

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)

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

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I. INTRODUCTION

FirstEnergy Solutions Corp. ("FES") seeks intervention in this proceeding because the fuel recovery rider at issue is a significant component of the Price-to-Compare for customers in The Dayton Power and Light Company's ("DP&L") service territory and, as a Competitive Retail Electric Service ("CRES") provider in DP&L's territory, FES has a direct and substantial interest in the Price-to-Compare as it affects FES's ability to participate as a CRES provider and offer savings to customers. In its Memorandum Contra FES's Motion to Intervene, DP&L fails to rebut this interest of FES in intervention. Instead, DP&L offers only speculation about FES's interest in this proceeding and a possible delay that might occur because of the use of confidential information at hearing. DP&L's conjecture, however, is insufficient to overcome FES's real and substantial interest in the outcome of this proceeding. Accordingly, for the reasons set forth in FES's Motion and the arguments set forth below, FES satisfies the intervention requirements of the Ohio Revised Code and the Commission's rules and its Motion should be granted.

II. LAW AND ARGUMENT

Contrary to DP&L's arguments, FES does not seek intervention in this proceeding to force DP&L to increase its fuel rider or to gain access to its confidential information. Rather,

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FES seeks intervention to ensure the continued development of the competitive market in DP&L's service territory and, accordingly, a fair and reasonable Price-to-Compare. FES clearly demonstrated its right to intervene in its Motion on this basis, and DP&L's response simply does nothing to rebut that right.

1. FES has a direct and substantial interest in the outcome of this proceeding.

DP&L argues that that the Commission should deny FES's Motion because FES's customers do not pay the bypassable fuel rider and, further, because, allegedly, FES's "real" interest is to see a "*dramatic increase in DP&L's fuel recovery rider, thus making FES' [sic] rates appear more attractive.*" (Memorandum Contra at 4). DP&L concludes that because of this alleged interest and because FES is a direct competitor of DP&L, FES's intervention "could actually be harmful to a fair outcome in the proceeding." (*Id.* at 2). These arguments, however, are fatally flawed.

As a fundamental matter, FES and DP&L are not, contrary to DP&L's claims, "direct" competitors. Instead, DP&L is an electric distribution utility ("EDU") with rates subject to regulation by the Commission, whereas FES is a CRES provider with rates not regulated by the Commission. Since this is not a case involving a true "direct" competitor, DP&L's concerns surrounding the release of confidential and proprietary data to FES are diminished.

Further, DP&L's argument that the fuel rider is of no interest to FES because it is a bypassable charge misses the point. FES's interest as a CRES provider is the treatment of generation-related charges and the impact the fuel rider will have on retail rates and the Price-to-Compare, not whether its customers are subject to the corresponding charge. DP&L's arguments in this regard, as with its claims of being a "direct competitor to FES" are mischaracterizations designed to obfuscate FES's real and substantial interest in this proceeding.

In addition, DP&L's speculation that FES seeks intervention to somehow ensure an increased fuel rider should be entirely disregarded. In addition to the fact that the fuel rider will be set based on the evidence submitted to the Commission rather than alleged competitive interests, if DP&L's reasoning were applied to its own interests the result would be an artificially decreased fuel rider so that DP&L could ensure that CRES providers, like FES, cannot beat the Price-to-Compare. Again, FES is interested in ensuring that a reasonable fuel rider is set for the continued development of the competitive market not manipulation of the Price-to-Compare. The public interest and the policy of the state of Ohio in furthering competition in Ohio's electricity marketplace favor FES's intervention as set forth in FES's Motion and above. FES's intervention and participation will encourage competition, provide retail customers with the best possible rate, and allow customers the choice of picking the supplier who best meets their needs. *See* R.C. § 4928.02. DP&L's mischaracterization of FES's interests fails to overcome these facts.

2. FES will abide by any protective orders issued by the Commission and the proceeding will not be delayed by FES's participation.

DP&L also argues that FES's intervention will unduly prolong this proceeding because of the confidential and proprietary information involved in this matter. DP&L asserts that granting FES access to DP&L's trade secret and proprietary business information would put DP&L at a competitive disadvantage. DP&L further argues that the hearing will be unduly prolonged by FES's participation. Both arguments, however, are without merit given that the Commission is well-equipped to deal with any such concerns.

Unlike DP&L, FES has no doubt in the Commission's ability to ensure that DP&L's confidential and proprietary information is protected at the hearing and otherwise. FES will abide by any protective orders issued by the Commission and procedures exist to address the

introduction of confidential information at hearing. See O.A.C. 4901-1-27 (setting forth procedure for in-camera inspection of confidential information). FES does not seek intervention to gain access to DP&L's trade secrets; it instead seeks to ensure a level playing field and a competitive market.

III. CONCLUSION

As established in FES's Motion and above, FES satisfies the requirements for intervention in this proceeding. DP&L's Memorandum Contra fails to offer any legitimate reason for denying FES's intervention. Accordingly, the Commission should grant FES's Motion to Intervene.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Reply Memorandum in Support of Motion to Intervene of FirstEnergy Solutions Corp.* was served this 15th day of August, 2011, via e-mail and regular U.S. Mail, postage pre-paid, upon the parties below.

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