

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of The AES)
Corporation, Dolphin Sub, Inc., DPL Inc. and) Case No. 11-3002-EL-MER
The Dayton Power and Light Company for)
Consent and Approval for a Change of)
Control of The Dayton Power and Light)
Company)

MEMORANDUM CONTRA JOINT MOTION OF APPLICANTS TO HOLD
MOTIONS TO INTERVENE IN ABEYANCE

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June 3, 2011

Attorneys for Industrial Energy Users-Ohio

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**MEMORANDUM CONTRA JOINT MOTION OF APPLICANTS TO HOLD
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On May 18, 2011, Dayton Power and Light Company ("DPL"), AES Corporation ("AES"), and Dolphin Sub ("Sub") (collectively "Applicants"), filed an Application with the Public Utilities Commission of Ohio ("Commission") seeking authorization for a merger that would result in DPL becoming a wholly-owned subsidiary of AES and requesting an expedited review process. Industrial Energy Users-Ohio ("IEU-Ohio") filed a motion to intervene on May 20, 2011.¹ On May 26, 2011, the Applicants filed a motion to establish deadlines for comments and to hold motions to intervene in abeyance. On June 1, 2011, the Commission issued an Entry suspending the Application to prevent automatic approval under Section 4905.402, Revised Code, and directing interested parties to file comments and reply comments. In response to the Applicants' motion to hold motions for intervention in abeyance, IEU-Ohio is filing this Memorandum Contra.

¹ Motion to Intervene and Memorandum in Support of Industrial Energy Users-Ohio (May 20, 2011).

The Applicants' motion to hold motions to intervene in abeyance was part of a broader request for expedited scheduling.² The Commission, however, has suspended the Application and established a comment cycle that is longer than that requested by the Applicants based on the need for a more detailed review.³ Given the need for a more detailed review process, it is perfectly consistent with the Commission's June 1, 2011 Entry to allow intervention at this stage of the proceeding.

The Applicants additionally urge holding motions to intervene in abeyance because they do not wish to burden the Commission with memoranda contra.⁴ Of course, the Applicants could choose to not oppose proper motions to intervene, but that does not appear to be the strategy. Instead, their position appears to be to oppose any intervention, as demonstrated by the general allegations directed at such motions in the supporting memorandum to the May 26 Motion⁵ and a recent memorandum opposing a motion to intervene by another customer group and after the Commission indicated that it would be extending the review process.⁶ Thus, it is apparent that saving the Commission some paperwork is not the prevailing concern of the Applicants.⁷

Moreover, the general grounds for delaying or denying intervention do not justify granting the Applicants' motion. While they assert that motions to intervene are

² Joint Motion of Applicant's to Establish Deadlines for Initial and Reply Comments and to Hold Motions to Intervene in Abeyance (May 26, 2011) ("Motion").

³ Entry at 3 (June 1, 2011).

⁴ Motion at 2-3.

⁵ *Id.*

⁶ Applicants' Motion in Opposition to the Motion to Intervene of Ohio Partners for Affordable Energy (June 2, 2011).

⁷ Section 4903.221, Revised Code; Rule 4901-1-11, Ohio Administrative Code ("OAC").

premature, unnecessary, and pose the risk of delaying resolution of the Application,⁸ none of these reasons is consistent with either the applicable law or rules or makes for good administrative process.

First, a motion to intervene for proper reasons is timely after the application is filed so long as it is not deemed untimely by rule or Commission order.⁹ Thus, there is no basis to find that a motion to intervene is premature.

Second, status as a party by intervention is a required first step in assuring that interests of IEU-Ohio members that are DPL customers are placed before the Commission and the Supreme Court if necessary.¹⁰ Certainly the Commission may invite comments from interested persons as it has done in this proceeding, but intervention is the recognized means for establishing one's status before the Commission.

Finally, there is no reason to expect and certainly no demonstration in the Applicant's motion that granting intervention to IEU-Ohio or some other person will unduly prolong the review of the Application. As noted previously, the Commission has already demonstrated that it will take the time necessary to conduct an appropriate review as required by Section 4905.402, Revised Code.¹¹

In summary, the Applicants have not provided any principled reason to support their request to hold proper motions for intervention in abeyance. Therefore, IEU-Ohio

⁸ Motion at 3.

⁹ Rule 4901-1-11, OAC.

¹⁰ Rule 4901-1-10, OAC.

¹¹ Entry at 3 (June 1, 2011).

urges the Commission to deny the Applicants' Joint Motion to Hold Motions to Intervene in Abeyance and grant IEU-Ohio's Motion to Intervene.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Memorandum Contra Joint Motion of Applicants to Hold Motions to Intervene in Abeyance* was served upon the following parties of record this 3rd day of June, 2011 via first class mail, postage prepaid.


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**On Behalf of DPL Inc. and The
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