

**FILE**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**MOTION TO INTERVENE OF THE CITY OF DAYTON**

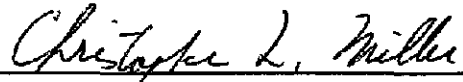
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The City of Dayton ("Dayton" or "City") on behalf of itself and its residential and commercial citizens hereby moves to intervene as a full party of record in the above captioned proceedings pursuant to Ohio Revised Code ("R.C.") Section 4903.221 and 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

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

Respectfully Submitted,

 by Gregory H. Dunn

Patrick Bonfield (0015796)

*Law Director, City of Dayton*

John Danish (0046639)

*Deputy Law Director, City of Dayton*

Christopher L. Miller (0063259)

*Counsel of Record*

Direct Dial: (614) 462-5033

E-mail: cmiller@szd.com

Gregory H. Dunn (0007353)

Direct Dial: (614) 462-2339

E-mail: gdunn@szd.com

Andre T. Porter (0080072)

Direct Dial: (614) 462-1065

E-mail: aporter@szd.com

Schottenstein Zox & Dunn Co., LPA

250 West Street

Columbus, Ohio 43215

(614) 462-2700 (Main Number)

(614) 222-4707 (Facsimile)

*Attorneys For The City of Dayton*

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

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**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

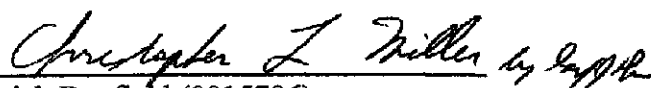
its residents obtain electric service in a manner favoring the interests of DP&L and to the detriment of the City and its residents.

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,



Patrick Bonfield (0015796)

*Law Director, City of Dayton*

John Danish (0046639)

*Deputy Law Director, City of Dayton*

Christopher L. Miller (0063259)

*Counsel of Record*

Direct Dial: (614) 462-5033

E-mail: [cmiller@szd.com](mailto:cmiller@szd.com)

Gregory H. Dunn (0007353)

Direct Dial: (614) 462-2339

E-mail: [gdunn@szd.com](mailto:gdunn@szd.com)

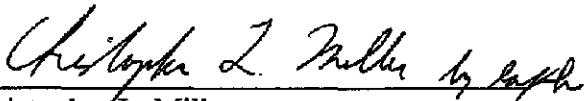
Andre T. Porter (0080072)

Direct Dial: (614) 462-1065  
E-mail: [aporter@szd.com](mailto:aporter@szd.com)  
Schottenstein Zox & Dunn Co., LPA  
250 West Street  
Columbus, Ohio 43215  
(614) 462-2700 (Main Number)  
(614) 222-4707 (Facsimile)

*Attorneys For The City of Dayton*

**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.

  
Christopher L. Miller

M. Howard Petricoff  
Stephen M. Howard  
VORYS, SATER, SEYMOUR AND  
PEASE LLP  
52 East Gay Street  
P. O. Box 1008  
Columbus, OH 43216-1008  
mhpetricoff@vorys.com  
smhoward@vorys.com

Richard L. Sites, Esq.  
OHIO HOSPITAL ASSOCIATION  
155 East Broad Street, 15th Floor  
Columbus, OH 43215-3620  
ricks@ohanet.org

David F. Boehm, Esq.  
Michael L. Kurtz, Esq.  
BOEHM, KURTZ & LOWRY  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202  
dboebm@bkllawfirm.com  
mkurtz@bkllawfirm.com

Charles J. Faruki  
(Counsel of Record)  
Jeffrey S. Sharkey  
Marc D. Amos  
FARUKI IRELAND & COX P.L.L.  
500 Courthouse Plaza, S.W.  
10 North Ludlow Street  
Dayton, OH 45402  
cfaruki@ficlaw.com

Judi L. Sobecki, Esq.  
Dayton Power & Light Company  
1065 Woodman Drive  
Dayton, OH 45432  
judi.sobecki@dplinc.com

Cynthia A. Fonner  
Senior Counsel  
Constellation Energy Group, Inc.  
550 W. Washington St., Suite 300  
Chicago, IL 60661  
Cynthia.A.Fonner@constellation.com



Jacqueline Lake Roberts, Counsel of Record  
Ann Hotz  
Mike Idzkowski  
Richard Reese  
Assistant Consumers' Counsel  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, OH 43215-3485  
roberts@occ.state.oh.us  
hotz@occ.state.oh.us  
idzkowski@occ.state.oh.us  
reese@occ.state.oh.us

Henry W. Eckhart (Counsel of Record)  
50 West Broad Street #2117  
Columbus OH 43215  
[henryeckhart@aol.com](mailto:henryeckhart@aol.com)

John W. Bentine  
Mark S. Yurick  
Matthew S. White  
Chester, Willcox & Saxbe LLP  
65 East State Street, Suite 1000  
Columbus, OH 43215-4213  
[jbentine@cwslaw.com](mailto:jbentine@cwslaw.com)  
[myurick@cwslaw.com](mailto:myurick@cwslaw.com)  
[mwhite@cwslaw.com](mailto:mwhite@cwslaw.com)

Larry Gearhardt  
Chief Legal Counsel  
Ohio Farm Bureau Federation  
280 North High Street  
P.O. Box 182383  
Columbus, OH 43218-2383  
[lgearhardt@ofbf.org](mailto:lgearhardt@ofbf.org)

Thomas O'Brien  
100 South Third Street  
Columbus, OH 43215  
[tobrien@bricker.com](mailto:tobrien@bricker.com)

Samuel C. Randazzo (Counsel of Record)  
Lisa G. McAlister  
Joseph M. Clark  
MCNEES WALLACE & NURICK LLC  
21 East State Street, 17th Floor  
Columbus, OH 43215  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[lmcalister@mwncmh.com](mailto:lmcalister@mwncmh.com)  
[jc1ark@mwncmh.com](mailto:jc1ark@mwncmh.com)

Robert Ukeiley  
435 R Chestnut Street, Ste. 1  
Berea, KY 40403  
[rukeiley@igc.org](mailto:rukeiley@igc.org)

David C. Rinebolt  
Colleen L. Mooney  
Ohio Partners for Affordable Energy  
231 West Lima Street  
P.O. Box 1793  
Findlay, OH 45839-1793  
[cmooney2@Columbus.rr.com](mailto:cmooney2@Columbus.rr.com)  
[drinebolt@aol.com](mailto:drinebolt@aol.com)

Craig I. Smith  
Attorney at Law  
2824 Coventry Road  
Cleveland, OH 44120