to intervene.

Respectfully submitted,


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

MEMORANDUM IN SUPPORT
OF
MOTION TO INTERVENE
OF
DOMINION RETAIL, INC.

Section 4903.221, Revised Code, provides that any “person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding.” Dominion Retail is a Commission-certified CRES provider authorized to offer competitive retail electric service to customers within the DP&L’s service territory. As such, Dominion Retail would be required to compete against the DP&L’s SSO to attract and retain customers. Thus, Dominion Retail clearly may be adversely affected by this proceeding. Moreover, not only does

Dominion Retail satisfy the underlying statutory test, but its also satisfies the standards governing intervention set forth in the Commission's rules.

Rule 4901-1-11(A), Ohio Administrative Code ("OAC"), provides, in pertinent part, as follows:

(A) Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:

(2) The 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 ability to protect that interest, unless the person's interest is adequately represented by existing parties.

As a CRES supplier, Dominion Retail plainly has a real and substantial interest in a proceeding in which the Commission is being asked to determine how the price against which it must compete will be established. At this juncture, none of the pending motions to intervene in this proceeding have been granted. Thus, by definition, no existing parties adequately represent Dominion Retail's interest.

Although Dominion Retail does not believe this to be a close question, each of the specific considerations that the Commission may, by rule, take into account in applying the Rule 4901-1-11(A)(2), OAC, standard, also fully support granting Dominion Retail's motion to intervene. Rule 4901-1-11(B), OAC, provides as follows:

In deciding whether to permit intervention under paragraph (A)(2) of this rule, the commission, the legal director, the deputy legal director, or an attorney examiner case 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.

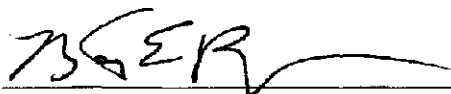
(4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

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

First, as previously explained, Dominion Retail's interest in connection with these proposals is obviously direct and substantial. Second, although Dominion Retail must necessarily await further developments before determining the specific positions it will adopt with respect to the issues in these proceedings, Dominion Retail will certainly advocate that any process adopted as a result of the applications be fair, reasonable, non-discriminatory, and designed to promote competition. Third, in view of the fact that the proceeding has just commenced, granting Dominion Retail's motion to intervene will not unduly delay or prolong the proceeding. Fourth, Dominion Retail has been a frequent participant in cases involving the establishment of competitive electric and gas markets in Ohio and the numerous other states in which it does business. Thus, Dominion Retail will bring substantial experience to bear on the issues raised. Finally, not only are there no existing parties that represent Dominion Retail's interest, but it would be inconsistent with the Commission's stated policy "to encourage the broadest possible participation in its proceedings" (*see, e.g., Cleveland Elec. Illum. Co., Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2*) to apply the Rule 4901-1-11(B)(5) standard in a manner that would favor certain CRES providers over others. Thus, granting Dominion Retail intervenor status is consistent with all the considerations set out in Rule 4901-1-11(B), OAC.

WHEREFORE, Dominion Retail respectfully requests that the Commission grant its motion to intervene.

Respectfully submitted,

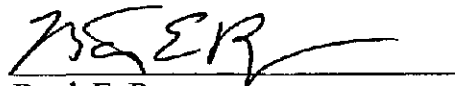


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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by first class mail, postage prepaid, this 11th day of December 2008.



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