BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

|  |  |  |
| --- | --- | --- |
| In the Matter of the Application of  The Dayton Power and Light Company for Approval of Its Market Rate Offer  In the Matter of the Application of  The Dayton Power and Light Company for Approval of Revised Tariffs  In the Matter of the Application of  The Dayton Power and Light Company for Approval of Certain Accounting Authority  In the Matter of the Application of  The Dayton Power and Light Company for the Waiver of Certain Commission Rules  In the Matter of the Application of  The Dayton Power and Light Company  to Establish Tariff Riders | :  :  :  :  :  :  :  :  :  :  :  :  :  :  :  :  :  :  : | Case No. 12-426-EL-SSO    Case No. 12-427-EL-ATA  Case No. 12-428-EL-AAM  Case No. 12-429-EL-WVR  Case No. 12-672-EL-RDR |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  MEMORANDUM OF APPLICANT  THE DAYTON POWER AND LIGHT COMPANY IN REPLY TO JOINT MEMORANDUM IN OPPOSITION TO MOTION TO SET PROCEDURAL SCHEDULE for dp&l's electric security plan filing  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | |

In the Joint Memorandum in Opposition, a number of parties in this case ask the Commission to reject the procedural schedule proposed by DP&L and to establish a procedural schedule after DP&L makes its ESP filing, or in the alternative to adopt a schedule consistent with the 275-day schedule provided in Ohio Rev. Code § 4928.143(C)(1).

DP&L filed its proposed schedule to allow this case to be resolved this year. DP&L’s proposed schedule would accomplish this goal. For that reason, the Joint Memorandum in Opposition should be rejected and DP&L’s proposed schedule should be adopted. In the alternative, should a different schedule be set, then only a short extension of DP&L’s proposed schedule should be adopted, and only so long as existing rates are continued until a Commission order deciding this ESP case.

FES and other intervenors suggest without any explanation or support that 275 days might be necessary. Such speculation ought not to be the basis for a ruling on a schedule. Given the facts that (a) some aspects of DP&L's ESP will be very similar to DP&L's just-withdrawn MRO, and (b) the parties have already been conducting discovery on some of the same issues, this Commission should set a more reasonable schedule than is suggested by FES's filing. A conference should be set to discuss a schedule; in advance of it, DP&L will endeavor to work out with the parties a proposed schedule satisfactory to a majority of the parties.

|  |  |
| --- | --- |
|  | Respectfully submitted,  *s/Judi L. Sobecki* Judi L. Sobecki (0067186)  THE DAYTON POWER AND   LIGHT COMPANY  1065 Woodman Drive  Dayton, OH 45432  Telephone: (937) 259-7171  Telecopier: (937) 259-7178  Email: judi.sobecki@dplinc.com  *s/Charles J. Faruki* Charles J. Faruki (0010417)  (Counsel of Record)  Jeffrey S. Sharkey (0067892)  FARUKI IRELAND & COX P.L.L.  500 Courthouse Plaza, S.W.  10 North Ludlow Street  Dayton, OH 45402  Telephone: (937) 227-3705  Telecopier: (937) 227-3717  Email: cfaruki@ficlaw.com  Attorneys for The Dayton Power and  Light Company |

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum of Applicant   
The Dayton Power and Light Company in Reply to Joint Memorandum in Opposition to Motion to Set Procedural Schedule for DP&L's Electric Security Plan Filing has been served via electronic mail upon the following counsel of record, this 24th day of September, 2012.

|  |  |  |
| --- | --- | --- |
| Samuel C. Randazzo, Esq. Frank P. Darr, Esq.  Matthew R. Pritchard, Esq.  Joseph E. Oliker, Esq. MCNEES WALLACE & NURICK LLC 21 East State Street, 17th Floor Columbus, OH 43215-4228 sam@mwncmh.com fdarr@mwncmh.com mpritchard@mwncmh.com  joliker@mwncmh.com  Attorneys for Industrial Energy Users-Ohio  Philip B. Sineneng, Esq.  THOMPSON HINE LLP  41 South High Street, Suite 1700  Columbus, OH 43215  Philip.Sineneng@ThompsonHine.com | | Mark A. Hayden, Esq.  FIRSTENERGY SERVICE COMPANY  76 South Main Street  Akron, OH 44308  haydenm@firstenergycorp.com  James F. Lang, Esq.  Laura C. McBride, Esq.  N. Trevor Alexander, Esq.  CALFEE, HALTER & GRISWOLD LLP  1400 KeyBank Center  800 Superior Avenue  Cleveland, OH 44114  jlang@calfee.com  lmcbride@calfee.com  talexander@calfee.com |
| Amy B. Spiller, Esq.  Deputy General Counsel  Jeanne W. Kingery, Esq.  Associate General Counsel  DUKE ENERGY RETAIL SALES, LLC and DUKE ENERGY COMMERCIAL ASSET MANAGEMENT, INC.  139 East Fourth Street  1303-Main  Cincinnati, OH 45202  Amy.Spiller@duke-energy.com  Jeanne.Kingery@duke-energy.com  Attorneys for Duke Energy Retail Sales, LLC and Duke Energy Commercial Asset Management, Inc. | | David A. Kutik, Esq.  JONES DAY  North Point  901 Lakeside Avenue  Cleveland, OH 44114  dakutik@jonesday.com  Allison E. Haedt, Esq.  JONES DAY  325 John H. McConnell Blvd., Suite 600 Columbus, OH 43215-2673  aehaedt@jonesday.com  Attorneys for FirstEnergy Solutions Corp. |
| Robert A. McMahon, Esq.  EBERLY MCMAHON LLC  2321 Kemper Lane, Suite 100  Cincinnati, OH 45206  bmcmahon@emh-law.com  Rocco D'Ascenzo, Esq.  Associate General Counsel  Elizabeth Watts, Esq.  Associate General Counsel  DUKE ENERGY OHIO, INC.  139 East Fourth Street  1303-Main  Cincinnati, OH 45202  Elizabeth.Watts@duke-energy.com  Rocco.D'Ascenzo@duke-energy.com  Attorneys for Duke Energy Ohio, Inc. | Jay E. Jadwin, Esq.  AMERICAN ELECTRIC POWER SERVICE CORPORATION  155 W. Nationwide Blvd., Suite 500  Columbus, OH 43215  jejadwin@aep.com  Attorney for AEP Retail Energy Partners LLC  M. Anthony Long, Esq.  Senior Assistant Counsel  HONDA OF AMERICA MFG., INC.  24000 Honda Parkway  Marysville, OH 43040  tony\_long@ham.honda.com  Attorney for Honda of America Mfg., Inc. | | |
| David F. Boehm, Esq. Michael L. Kurtz, Esq. BOEHM, KURTZ & LOWRY 36 East Seventh Street Suite 1510 Cincinnati, OH 45202-4454 dboehm@BKLlawfirm.com  mkurtz@BKLlawfirm.com  Attorneys for Ohio Energy Group  Gregory J. Poulos, Esq.  EnerNOC, Inc.  471 East Broad Street  Columbus, OH 43215  Telephone: (614) 507-7377  Email: gpoulos@enernoc.com  Attorney for EnerNOC, Inc. | Richard L. Sites, Esq. General Counsel and Senior Director of  Health Policy OHIO HOSPITAL ASSOCIATION 155 East Broad Street, 15th Floor Columbus, OH 43215-3620  ricks@ohanet.org  Thomas J. O'Brien, Esq. BRICKER & ECKLER LLP 100 South Third Street Columbus, OH 43215-4291 tobrien@bricker.com  Attorneys for Ohio Hospital Association  Thomas McNamee, Esq. Assistant Attorney General | | |
| Colleen L. Mooney, Esq.  OHIO PARTNERS FOR AFFORDABLE ENERGY 231 West Lima Street  P.O. Box 1793 Findlay, OH 45839-1793  cmooney2@columbus.rr.com  Attorney for Ohio Partners for Affordable Energy | Devin Parram, Esq.  Assistant Attorneys General  180 East Broad Street Columbus, OH 43215  Thomas.mcnamee@puc.state.oh.us devin.parram@puc.state.oh.us  Attorneys for the Staff of the Public Utilities Commission of Ohio | | |
| Mark S. Yurick, Esq. (Counsel of Record)  Zachary D. Kravitz, Esq.  TAFT STETTINIUS & HOLLISTER LLP 65 East State Street, Suite 1000 Columbus, OH 43215 myurick@taftlaw.com  zkravitz@taftlaw.com  Attorneys for The Kroger Company | Joseph P. Serio, Esq. (Counsel of Record)  Melissa R. Yost, Esq.  Assistant Consumers' Counsel  Office of The Ohio Consumers' Counsel  10 West Broad Street, Suite 1800  Columbus, OH 43215-3485  serio@occ.state.oh.us  yost@occ.state.oh.us  Attorneys for Office of the Ohio Consumers' Counsel | | |
| Mark A. Whitt, Esq. (Counsel of Record)  Andrew J. Campbell, Esq.  WHITT STURTEVANT LLP  PNC Plaza, Suite 2020  155 East Broad Street  Columbus, OH 43215  whitt@whitt-sturtevant.com campbell@whitt-sturtevant.com  Vincent Parisi, Esq.  Matthew White, Esq.  INTERSTATE GAS SUPPLY, INC.  6100 Emerald Parkway  Dublin, OH 43016  vparisi@igsenergy.com mswhite@igsenergy.com  Attorneys for Interstate Gas Supply, Inc.  Steven M. Sherman, Esq. Counsel of Record  Joshua D. Hague, Esq. | Christopher L. Miller, Esq.  (Counsel of Record)  Gregory H. Dunn, Esq.  Asim Z. Haque, Esq.  ICE MILLER LLP  250 West Street  Columbus, OH 43215  Christopher.Miller@icemiller.com  Gregory.Dunn@icemiller.com  Asim.Haque@icemiller.com  Attorneys for the City of Dayton, Ohio  M. Howard Petricoff, Esq.  Stephen M. Howard, Esq.  VORYS, SATER, SEYMOUR AND  PEASE LLP  52 East Gay Street  P.O. Box 1008  Columbus, OH 43216-1008  mhpetricoff@vorys.com  smhoward@vorys.com  Attorneys for the Retail Energy Supply Association | | |
| Grant E. Chapman, Esq.  KRIEG DEVAULT LLP  One Indiana Square, Suite 2800  Indianapolis, IN 46204-2079  ssherman@kdlegal.com  jhague@kdlegal.com  gchapman@kdlegal.com  Attorneys for Wal-Mart Stores East, LP  and Sam's East, Inc. | Trent A. Dougherty, Esq. Counsel of Record  Cathryn N. Loucas, Esq.  OHIO ENVIRONMENTAL COUNCIL  1207 Grandview Avenue, Suite 201  Columbus, OH 43212-3449  trent@theoec.org  cathy@theoec.org  Attorneys for the Ohio Environmental Council | | |
| Joseph M. Clark, Esq., Counsel of Record  6641 North High Street, Suite 200  Worthington, OH 43085  joseph.clark@directenergy.com  Asim Z. Haque, Esq.  Christopher L. Miller, Esq.  Gregory J. Dunn, Esq.  Alan G. Starkoff, Esq.  ICE MILLER LLP  2540 West Street  Columbus, OH 43215  Asim.Haque@icemiller.com  Christopher.Miller@icemiller.com  Gregory.Dunn@icemiller.com  Attorneys for Direct Energy Services, LLC and Direct Energy Business, LLC | Ellis Jacobs, Esq.  Advocates for Basic Legal Equality, Inc.  333 West First Street, Suite 500B  Dayton, OH 45402  ejacobs@ablelaw.org  Attorney for Edgemont Neighborhood Coalition  Stephanie M. Chmiel, Esq.  Michael L. Dillard, Jr., Esq.  THOMPSON HINE LLP  41 South High Street, Suite 1700  Columbus, OH 43215  Stephanie.Chmiel@ThompsonHine.com  Michael.Dillard@ThompsonHine.com  Attorneys for Border Energy Electric Services, Inc. | | |
| M. Howard Petricoff, Esq.  VORYS, SATER, SEYMOUR AND PEASE LLP  52 East Gay Street  P.O. Box 1008  Columbus, OH 43216-1008  mhpetricoff@vorys.com  smhoward@vorys.com  Attorneys for Exelon Generation Company, LLC, Exelon Energy Company, Inc., Constellation Energy Commodities Group, Inc., and Constellation NewEnergy, Inc. | Lisa McAlister, Esq.  Matthew W. Warnock, Esq. J. Thomas Siwo, Esq.  BRICKER & ECKLER LLP 100 South Third Street Columbus, OH 43215-4291 lmcalister@bricker.com mwarnock@bricker.com tsiwo@bricker.com  Attorneys for The Ohio Manufacturers' Association Energy Group | | |
| Matthew J. Satterwhite, Esq. Steven T. Nourse, Esq. AMERICAN ELECTRIC POWER SERVICE CORPORATION 1 Riverside Plaza, 29th Floor  Columbus, OH 43215  mjsatterwhite@aep.com  stnourse@aep.com  Attorneys for Ohio Power Company | Kimberly W. Bojko, Esq. Joel E. Sechler, Esq. CARPENTER LIPPS & LELAND LLP 280 Plaza, Suite 1300 280 North High Street Columbus, OH 43215 Bojko@carpenterlipps.com Sechler@carpenterlipps.com  Attorneys for SolarVision, LLC | | |
| Matthew R. Cox, Esq. MATTHEW COX LAW, LTD.  4145 St. Theresa Blvd.  Avon, OH 44011  matt@matthewcoxlaw.com  Attorney for the Council of Smaller Enterprises | Scott C. Solberg, Esq.  *(requested pro hac vice)*  Eimer Stahl LLP  224 South Michigan Avenue, Suite 1100  Chicago, OH 60604  ssolberg@eimerstahl.com  Attorney for Exelon Generation  Company, LLC | | |

*s/Charles J. Faruki*

Charles J. Faruki