

RESOLUTION NO. 15-01
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Roger W. Kress ON THE
19th DAY OF February, 2001.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH DPL ENERGY (DPLE) FOR THE SUPPLY OF ELECTRICITY AND CONSULTATIVE SERVICES TO THE CITY OF CENTERVILLE, OHIO.

WHEREAS, the State of Ohio and Public Utilities Commission of Ohio have made certain options available to municipalities pertaining to the supply of electric generation, and

WHEREAS, Miami Valley Lighting, Inc., a DPL Inc. Company, d.b.a. as DPL Energy (DPLE) is willing to provide certain electric supply and consultative services, and

WHEREAS, The City of Centerville desires to purchase such electric supply and consultative services from DPLE at prices and on terms beneficial to both parties.

WHEREAS, an Agreement for these services has been negotiated between the City of Centerville and DPLE.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager is hereby authorized to enter into an Agreement, on behalf of the City of Centerville, with DPLE to purchase certain electric supply and consultative services at prices and on terms beneficial to both parties, a copy of said Agreement is attached hereto, marked as Exhibit "A" and incorporated herein.

Section 2. That this Resolution shall become effective immediately upon passage.

PASSED this 19th day of February, 2001.

Sally D. Buis
Mayor of the City of Centerville, Ohio

ATTEST:

Maril J. Saugh
Clerk of Council, City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution Number 15-01, passed by the Council of the City of Centerville, Ohio, on the 19th day of February, 2001.

Maril J. Saugh
Clerk of Council

Approved as to form, consistency
with the Charter and Constitutional Provisions.

Department of Law
Robert N. Farquhar
Municipal Attorney

City of Centerville, State of Ohio
Energy Partnership Agreement

Whereas, the State of Ohio and Public Utilities Commission of Ohio (PUCO) have made certain options available to municipalities pertaining to the supply of electric generation, and

Whereas, Miami Valley Lighting, Inc., a DPL Inc. Company, d.b.a. as DPL Energy (DPLE) is willing to provide certain electric supply and consultative services, and

Whereas, The City of Centerville, State of Ohio (City), desires to purchase such electric supply and consultative services from DPLE at prices and on terms beneficial to both parties.

Now therefore, DPLE proposes to provide certain services related to electric supply and consultation on the following terms and conditions:

1. Generation Service: Subject to the terms and conditions of the City's electric distribution utility (EDU), at any time during the term of the Agreement, upon ninety (90) days advance written notice, the City can elect one of the following options with regard to purchasing electric generation for municipal operations:

- A. The City will continue service under their EDU's then-effective tariffs and rates, including all applicable riders in effect at the time this option is chosen or that become effective at any future time during the term of this Agreement specified for bundled or unbundled generation and the applicable transmission and/or distribution service;
- B. The City and DPLE will negotiate a separate Contract for the provision of electric generation service to the City at a fixed price. DPLE will utilize reasonable efforts to find the best electric generation service that DPLE can acquire for the City, given the City's specifications as to term, source, price, delivery risk and other factors. DPLE will provide an annual report to the City regarding its efforts to meet these criteria. Should the City choose this option, a separate agreement setting the terms and conditions for this service will be executed by the parties, which Contract shall provide that if DPLE acquires generation from an unaffiliated entity, then the City shall pay to DPLE a consulting fee for the consulting services described below in the amount of \$10,000.00.

2. **Electric Consultative Service:** The City agrees to partner exclusively with DPLE to, at the City's request (a) evaluate the energy efficiency of municipal operations, (b) evaluate the impact on electric spending of various demand management initiatives, (c) evaluate any interest the City may have with regard to the aggregation of municipal electric load with that of residences and businesses and (d) assess the future market opportunity for the City's electric supply at the end of the Agreement.

3. **Term:** This Agreement shall commence on the date of execution and shall remain in effect for a period of three (3) years through December 31, 2003.

4. **Force Majeure:** Neither party shall be liable to the other for any act, omission, misfeasance, malfeasance or circumstance arising or resulting from events reasonably beyond the control of either party. If a force majeure condition arises, each party will use due diligence to remove the condition and put itself in a position to carry out all of the obligations it has assumed hereunder.

5. **Indemnification:** Each party hereto agrees to indemnify, defend and hold harmless the other respective party, including its officials, employees and agents from any and all claims, damages, losses, expenses, and lawsuits, including reasonable attorneys' fees (collectively referred to as "Claims") as such Claims are related to, directly or indirectly, this Agreement and flow from any negligent act or acts of the indemnifying party and/or one or more negligent omissions of the indemnifying party and without regard to whether such act or omission is alleged, admitted or proved.

6. **Assignment:** DPLE reserves the right to assign this agreement upon ninety (90) days advance written notice.

7. **Modification and Extension:** No later than twelve (12) months prior to the date of expiration of this Contract each party may submit to the other suggested changes to be included in a new or renewed Contract. If the parties are unable to agree on new contractual language within the period ending sixty (60) days before the date of Contract expiration then either party may give written notice of termination up to the date of actual expiration. If neither party elects to terminate, the Contract shall automatically renew on the same terms and conditions and for a like term as the expired Contract.

8. **Required Disclosures:** Ohio Administrative 4901:1-21-12 requires that the following disclosures be made: (a) The City's EDU may charge a fee for switching generation providers. (b) The City may request from DPLE up to 24 months of its payment history without charge.

9. **Waiver:** Either party may waive any right under this agreement. The waiver by a party to require performance of a provision of the Agreement will not affect the right to require full performance of any provision thereafter. The waiver by either party of a breach of a provision will not constitute a waiver of any subsequent breach or nullify the effectiveness of the provision.

10. **Notices:** All notices and correspondence transmitted in regard to this Agreement shall be addressed to the following persons:

If to DPLE: DPL Energy
 P.O. Box 1807
 Dayton, Ohio 45401
 Attn: General Manager

If to City: _____

These addresses may be changed upon written notice to the other party.

11. **Entirety:** This Agreement contains the entire agreement and understanding between the parties. Except as stated herein, THERE ARE NO OTHER ORAL OR WRITTEN PROMISES, AGREEMENTS, WARRANTIES, ASSURANCES OR CONDITIONS WHICH AFFECT THE PROMISES AND OBLIGATIONS PROVIDED HEREIN.

Attest

DPL Energy

By: _____

Attest

City of Centerville, State of Ohio

By: _____

City Manager