

RESOLUTION NO. 44-98
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER JAMES SINGER ON THE
16th DAY OF NOVEMBER, 1998.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO GRANT A RIGHT OF WAY AND EASEMENT, ON BEHALF OF THE CITY OF CENTERVILLE, TO THE DAYTON POWER AND LIGHT COMPANY TO INSTALL GAS AND ELECTRIC UTILITIES TO SERVICE THE YANKEE TRACE RESIDENTIAL DEVELOPMENT.

WHEREAS, it is necessary for the City of Centerville to grant unto The Dayton Power & Light Company a right of way and easement to provide for the installation of gas and electric utilities to serve The Yankee Trace Residential Development; and

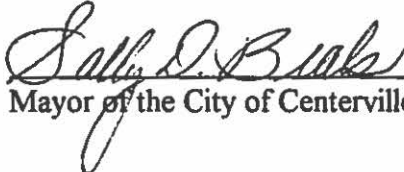
WHEREAS, to accomplish this The Dayton Power & Light Company is requesting a 10 foot wide right of way and easement on property situated in the City of Centerville, Montgomery County, State of Ohio and owned by the City of Centerville, said property being a parcel of land located along Yankee Trace Drive, and being a part of the premises described in a Quit Claim Deed recorded on Microfiche No. 94-742 D04 of the Deed Records of Montgomery County, Ohio.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager is hereby authorized to do all things necessary to execute a grant of right of way and easement to The Dayton Power & Light Company to provide for the installation of gas and electric utilities to serve The Yankee Trace Residential Development, in accordance with said option for right of way and easement and addendum, both of which are attached hereto and made a part hereof, marked Exhibit "A".

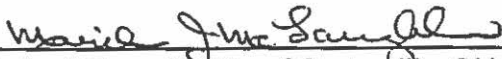
Section 2. This Resolution shall become effective at the earliest date allowed by law.

PASSED this 16th day of NOVEMBER, 1998.



Mayor of the City of Centerville, Ohio

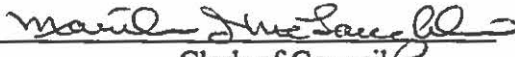
ATTEST:



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 44-98, passed by the Council of the City of Centerville, Ohio, on the 16th day of NOVEMBER, 1998.


Clerk of Council

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

Department of Law
Robert N. Farquhar
Municipal Attorney

UTILITY R/W

KNOW ALL MEN BY THESE PRESENTS

THAT CITY OF CENTERVILLE

Grantor(s), for valuable considerations to them paid by The Dayton Power and Light Company, Courthouse Plaza Southwest, Dayton, Ohio 45401 (Grantee), do(es) hereby GRANT, BARGAIN, SELL AND CONVEY unto The Dayton Power and Light Company, its successors and assigns forever, a right of way and easement for gas, electric and/or utility lines or facilities; for the transmission and/or distribution of electric energy; for the transmission and/or distribution of liquefied and/or gaseous substances; and/or for other utility purpose(s); and/or for any and all purposes for which gas and/or electric energy and/or for the transmission and/or distribution of liquefied and/or gaseous substances(s) which in the judgement of the Grantee are necessary or incidental to the use of said right of way and easement, together with the right to construct, thereon, either underground or overhead lines, all poles, lines, structures, wires, cables, conduits, manholes, anchors, grounding systems, communication circuits, fiber optic cables, equipment, appurtenant valves, drips, regulators, pits and all other appurtenances, and the right to add to, construct, reconstruct, erect, operate, repair, maintain, use, remove or replace such facilities at any time, subject to the conditions hereinafter contained, upon, over, under and through the following premises, viz:

Situated in the City of Centerville, Montgomery County, State of Ohio.

And being a tract of land containing before exceptions 309.426 acres, more or less, before exceptions situated in part of Section 5, Town 2, Range 5 M.R.S. and being a part of the premises described in a Quit Claim Deed recorded on Microfiche No. 94-742 D04 of the Deed Records of Montgomery County, Ohio.

Said right of way and easement shall be 10 feet in width and the centerline shall be approximately along the course identified on Exhibit "A" attached hereto and made a part hereof.

In addition to the rights provided above, said grant of right of way and easement shall provide that:

Grantee, its successors and assigns, by and through its employees, servants, and agents, shall have the right of ingress and egress over the right of way and easement and the adjoining premises of Grantor(s) to add to, construct, reconstruct, repair, maintain, use or remove its facilities or parts thereof, and to cut, trim and remove or otherwise control such trees, roots, undergrowth or overhanging branches and/or other obstructions, both within and without the limits of said right of way and easement, as, in the opinion of Grantee, may now or at any time hereafter interfere with the construction, use, maintenance or successful operation of its facilities and/or the transmission and/or distribution of electric energy and/or transmission and/or distribution of liquefied or gaseous substances(s) and/or for any other utility purpose(s).

Grantee its successors and assigns shall reimburse Grantor(s) for any damage or loss to growing crops and other property, including buildings and fences, that may be caused by the negligence of Grantee, its agents, servants, or employees, in the construction, repair or removal of its facilities.

No buildings or other structures shall be erected within the limits of said right of way and easement by Grantor(s). No excavating or filling shall be done or be permitted by Grantor(s) within said right of way and easement, which in the opinion of Grantee would either (a) reduce or add to the distance between Grantee's facilities and the land surface, (b) impair the land support of its facilities, (c) impair Grantee's ability to maintain its facilities, and/or (d) create a hazard.

Grantor(s) shall have the right to use the land within the limits of said right of way and easement in any other manner not inconsistent with the rights herein described.

Grantor(s) covenant with Grantee, that he/she/they are the true and lawful owner(s) of said premises and have full power to convey the rights hereby conveyed and he/she/they do warrant and will defend the same against the claims of all persons whomsoever.

In the event that any road should be widened or relocated so that its right of way extends onto the Grantee's right of way and easement herein provided for, Grantee may, but shall not be required to relocate or reconstruct its facilities so that Grantee's facilities as relocated or reconstructed are contained within Grantee's right of way as relocated so that the centerline of said right of way shall not be more than five (5) feet off the road right of way as widened or relocated.

All the covenants, agreements, stipulations, provisions, conditions and obligations contained herein, shall be considered as running with the land and shall extend to, bind and inure to the benefit of, as the case may require, the heirs, executors, administrators, successors and assigns of the Grantor(s) and Grantee respectively, as fully as if such words were written whenever reference to the Grantor(s) and Grantee occur in this grant.

As used herein, words in the plural number include words in the singular number.

IN WITNESS WHEREOF, the Grantor(s) have hereunto subscribed their names this ____ day of _____, 19__.

Signed and acknowledged in the presence of:

WITNESSES

GRANTOR(S)

CITY OF CENTERVILLE

(WITNESS SIGNATURE)

BY: _____

(PRINT NAME)

ITS: _____

(WITNESS SIGNATURE)

AND: _____

(PRINT NAME)

ITS: _____

(WITNESS SIGNATURE)

(PRINT NAME)

(WITNESS SIGNATURE)

(PRINT NAME)

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

Before me, a Notary Public in and for said County and State, personally appeared
CITY OF CENTERVILLE

BY: _____ ITS: _____

AND: _____ ITS: _____

the Grantor(s) in the foregoing Instrument, and acknowledged the signing thereof to be its/their voluntary act and deed. In testimony thereof, I have hereunto set my hand and seal, this ____ day of _____, 19__.

Notary Public

This Instrument Prepared By

Real Estate Services Department _____

The Dayton Power and Light Company _____

0016GL(N)
9438jt

Project No. 49621 and 63228

ADDENDUM

The Dayton Power and Light Company (DP&L) and the City of Centerville (City), to further define the rights and obligations of each with regard to this easement, agree as follows:

I. Obligations of DP&L

A. In addition to other conditions set forth in the easement, DP&L shall:

1. Use its best efforts to cooperate with the City and other occupants of the right of way (if any), consistent with safety, and to minimize traffic and other disruptions including street cuts;
2. Participate in such joint planning in advance notification of right of way work as the City might set forth in its regulations, excepting such work performed in emergencies or other exigent circumstances;
3. Cooperate with other users of the right of way in the utilization of, construction in and occupancy of the rights of way but only to the extent it is not inconsistent with the grant thereof or is not additionally burdensome to any property owner;
4. Upon written notice from, and at the direction of the City, and at DP&L's sole cost, DP&L will promptly remove or rearrange facilities upon its poles as necessary, during any construction, repair or modification of any street or within the limits of any road right of way, as defined in O.R.C. 4511.01(UU), inconsistent with then current uses of DP&L.
5. Provide maps or other information in such form and at such times, as the regulations require. Said maps and information shall locate, describe and identify all uses, structures and facilities of DP&L in the rights of way;
6. Perform all work, construction, maintenance or removal of structures and facilities within the right of way in accordance with good engineering and construction practice including any appropriate safety codes and in accordance with the regulations and use best efforts to repair and replace any street, curb or other portion of the right of way, or facilities or structure located therein, to a condition materially equivalent to its condition prior to such work and to do so in a manner which minimizes any inaccommodation to the public, the City and other users of the right of way, all in accordance with the City's regulations;

7. Register with all appropriate underground reporting services; and
 8. Not, unless otherwise set forth in a permit and without City's prior written approval, enter into leases or other agreements for the use of DP&L's facilities located within these rights of way except for such use by other holders of City permits or franchises.
- B. DP&L hereby assures the City that any subcontractors or others performing any work or services in the right of way on behalf of DP&L shall comply with all applicable provisions of this easement and addendum and DP&L shall be responsible and liable hereunder for all actions of any such subcontractor.

II. Notice of Right of Way Work, Joint Planning

- A. DP&L shall file a written notice with the City Manager in accordance with the standard work permitting process before working in or on the right of way. In addition to such other information as the City Manager may require, such notice shall contain or indicate, to the extent possible;
1. The right of way affected;
 2. A description of any facilities to be installed, constructed or maintained;
 3. Whether or not any street will be opened or otherwise need to be restricted, blocked or closed;
 4. An estimate of the amount of time needed to complete such work;
 5. A description and timetable of any remedial measures planned to close any street opening or repair any damage done to facilitate such work;
 6. A statement verifying that other affected or potentially affected users of the right of way have been notified; and
 7. A statement that any consumers of any utility, cable television, communications or other service which will be adversely affected by such work have been or will be notified.
- B. DP&L may, under emergency or other exigent circumstances, work in the right of way so long as it uses its best efforts to provide the City the notice required by this section at the earliest possible time.

III. Use of DP&L Facilities

The City shall have the right to install and maintain, free of charge, upon any poles and within any underground pipes and conduits or other facilities of DP&L any facilities desired by the City unless (i) such installation and maintenance unreasonably and materially interferes with existing and future operations of DP&L, or (ii) such installation and maintenance would be unduly burdensome to DP&L. DP&L shall cooperate with the City in planning and design of its facilities so as to accommodate the City's reasonably disclosed requirements in this regard.

IV. Indemnity

DP&L shall indemnify, protect and hold harmless the City from any claim, loss or damage arising in any way from DP&L's use of the right of way including but not limited to the construction, operation or maintenance of DP&L's facilities or from any negligent or wrongful act or omission committed by DP&L.

V. Removal of Facilities

- A. In the event DP&L intends to discontinue use of any facilities within the right of way, DP&L shall submit a notice to the City Manager describing the portion of the facilities to be discontinued and the date of discontinuance, which date shall not be less than 30 days from the date such notice is submitted. DP&L shall remove and secure such facilities as set forth in the notice unless directed by the City Manager to abandon such facilities in place.
- B. Upon such abandonment and acceptance by the City in writing, full title and ownership of such abandoned facilities shall pass to the City without the need to pay compensation. DP&L shall however continue to be responsible for all taxes on such facilities or other liabilities associated therewith, until the date accepted by the City.

VI. Reservation of Rights

- A. Nothing in this agreement shall be construed to prevent the City from constructing, maintaining, repairing or relocating any City utility, communications or light facilities; grading, paving, maintaining, repairing, relocating or altering any street or right of way; or constructing, maintaining, relocation or repairing any sidewalk or other public work or improvement.
- B. Nothing in this chapter should be construed so as to grant any right or interest in any right of way or public property other than that explicitly set forth herein or in a permit.

VII. Street Vacation

Unless preempted by state or federal law, in the event any street or right of way used by DP&L shall be vacated by the City, the City will grant an easement to DP&L to continue the same. DP&L may choose to remove its facilities, and upon the removal thereof, restore, repair or reconstruct the area where such removal has occurred to a condition materially equivalent to that existing before such removal took place. Should DP&L fail to do so after 30 days written notice by the City, the City may do such work or cause it to be done, and the cost thereof shall be paid by DP&L.

VIII. Temporary Movement of Facilities

In the event it is necessary temporarily to move or remove any of DP&L's wires, cables, poles, or other facilities placed pursuant to this agreement, in order to lawfully move a large object, vehicle, building or other structure over the streets of the City, upon (2) weeks written notice by the City to DP&L, DP&L shall at the expense of the person requesting the temporary removal of such facilities, comply with the City's request.

BT29HB

THE DAYTON POWER AND LIGHT COMPANY - LAND SURVEY

| | | | | |
|-----------------|---------------|---|----------------------------|--|
| M-507 2-78 (23) | | OWNER CITY OF CENTERVILLE | | PROJ. NO. 4962163228 |
| SURVEYED BY | DATE SURVEYED | LOCATION AS SHOWN | | SHEET 1 OF SHEET 2 |
| DRAWN BY YOUNG | CHECKED | CONP. <input checked="" type="checkbox"/> TWP. <input type="checkbox"/> CENTERVILLE | ACRES 309.426 | GAS <input checked="" type="checkbox"/> ELECTRIC <input checked="" type="checkbox"/> |
| APPROVED | APPROVED | COUNTY MONTGOMERY | SEC. 5 T. 2 R. 5 MRS W. S. | DATE 10-29-98 |
| | | | | REV. _____ |
| | | | | SCALE 1" = 40' |

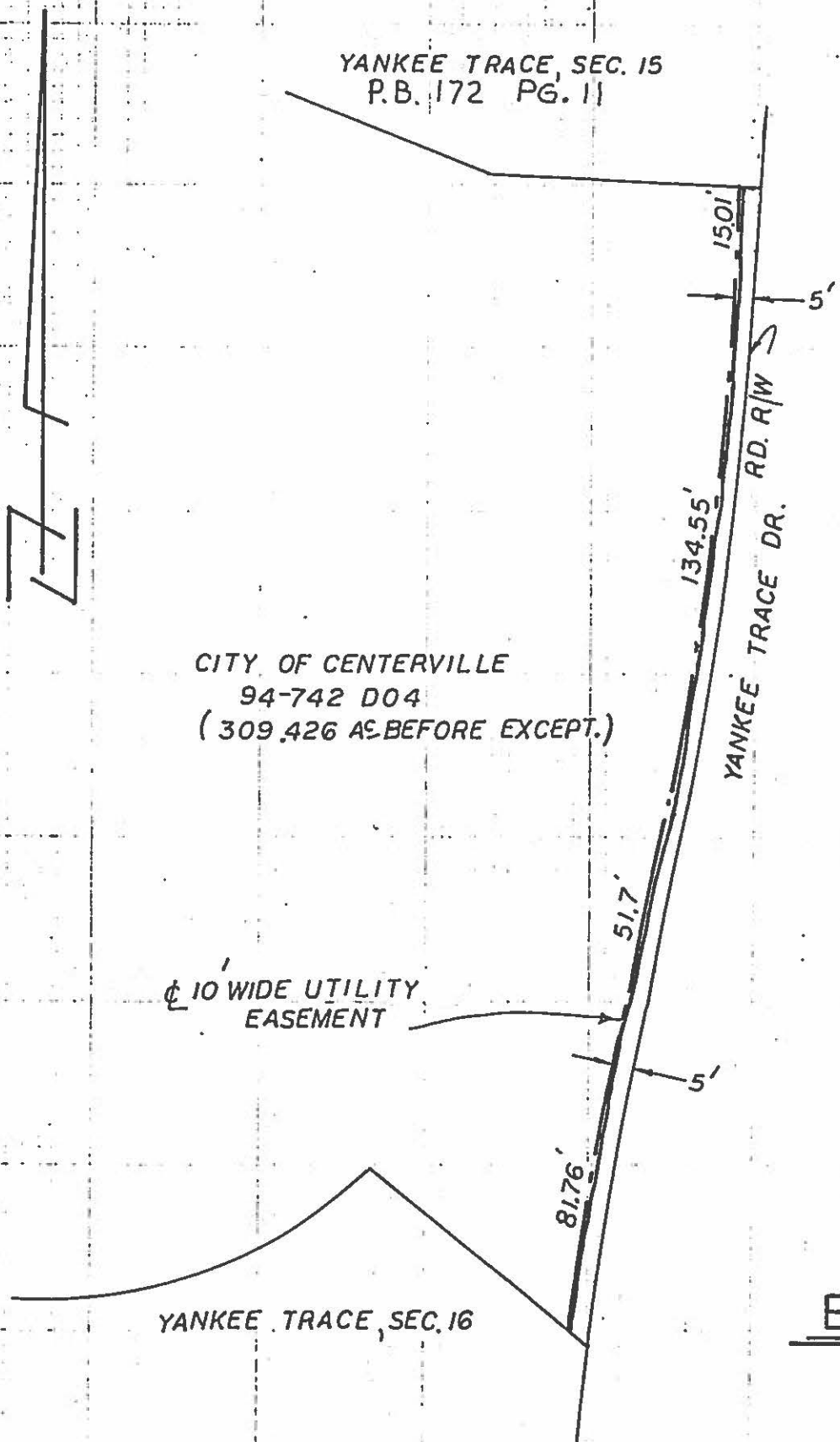


EXHIBIT A