

RESOLUTION NO. 50-74

CITY OF CENTERVILLE, OHIO

Sponsored by Councilman Russell Sweetman on the 14th day of August, 1974.

By resolution authorizing and directing the acting City Manager to enter into an agreement with the Dayton Power & Light Company for the joint use of poles bound by the Dayton Power & Light Company in the City of Centerville for joint use shall be of mutual advantage.

WHEREAS, the Dayton Power & Light Company has proposed to the City of Centerville that the City of Centerville and the Dayton Power & Light Company enter into a "facility license agreement", a copy of which is attached hereto, marked Exhibit A and made a part hereof; and

WHEREAS, the Council of the City of Centerville has determined that the execution of said agreement will be to the mutual advantage of the City of Centerville and the Dayton Power & Light Company;

NOW, THEREFORE,

THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

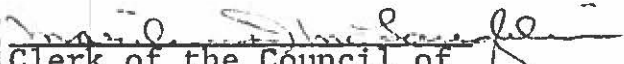
Section 1. The acting City Manager is hereby authorized and directed to execute the facility license agreement attached hereto, marked Exhibit A and made a part hereof, and to do any and all things necessary to effectuate said agreement.

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

PASSED this 14th day of August 1974.

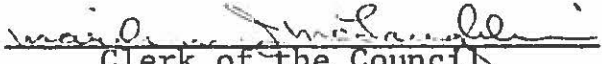

Deputy - Mayor of the City of Centerville, Ohio

ATTEST:


Clerk of the Council of
the City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 50-74, passed by the Council of the City of Centerville, Ohio, on the 14th day of August, 1974.


Clerk of the Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions.

Department of Law
Robert N. Farquhar
Municipal Attorney

FACILITY LICENSE AGREEMENT

THIS AGREEMENT, made as of the day of
19 , by and between the CITY OF CENTERVILLE, OHIO, a municipal
corporation, hereinafter called the City, and THE DAYTON POWER
AND LIGHT COMPANY; an Ohio corporation, hereinafter called the
Company.

WHEREAS, the Company and the City desire to establish
joint use of their respective poles when and where joint use
shall be of mutual advantage; and

WHEREAS, the City desires to use certain poles of
the Company for traffic control lights, fire alarm signal cross-
arms and boxes, police or fire alarm signal systems and
appurtenances necessary thereto; and

WHEREAS, the Company is desirous of using certain
poles belonging to the City for the purpose of carrying street
lights, service drops and other secondary contacts which use
by the Company will not materially interfere with or hamper
the use to which the City is putting said poles; and

WHEREAS, it will be to the benefit of both parties
hereto to permit each other to use their poles in accordance
with the provisions of this Agreement;

NOW, THEREFORE, in consideration of the promises and
agreements hereinafter set forth and subject to the conditions
contained herein, the parties hereto agree as follows:

1. The Company grants to the City the right to use
its poles or any of them for the purpose of attaching traffic
or control lights, fire alarm signal cross-arms and boxes,
police or fire signal systems and any and all appurtenances
necessary thereto, provided, however, that before any such
pole or poles are so used by the City, the Company shall be
notified and its consent in writing shall first be obtained.

2. The City agrees to permit the Company to use any
or all poles owned by the City for the purpose of carrying
street lights, service drops, and other secondary contacts,
provided, however, that before any such pole or poles are so
used by the Company, the City shall be notified and its con-
sent in writing shall first be obtained.

3. It is further understood and agreed that any
installation, maintenance, and/or repair of any of the Company's
facilities upon poles of the City or any installation, mainte-
nance and/or repair of any of the City's facilities upon poles
of the Company which are covered by this Agreement shall con-
form to the National Electrical Safety Code, all applicable
statutes and ordinances, all orders, rules and regulations
of The Public Utilities Commission of Ohio with specific
reference to Administrative Order No. 72 and any modifications
or amendments thereto.

4. Each of the parties hereto agree that any such
installation and operation of the same shall be at its own
cost and expense, provided, however, that if such new install-
ation shall require the other party or its licensees to relocate
or rearrange any of its existing facilities, then in such event
the cost of such relocation or rearrangement shall be paid by
the party requesting such installation.

5. Each of the parties hereto agree that there shall be no rent or other fee charged for the privilege of making attachments to the other's poles.

6. The City agrees to indemnify the Company and save it harmless against any and all loss, expense, damage claims and causes of action which may be sustained by or arise against the Company by reason of the use of said poles by the City as aforesaid and the Company agrees to indemnify the City and save it harmless against any and all loss, expense, damage claims and causes of action which may be sustained by or arise against the City by reason of the use of its poles by the Company as aforesaid.

7. It is further understood and agreed that if any claim is made against the Company by reason of the use by the City of the Company's poles or if any claim is made against the City by reason of the use by the Company of the City's poles, then and in either of such events, it shall be the duty of the party first receiving notice of such claim to immediately notify the responsible party and it shall become the responsible party's duty to assume charge thereof and pay any and all costs or expenses and any final judgment rendered as a result thereof, provided, however, that nothing contained herein shall be construed to impose upon the Company any liability for any claim or cause of action found to be caused by, growing out of, or incident to the condition or something other than the use of the pole or poles by the Company for the aforesaid purposes unless the Company would otherwise be liable, and provided further that nothing contained herein shall be construed to impose upon the City any liability for any claim or cause of action found to be caused by, growing out of, or incident to a condition or something other than the use of the pole or poles by the City for the aforesaid purposes unless the City would otherwise be liable therefore.

8. It shall be the duty of the party removing any of its facilities to do so at its own expense. After removal of all facilities has been completed, the owner of the pole is to be notified in writing and acknowledgment of said notice given to the notifying party together with any complaint regarding the condition of the pole or poles from which the apparatus has been removed.

9. In the event either party abandons any of its poles which pole or poles are being used by the other, it is hereby understood and agreed that the party abandoning its pole or poles will give written notice to the other party upon such abandonment and should the other party so desire, it shall within sixty days of such notice purchase such pole or poles at the fair value thereof, or remove its facilities therefrom.

10. In the event compliance with this agreement should be rendered impossible by reason of any emergency, then the provisions hereof shall be complied with as soon thereafter as possible.

11. This Agreement shall be deemed effective from and after the day of , 1974 and shall continue in effect thereafter until either party hereto elects to terminate this Agreement by giving at least ninety (90) days written notice to the other party of its election to so terminate.

IN WITNESS WHEREOF the parties have hereunto affixed their signatures by their respective officers who are duly authorized in the premises as of the date first above written.

WITNESSES:

CITY OF CENTERVILLE, OHIO

_____ By _____

_____ By _____

THE DAYTON POWER AND LIGHT COMPANY

_____ By _____
F. N. Wones, Vice President
Construction and General Services

_____ And _____
W. R. Hutchison, Secretary