

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of The Dayton Power and Light Company For Approval of its Electric Security Plan.</b>	) ) )	<b>Case No. 08-1094-EL-SSO</b>
<b>In the Matter of the Application of The Dayton Power and Light Company For Approval of Revised Tariff.</b>	) ) )	<b>Case No. 08-1095-EL-ATA</b>
<b>In the Matter of the Application of The Dayton Power and Light Company For Approval of Certain Accounting Authority Pursuant to Section 4905.13, Revised Code.</b>	) ) ) )	<b>Case No. 08-1096-EL-AAM</b>
<b>In the Matter of the Application of The Dayton Power and Light Company For Approval of its Amended Corporate Separation Plan.</b>	) ) ) )	<b>Case No. 08-1097-EL-UNC</b>

**MOTION FOR LEAVE TO INTERVENE OF THE  
RETAIL ENERGY SUPPLY ASSOCIATION**

Now comes the Retail Energy Supply Association (RESA),<sup>1</sup> who pursuant to Revised Code Section 4903.221, and Ohio Administrative Code Rule 4901:1-11, moves for leave to intervene in the above-styled proceedings. RESA was a full party of record in the second electric security plan (“ESP II”) proceeding of The Dayton Power and Light Company,<sup>2</sup> but not these proceedings – DP&L’s first electric security plan proceeding (“ESP I”). The purpose of the intervention in these proceedings is for RESA to express its opposition regarding several

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<sup>1</sup> The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

<sup>2</sup> *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security*

interrelated pleadings recently filed by DP&L on July 27 and August 1, 2016. They are: (a) DP&L's motions in its ESP I and ESP II proceedings to withdraw its application in ESP II and revert back to the 2013 rates; and (b) DP&L's proposed tariffs sheets to accomplish such. DP&L proposes to unreasonably interpret R.C. 4928.143(C)(2)(a) in such a manner that would allow it to withdraw its ESP II two and a half years into the ESP II term and effectively allow other utilities the same opportunity. DP&L's request to revert to its pre-ESP II rate should also be denied as it too is based on an improper interpretation of Ohio law.

WHEREFORE, RESA respectfully requests that the Commission grant this motion for leave to intervene and that RESA be made a party of record in these proceedings. Contemporaneous to the filing of this motion for leave to intervene, RESA is timely filing a memorandum contra to the DP&L motions filed in both its ESP I and ESP II proceedings. RESA intends to respond to DP&L's proposed tariff filing in the ESP I proceedings on August 12, 2016, in accordance with the comment schedule established by the Attorney Examiner.

The reasons supporting this motion for leave to intervene at this time are contained in the accompanying Memorandum in Support.

Respectfully Submitted,

s/ Michael J. Settineri

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**MEMORANDUM IN SUPPORT OF  
THE MOTION TO INTERVENE  
BY  
THE RETAIL ENERGY SUPPLY ASSOCIATION**

**I. Introduction**

Revised Code Section 4903.221 and Ohio Administrative Code Rule 4901-1-11 establish the standard for intervention in the above-styled proceedings as a full party of record. Rule 4901-1-11(A) of the Ohio Administrative Code states in part:

Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:

\* \* \*

(2) The 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.

Also, a motion to intervene that is not timely is granted under extraordinary circumstances, per Ohio Administrative Code Rule 4901-1-11

**II. RESA Meets the Statutory and Rule Requirements for Intervention**

RESA was a party in DP&L's ESP II proceedings, but not a party in DP&L's ESP I proceedings. The ESP II is in place and effective today. However, on June 20, 2016, the Supreme Court of Ohio reversed the Commission's ESP II decision on authority of *In re Application of Columbus S. Power Co.*, 2016-Ohio-1608 (the "June 20, 2016 Supreme Court Decision").<sup>3</sup> Following that ruling, on July 27, 2016, DP&L filed three motions as follows:

*In the ESP II case:* Motion to Withdraw Its Application

*In the ESP II case:* Motion to Implement Previously Established Rates

*In the ESP I case:* Motion to Implement Previously Established Rates

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<sup>3</sup> *In re Dayton Power & Light Co.*, 2016-Ohio-3490.

Also, on August 1, 2016, DP&L filed proposed tariff changes in its ESP I case.

DP&L's motions and tariff filing were unanticipated and its requests are unprecedented. Therefore this situation involves extraordinary circumstances.

As the trade association which represents a significant number of competitive retail electric service providers in Ohio, the proposed abrupt and significant change in the manner in which DP&L's competitive marketplace might operate is of direct interest to RESA and its members.

In addition to establishment of a direct interest, the factors that the Public Utilities Commission of Ohio (the "Commission") considers in implementing the above rule are the nature of the intervenor's interest, the extent that interest is represented by existing parties, the intervenor's potential contribution to a just and expeditious resolution of the issues involved, and whether intervention would result in an undue delay of the proceeding. *See, also*, Revised Code Section 4903.221(B), upon which the above rule is authorized.

RESA is a broad and diverse group of energy retail suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome than regulated utility structure. Several RESA members are certificated as competitive retail electric service providers and active in the DP&L service area. In addition, other RESA members could supply competitive retail electric service in the future in the DP&L service area. RESA's interest is unique and not fully represented by any other party in the ESP I proceedings. Further, its intervention will not delay the proceeding as the schedule for responding to the motions and providing comments in response to the proposed tariffs has already been set and will not be delayed by RESA's intervention at this time. Finally, RESA strongly believes that its responsive pleading and comments will assist the Commission in evaluating these unusual and

extraordinary requests by presenting a coordinated response in both sets of dockets.

## **II. Conclusion**

RESA respectfully requests that its motion for leave to intervene be granted, that it be made a full party of record.

Respectfully Submitted,

s/ Michael J. Settineri

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## **CERTIFICATE OF SERVICE**

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket cards who have electronically subscribed to these cases. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served upon the persons below via electronic mail this 11th day of August, 2016.

s/ Michael J. Settineri

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Summary: Motion for Leave to Intervene electronically filed by Mr. Michael J. Settineri on behalf of Retail Energy Supply Association