

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton)
Power and Light Company for Authority to) Case No. 13-2420-EL-UNC
Transfer or Sell its Generation Assets.)

**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 this proceeding. FES has a number of real and substantial interests which may be prejudiced by the results of this proceeding. This proceeding involves the proposed transfer or sale of the generation assets of Dayton Power & Light Company (“DP&L”). The provisions of this asset transfer plan are also related to DP&L’s most recent ESP proceeding, Case No. 12-426-EL-SSO *et al.*, in which FES was granted leave to intervene and participated actively. As the application was filed recently and no intervention schedule or hearing has been established, FES’ Motion is timely and will not prejudice any party.

Thus, as set forth more fully in the attached memorandum in support, FES respectfully requests that the Commission grant this motion to intervene.

Respectfully submitted,

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

I. Introduction

On December 30, 2013, the Dayton Power & Light Company (“DP&L”) filed an application (the “Application”) for approval of the transfer, sale, or decommissioning of its generation assets. FirstEnergy Solutions Corp. (“FES”) supports DP&L’s corporate separation. However, the specific details regarding how this separation is accomplished may have a significant impact on CRES providers operating in DP&L’s territory, bidders in DP&L’s anticipated competitive auctions, and in the potential market distorting effect of DP&L’s transfer of generation assets. As such, FES should be granted leave to intervene in this action.

II. Factual Background

DP&L has proposed this Application to address the potential separation of its generation assets. According to DP&L, this could include the transfer of those assets to an affiliate, the sale of the assets, or the decommissioning of some or all of its generation assets.¹ Once completed, this proposed asset transfer will move DP&L from the functional separation under which it has operated for more than a decade – which essentially has resulted in DP&L remaining a vertically integrated utility – to the corporate separation required by S.B. 3. This proceeding may also control the terms and conditions under which DP&L transfers its generation assets to a DP&L affiliate. The resolution of these issues could significantly impair FES’ ability to serve retail

¹ Application, p. 1.

customers in DP&L's service territories. These issues could also impact FES' ability to successfully bid in the competitive bid processes anticipated by the ESP Case. Accordingly, FES requests that it be allowed to intervene so that it may participate in the Application proceeding and insure that its interests are protected and adequately represented.

III. 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' motion to intervene satisfies each of these factors.

IV. Argument

A. The Nature And Extent Of FES' Interest

FES is an owner and operator of electric generating facilities and a certified CRES provider in Ohio. As a CRES and wholesale provider, FES is impacted by DP&L's completion of its corporate separation through the sale or transfer of its generation assets. For example, the terms under which such a transfer or sale is consummated could have negative or positive effects on wholesale and retail markets in Ohio. Moreover, the transfer of DP&L's generation assets may involve FERC and potentially the commissions of several states. Despite these potentially significant impacts on CRES providers, DP&L has not yet explained what it intends to do with its generation assets, what the terms of any transfer would be, or what safeguards it would put in place to ensure appropriate corporate separation. As a CRES provider, FES could be significantly prejudiced by an inappropriate transfer of assets which could impact the PJM or Ohio markets.

B. The Legal Position Asserted By FES

FES generally supports DP&L's transfer of its generation assets as required by Ohio law. However, the specific details regarding how this separation is accomplished may have a significant impact on CRES providers operating in DP&L's territory, bidding in DP&L's anticipated competitive auctions, and in the potential market distorting effect of DP&L's transfer of generation assets. As such, FES seeks to intervene to ensure that DP&L's corporate separation is accomplished in an orderly manner consistent with all relevant legal principles.

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

The Application was filed on December 30, 2013, and no intervention or hearing deadline has been set. The first task in the procedural schedule is a request for comments on or

before February 4, 2014. As a result, FES' Motion to Intervene is timely and will not prejudice any existing parties or unduly prolong or delay the proceedings.²

D. FES Will Contribute To The Full Development Of Factual Issues And FES' 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 FES has already been a part of a similar proceeding involving AEP Ohio.³ FES also 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.⁴ FES' interests as one of the largest CRES and wholesale providers in the state is 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 wholesale and retail basis.

V. 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.

²See 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").

³Case No. 12-1126-EL-UNC.

⁴See, e.g., *In the Matter of the Application of The Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to § 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO et al., Mot. To Intervene of FES, dated February 14, 2011; *In the Matter of the Application of Ohio Power Company to Establish a Competitive Bidding Process for Procurement of Energy to Support its Standard Service Offer*; Case No. 12-3254-EL-UNC, Mot. To Intervene of FES, dated January 14, 2013; *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.

Respectfully submitted,

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/9/2014 11:00:31 AM

in

Case No(s). 13-2420-EL-UNC

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