

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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THE CITY OF DAYTON, OHIO'S REPLY TO THE APPLICANTS'  
MEMORANDUM CONTRA TO DAYTON'S MOTION TO INTERVENE

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I. INTRODUCTION

The City of Dayton ("Dayton") has adhered to the proper statutory and regulatory processes for intervention in the above captioned case. As such, and because the AES Corporation, Dolphin Sub, Inc., and the Dayton Power & Light Company (collectively referred to herein as the "Applicants") have failed to advance any substantive or procedural argument as to why these the statutory and regulatory processes for intervention should be held null, Dayton respectfully requests that the Commission grant Dayton's timely filed Motion to Intervene in this case.

II. ARGUMENT

Dayton properly adhered to the processes and criteria set forth in P.U.C. § 4903.221 and O.A.C. Rule 4901-1-11 in submitting its Motion to Intervene. Dayton submits that it undoubtedly fulfills the necessary criteria to be granted intervention, but Applicants oppose Dayton's intervention not based upon substantive legal criteria. Rather, Applicants oppose any and all interventions based upon the requested interventions being "premature," "unnecessary," and "posing a risk of delaying resolution in this matter." Applicants do not oppose the substance of any particular party's

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intervention in this case. Instead, Applicants request that the Commission create new law that would act as a barrier to any party's intervention in a merger proceeding. This is wholly improper.

Dayton has a right to intervene in this case pursuant to statutes adopted by the state legislature and rules promulgated by this Commission. The Applicants essentially ask this Commission to conclude that Dayton cannot be recognized as an interested party and enter its appearance in this case. This would, in effect, silence Dayton (and all similarly situated and legitimately interested parties) from partaking in substantive deliberations in this case. Dayton is the largest political subdivision and is believed to be the second largest consumer of electricity in the Dayton Power & Light service area, is an interested party, and should be given the opportunity to fully participate in deliberations in this case.

This Commission had the opportunity to hold any intervention motions in abeyance, but chose not to do so in its June 1, 2011 Entry. As such, Dayton has a legal and equitable right to intervene and the Applicants have not substantively challenged that right. The debate as to Dayton's ability to intervene should end here.


Dayton does, however, concur with each similarly situated party seeking intervention in this case. Dayton agrees that: (1) granting intervention in this case 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 to motions to intervene); (3) the Applicants' argument that allowing intervention will further delay proceedings is nonsensical in that the Commission itself has decided that the proceedings

should be delayed in order to determine the best mechanism to analyze the merger; and (4) the Commission has granted intervention in other merger proceedings (Nova/VNC, Fronteir/Verizon, SBC/AT&T, Verizon/MCI).

### III. CONCLUSION

As Dayton has satisfied the statutory requirements and regulatory processes necessary to intervene in this case, and because Dayton is seeking to ensure that its interests and the interests of its citizens are adequately represented, Dayton respectfully requests that its Motion to Intervene be granted by the Commission.

Respectfully Submitted,



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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Reply was served upon the parties of record listed below this 10<sup>th</sup> day of July, 2011 via first class mail and electronic mail.



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