

FILE

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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

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**MOTION TO INTERVENE
OF FIRSTENERGY SOLUTIONS CORP.**

Pursuant to R.C. Section 4903.221 and O.A.C. 4901-1-11, FirstEnergy Solutions Corp. ("FES") moves to intervene in the subject proceeding, specifically the Application of AES Corporation, Dolphin Sub, Inc., DPL, Inc. and the Dayton Power and Light Company ("DP&L"). As a Competitive Retail Electric Service provider currently operating in DP&L's territory, FES has a number of direct, real and substantial interests in this proceeding that are not adequately represented by existing parties. Absent leave to intervene, FES's interests may be impeded or impaired as a result of this proceeding and FES's participation in this proceeding will serve the public interest of ensuring the adequate, reliable and efficient supply of energy to consumers at competitive prices. Thus, as set forth more fully in the attached Memorandum in Support, FES respectfully requests that the Commission grant this timely request to intervene.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF THE
MOTION TO INTERVENE OF FIRSTENERGY SOLUTIONS CORP.**

On May 18, 2011, The AES Corporation ("AES"), Dolphin Sub, Inc., DPL Inc. and The Dayton Power and Light Company ("DP&L") (collectively, the "Applicants") filed an Application for Consent and Approval for a Change of Control of The Dayton Power and Light Company (the "Application"). The Application seeks Commission approval of the merger of DPL Inc., the parent corporation of DP&L, with AES, through which AES will ultimately acquire all shares of DPL Inc., the holding company parent of DP&L. FES has a direct, real and substantial interest in this proceeding, and the Commission's disposition of this proceeding may impair or impede FES's ability to protect that interest. Thus, FES respectfully requests that the Commission grant its motion to intervene in this proceeding.¹

In order to obtain Commission approval for acquisition or control of a domestic electric utility or a holding company controlling a domestic electric utility pursuant to R.C. Section 4905.402, the applicant must demonstrate "that the acquisition will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll, or charge." R.C.

¹ FES anticipates that Applicants will oppose this Motion to Intervene (as they have with every other motion to intervene in this proceeding) and request the Commission to hold its decision in abeyance until after the Commission has reviewed comments on the Application. However, Applicants identify no legitimate reason for such a delay. As demonstrated below, FES's Motion is timely and FES satisfies the criteria for intervention established by statute and the Commission's rules. Thus, there is no reason to delay a decision on FES's Motion.

§ 4905.402(B). Further, R.C. Section 4903.221 provides that any “person who may be adversely affected by a public utilities commission proceeding” may intervene in the proceeding. R.C. § 4903.221. The Commission’s own rules reinforce the right to intervene:

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.

O.A.C. 4901-1-11(A) (emphasis added). “The regulation’s text is very similar to Civ. R. 24 – the rule governing intervention in civil cases in Ohio – which is generally liberally construed in favor of intervention.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 387 (2006) (internal quotations omitted).

In considering a motion to intervene, the Commission’s rule directs that the Commission should consider: the nature and extent of the intervenor’s interest; the legal position advanced by the intervenor and its probable relation to the merits of the case; whether intervention will unduly prolong or delay the proceedings; whether the intervenor will significantly contribute to full development and equitable resolution of the factual issues; and the extent to which the intervenor’s interest is represented by existing parties. *See* O.A.C. 4901-1-11(B)(1)-(5); *see also* R.C. § 4903.221(B)(1)-(4). FES’s motion to intervene satisfies each of these factors.

Specifically, FES is a Competitive Retail Electric Service (“CRES”) provider and owns and operates electric generating facilities located in Ohio and elsewhere. FES offers a wide range of energy and energy-related products and services, including the generation and sale of electricity and energy planning and procurement, to wholesale and retail customers across Ohio both directly and through governmental aggregation programs. FES currently provides competitive services to customers in DP&L’s service territories. FES is a direct competitor of

DP&L's CRES provider subsidiary, DPL Energy Resources, which will be acquired by AES if the Commission approves this merger. In addition to its interests as a retail provider, the DP&L merger will also impact FES's interests as an active wholesale supplier. Thus, as a CRES provider in DP&L's service territories and an active wholesale supplier, FES clearly has a direct and substantial interest in the outcome of this proceeding.

An evaluation of the remaining factors that the Commission reviews to determine whether intervention is appropriate supports granting FES's Motion. FES's participation will significantly contribute to the full development and resolution of the issues raised by Applicants' proposed merger because FES has significant experience in the supplier marketplace and the territory served by DP&L. Allowing FES to intervene and comment on the Application will aid the Commission's review and determination of whether the merger will "promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll, or charge." See R.C. § 4905.402(B). FES's intervention will not unduly prolong or delay this proceeding, because the Commission will not determine the scope and nature of its review of the Application until at least August 18, 2011.² Finally, neither the Applicants (who are competitors of FES) nor the other parties that have moved to intervene will represent FES's interests.

WHEREFORE, FES respectfully requests that the Commission grant this Motion to Intervene and that it be made a party of record to these proceedings.

Respectfully submitted,

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² August 18, 2011, is the date that replies to the initial comments of interested persons are due. The June 1, 2011 Entry states that "[f]ollowing the receipt of the comments and replies, the Commission will determine the scope and nature of its review."

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Intervene of FirstEnergy Solutions Corp. and Memorandum in Support* thereof was served this 14th day of June, 2011, via e-mail and regular U.S. Mail, postage pre-paid, upon the parties below.

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