

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The attorney examiner finds:

- (1) On June 24, 2009, the Commission issued an Opinion and Order approving a stipulation that, *inter alia*, authorized The Dayton Power and Light Company (DP&L) to institute a fuel recovery rider (fuel rider), effective January 1, 2010. *In the Matter of the Application of The Dayton Power and Light Company For Approval of its Electric Security Plan*, Case No. 08-1094-EL-SSO, et al. (*ESP case*). Under the terms of the stipulation, DP&L is required to submit an annual fuel cost filing, beginning in 2011, with the 2011 and 2012 filings subject to an audit.
- (2) By entry issued July 28, 2011, the attorney examiner established the following procedural schedule:

September 6, 2011	Prehearing Conference
September 27, 2011	Pre-filed Testimony Deadline
October 19, 2011	Hearing Commences
- (3) On September 23, 2011, DP&L filed a motion for an extension of time to file testimony, and requested an expedited ruling. In its motion, DP&L requests the deadline to file testimony be extended from September 27, 2011, to October 4, 2011. DP&L states that it has communicated with Staff, the Ohio Consumers' Counsel, and the Industrial Energy Users-Ohio, and no party objects to the motion.
- (4) The attorney examiner finds that DP&L's motion for an extension of time to file pre-filed testimony should be granted. The attorney examiner notes that while DP&L failed to contact FirstEnergy Solutions Corp. (FES), pursuant to Rule 4901-1-12(C) and (E), Ohio Administrative Code (O.A.C.), granting this motion will not adversely affect a substantial right of any

party. Accordingly, the deadline to file pre-filed testimony shall be extended from September 27, 2011, to October 4, 2011.

- (5) On July 25, 2011, FES filed a motion to intervene. In support of its motion, FES explains that it provides competitive services to customers in DP&L's service territory, and as such, any change in the fuel rider has an impact on FES's ability to compete.
- (6) On August 9, 2011, DP&L filed a memorandum in opposition to FES's motion to intervene. In its memorandum contra, DP&L asserts that neither FES nor its customer base pay the bypassable fuel rider. DP&L opines that FES's interest as a direct competitor is to see an increase in DP&L's fuel rider. Further, DP&L states that FES's participation in this proceeding would not only cause undue delays in the proceedings but also put DP&L at a competitive disadvantage because FES may be exposed to DP&L's trade secret and proprietary business information.
- (7) On August 15, 2011, FES filed a reply memorandum in support of its motion to intervene. FES claims that it is not seeking to increase DP&L's fuel rider, but rather, ensure the continued development of the competitive market in DP&L's service territory. Further, FES states that its intervention will not cause undue delays in the proceedings, and DP&L has the ability to ensure that its confidential information is protected through protective orders and Commission procedures.
- (8) The attorney examiner finds that FES's motion to intervene meets the criteria set forth in Rule 4901-1-11, O.A.C., and Section 4903.221, Revised Code. FES is a certified CRES supplier serving customers in the DP&L service territory; therefore FES has a real and substantial interest in the proceeding. As DP&L's annual fuel rider comprises a significant percentage of the Price-to-Compare, this proceeding may impact FES's ability to compete within DP&L's service territory. Further, FES's interest in the continued development of the competitive market in DP&L's service territory is not currently represented by any other party in this proceeding. Finally, FES's intervention will not cause any undue delays in this proceeding, as, by motion, any party may seek protective treatment for trade secrets or confidential information, and may include a request for an expedited ruling. In addition, the

Supreme Court has held that statutes and rules governing intervention should be "generally liberally construed in favor of intervention." *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 384 (quoting *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections* (1995), 74 Ohio St.3d 143, 144). Accordingly, the attorney examiner finds FES's motion to intervene should be granted.

It is, therefore,

ORDERED. That DP&L's motion for an extension of time to file testimony be granted. It is, further,

ORDERED, That the pre-filed testimony deadline be extended from September 27, 2011, to October 4, 2011. It is, further,

ORDERED, That FES's motion to intervene be granted. It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record in this proceeding.

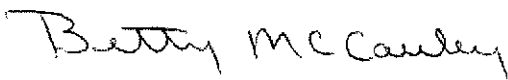
THE PUBLIC UTILITIES COMMISSION OF OHIO

By 
Jonathan J. Tauber
Attorney Examiner

JRG /sc

Entered in the Journal

SEP 26 2011



Betty McCauley
Secretary