

FILE

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The)
Dayton Power and Light Company to) Case No. 09-1012-EL-FAC
Establish a Fuel Rider)

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

Pursuant to R.C. Section 4903.221 and O.A.C. Section 4901-1-11, FirstEnergy Solutions Corp. ("FES") moves to intervene in the above-captioned proceeding involving the Dayton Power and Light Company's ("DP&L") fuel recovery rider and annual fuel cost filing. As Competitive Retail Electric Service provider 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 any existing party. Absent leave to intervene, FES's interests may be impeded or impaired as a result of this proceeding. Further, 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. Accordingly, as set forth more fully in the attached Memorandum in Support, FES respectfully requests that the Commission grant this request to intervene.

Respectfully submitted,

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

I. INTRODUCTION

FirstEnergy Solutions Corp. ("FES") seeks to intervene in this proceeding in order to participate in the August 30, 2011 hearing regarding the audit of The Dayton Power and Light Company's ("DP&L") annual fuel cost filing. As explained below, 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 these interests. Thus, FES respectfully requests that the Commission grant its Motion to intervene in this proceeding.

II. BACKGROUND

On October 30, 2009, The Dayton Power and Light Company ("DP&L") filed an application to establish a fuel recovery rider. In its Entry of June 24, 2009, the Commission approved the application. On November 10, 2010, the Commission ordered DP&L to submit its annual fuel cost filing subject to an audit by Energy Ventures Analysis ("EVA"), the auditor chosen by the Commission. On April 29, 2011, DP&L filed EVA's initial audit report (the "Report") along with a motion seeking a protective order with regard to certain information in the Report that DP&L considers trade secrets and/or confidential and proprietary business information. The Attorney Examiner granted the motion, determined that the matter should be set for hearing and established a procedural schedule with an intervention deadline of July 25,

2011.¹ FES seeks to intervene to protect its interests and participate in the hearing and file written testimony, as necessary.²

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 provides competitive services to residential, commercial and industrial customers in DP&L’s service territory.

DP&L’s fuel recovery rider is a large component of the Price-to-Compare, which is the rate FES must beat in order to save a customer money. In fact, the fuel recovery rider constitutes more than one-third of the total Price-to-Compare for DP&L customers. As a result, any change in the rider has a direct, and possibly substantial, impact on FES’s ability to sign DP&L’s customers to a retail contract.

III. ARGUMENT

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.

¹ *In the Matter of the Application of The Dayton Power and Light Company to Establish a Fuel Rider*, Case No. 09-1012-EL-FAC (Entry, July 8, 2011).

² FES has not yet determined the extent of its participation or whether it will file any written testimony but wishes to preserve its right to do so.

O.A.C. Section 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 the 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.

The determination of DP&L’s annual fuel recovery rider has a direct, and substantial, impact on FES’s ability to obtain customers within the DP&L service territory as it comprises at least 1/3 of the Price to Compare. As a result, FES has a substantial interest in this proceeding given the extent that the outcome of this proceeding has on FES’s ability to compete.

An evaluation of the remaining factors 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 in the Report. FES has significant experience with the impact the fuel recovery rider has on customers in DP&L’s service territory. Thus, allowing FES to intervene and file testimony regarding the Report will aid the Commission’s review of DP&L’s annual fuel filing. Further, FES’s intervention will not unduly prolong or delay this proceeding, because FES filed the subject

motion by the deadline set by the Attorney Examiner. Finally, neither DP&L nor any other intervenor will represent FES's interests.

IV. CONCLUSION

Given that DP&L's fuel recovery rider stands to substantially impact the Price to Compare and, correspondingly, FES's ability to sign customers in DP&L's service territory to retail contracts, FES has a significant interest in the assessment of the Report and the outcome of these proceedings. Accordingly, 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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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 25th day of July, 2011, via e-mail and regular U.S. Mail, postage pre-paid, upon the parties below.

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