

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)
The Dayton Power and Light Company for)
Consent and Approval for a Change of)
Control of The Dayton Power and Light)
Company.)

Case No. 11-3002-EL-MER

OMA ENERGY GROUP'S REPLY IN SUPPORT OF ITS MOTION TO INTERVENE

I. INTRODUCTION

On May 18, 2011, the AES Corporation ("AES") and its subsidiary Dolphin Sub, Inc. ("Merger Sub"), as well as DPL Inc. and its subsidiary, The Dayton Power and Light Company ("DP&L") (collectively, "Applicants") jointly filed an application for approval of a merger between Merger Sub and DPL Inc., with DPL, Inc. emerging as a wholly-owned subsidiary of AES. Just eight days later, the Applicants filed a joint motion to establish deadlines for comments and asking the Public Utilities Commission of Ohio ("Commission") to hold motions to intervene in abeyance. The Commission issued an Entry dated June 1, 2011 suspending the automatic approval process contemplated under Ohio Revised Code Section ("R.C.") 4905.402, and establishing a schedule for the filing of initial and reply comments. Notably absent from the June 1, 2011 Entry was any prohibition or limitation on an interested party's filing of a motion to intervene. As a result, and to protect the interests of its members, the OMA Energy Group ("OMAEG") filed a Motion to Intervene on June 3, 2011. The Applicants filed a Memorandum Contra the OMAEG's Motion to Intervene on June 10, 2011 ("Memo Contra").

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Pursuant to Ohio Administrative Code ("OAC") Rule 4901-1-12, OMAEG hereby responds to the Applicants' Memo Contra OMAEG's Motion to Intervene.

II. ARGUMENT

A. The Applicants do not dispute that the OMAEG satisfies the criteria for intervention set forth in the Ohio Revised Code and the Ohio Administrative Code.

The Applicants' Memo Contra asks the Commission to ignore the statutory process for intervention and deny the OMAEG's Motion to Intervene as "premature, unnecessary, and pos[ing] the risk of delaying resolution of the Application." Memo Contra at 3. This argument, however, ignores the clear and unambiguous requirements for intervention under Ohio law and fails to raise any legitimate reason for denying the OMAEG's intervention request. For these reasons, the OMAEG's motion to intervene should be granted.

R.C. 4903.221 states that a motion to intervene is timely so long as it is filed before "[a]ny specific deadline established by order of the commission for purposes of a particular proceeding; or, if no such deadline is established. . . [f]ive days prior to the scheduled date of hearing." The Commission has not established an intervention deadline or hearing date in this case. For this reason, OMAEG's Motion to Intervene is timely and properly before the Commission. The Applicants should not be allowed to arbitrarily and unilaterally establish intervention deadlines that do not comport with Ohio law.

Perhaps more importantly, the only prerequisite to intervention that the Applicants contest is "[w]hether the intervention by the prospective intervenor will unduly prolong or delay the proceedings." R.C. 4903.221; OAC Rule 4901-1-11(B)(3).

Contrary to the Applicants' claims, the OMAEG's participation in the above-captioned merger proceeding poses little, if any, risk of delaying the proceeding. In fact, the Applicants offer no evidence that the OMAEG's participation will in any way prolong or delay this proceeding, let alone in a manner that prejudices the Applicants. The OMAEG simply intends to monitor this proceeding to ensure that the proceeding is fair to its membership. Because the Applicants lone statutory argument fails, and it is undisputed that the OMAEG satisfies all of the requirements for intervention, the Commission should grant OMAEG's Motion to Intervene.

B. OMAEG supports the arguments raised by other parties regarding the propriety of interventions.

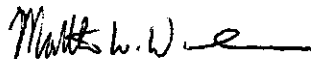
Several other parties have also moved to intervene in this proceeding. In response to the Applicants' memoranda contra other interventions, the moving parties persuasively argued that: 1) granting intervention in the above-captioned proceeding is consistent with the Commission's June 1, 2011 Entry; 2) the Applicants' alleged desire to reduce the administrative burden on the Commission is not the prevailing concern of the Applicants (as demonstrated by the filing of numerous memoranda contra motions to intervene); 3) the Applicants' unpersuasive arguments for delaying and/or denying intervention are inconsistent with the requirements for intervention under Ohio law; and 4) as the Commission has already found that it is necessary to investigate the proposed transaction in order to fulfill its statutory obligation, interested parties should be afforded the same opportunity.

The OMAEG agrees with other intervenors that the Applicants have set forth no legitimate reason for holding OMAEG's motion to intervene in abeyance.

III. CONCLUSION

For the reasons set forth herein, OMAEG respectfully requests that the Commission deny the Applicants' Memo Contra and grant OMAEG's Motion to Intervene.

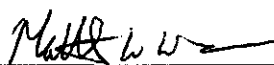
Respectfully submitted on behalf of
THE OMA ENERGY GROUP



Lisa G. McAlister
Matthew W. Warnock
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
E-mail: lmcaster@bricker.com
mwarnock@bricker.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion to Intervene was served upon the parties of record listed below this 13th day of June 2011 via first class mail and electronic service.



Matthew W. Warnock

Daniel R. Conway
Andrew C. Emerson
Porter Wright Morris & Arthur
41 South High Street, Suites 2800 - 3200
Columbus, Ohio 43215-6194
dconway@porterwright.com

Arthur G. Meyer
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, Ohio 45432
arthur.meyer@dplinc.com

Charles J. Faruki
Jeffrey S. Sharkey
Faruki Ireland & Cox, P.L.L.
500 Courthouse Plaza, S.W.
10 North Ludlow Street
Dayton, Ohio 45402
cfaruki@ficlaw.com

Samuel Randazzo
Frank P. Darr
Joseph Oilker
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45839
cmooney2@columbus.rr.com

William Wright
Attorney General's Office
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215-3793
William.Wright@puc.state.oh.us