

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The)	
Dayton Power and Light Company To)	Case Nos. 11-5730-EL-FAC
Establish a Fuel Rider)	

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

Pursuant to Ohio Revised Code § 4903.221 and O.A.C. 4901-1-11, FirstEnergy Solutions Corp. (“FES”) moves to intervene in these proceedings. FES has a number of real and substantial interests in these proceedings and its interests, which may be prejudiced by the results of these proceedings, are not adequately represented by existing parties. Thus, as set forth more fully in the attached memorandum in support, FES respectfully requests that the Commission grant this timely request to intervene.

Dated: September 10, 2012

Respectfully submitted,

/s/ Mark A. Hayden

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

I. Introduction

In The Application of The Dayton Power and Light Company To Establish a Fuel Rider (the “Application”), the Dayton Power and Light Company (“DP&L”) seeks Commission approval of modifications to its FUEL rider. The Commission has previously authorized the FUEL rider subject to audit as part of a Stipulation,¹ and the audit for the period from December 31, 2010 through December 31, 2011 has been filed in this proceeding.²

As DP&L has recognized, the Commission has previously ordered that least cost fuel and purchased power costs be allocated to retail customers.³ The proper allocation of fuel costs between retail and shopping customers is vital both under the previous Orders of the Commission and as a matter of sound policy. Costs must be properly allocated to ensure that retail customers are not subsidizing shopping customers through improperly allocated fuel costs. This improper cross-subsidization could significantly affect Competitive Retail Electric Service (“CRES”) providers such as FirstEnergy Solutions Corp. (“FES”), who could be disadvantaged

¹ See *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, Opinion and Order filed June 24, 2009.

² See *Report of the management/performance and financial audit of the fuel and purchased power rider of The Dayton Power and Light Company filed by Energy Ventures Analysis, Inc. and Larkin & Associates PLLC*, filed April 27, 2012.

³ See *DP&L Notice of the Annual Fuel Filing*, filed March 30, 2012, p. 1 (citing Case No. 08-1094-EL-SSO).

by being forced to compete against subsidized offers from DP&L's competitive affiliate. Accordingly, FES has a 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.

II. Legal Standard

R.C. § 4903.221 provides that any "person who may be adversely affected by a public utilities commission proceeding" may intervene in the proceeding. 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.

III. Argument

A. The Nature And Extent Of FES's Interest

FES is an owner and operator of 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. Potential cross-subsidization through fuel charges would directly impact FES's ability to provide those competitive services. As such, FES has a substantial interest in the outcome of this proceeding and in ensuring that DP&L's fuel costs have been allocated correctly, and that interest cannot be represented by any other party to this proceeding.

B. The Legal Position Asserted By FES

FES supports the Commission's decision to allocate least-cost fuel and purchased power to retail customers. FES seeks to intervene to ensure that the Commission's directive has been followed and that fuel costs have been properly allocated by DP&L. As such, FES seeks to intervene to ensure that DP&L's Application is implemented in an orderly manner consistent with all relevant legal principles.

C. FES's Intervention Will Not Unduly Prolong Or Delay The Proceedings

The Application was filed on November 10, 2011, and the Commission's scheduling order allows motions to intervene to be filed through September 14, 2012.⁴ As a result, FES's

⁴ See Entry dated August 27, 2012.

Motion to Intervene is timely and will not prejudice any existing parties or unduly prolong or delay the proceedings.⁵

D. FES Will Contribute To The Full Development Of Factual Issues And FES's Interests Are Not Already Represented By Existing Parties.

FES is uniquely situated to contribute to the full development of factual issues in this case as one of the largest CRES and wholesale providers in the state. FES has substantial experience promoting fair and open competitive markets through participation in Commission proceedings, which experience may benefit the Commission's review of DP&L's Application.⁶ FES's participation will significantly contribute to the full development and resolution of the issues raised by DP&L's proposal because FES has significant experience in the supplier marketplace.

FES's interests are not already represented by existing parties, as no other party currently involved in this proceeding currently represents the interests of FES in serving DP&L's customers on a retail basis.

IV. Conclusion

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

⁵See O.A.C. 4901:1-11(E) (providing that a motion to intervene "will not be considered timely if it is filed later than five days prior to the scheduled date of hearing or any specific deadline established by order of the commission for purposes of a particular proceeding").

⁶ See, e.g., *In re Application of Duke Energy Ohio for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply*, Case No. 10-2586-EL-SSO, Mot. to Intervene of FES, filed Nov. 19, 2010; *In re Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply*, Case No. 09-906-EL-SSO, Mot. to Intervene of FES, dated Nov. 25, 2009.

Dated: September 10, 2012

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 10th day of September, 2012, via e-mail upon the parties below.

/s/ N. Trevor Alexander
One of the Attorneys for FirstEnergy Solutions Corp.

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Summary: Motion to Intervene of FirstEnergy Solutions Corp. electronically filed by Mr. Nathaniel Trevor Alexander on behalf of FirstEnergy Solutions Corp.