

**FILE**

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the  
Dayton Power and Light Company for  
Approval of Its Proposed Economic  
Development Rider.

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Case No. 07-1079-EL-ATA

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**REPLY TO THE DP&L'S  
MEMORANDUM CONTRA OCC'S  
MOTION TO INTERVENE AND PROTEST  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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November 30, 2007

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**I. INTRODUCTION AND STATEMENT OF THE CASE**

The Dayton Power and Light Company ("DP&L" or "Company") submitted an application ("Application") to the Public Utilities Commission of Ohio ("PUCO" or "Commission") on September 28, 2007. The Application requested both approval of tariffs that would provide an incentive payment to certain commercial customers and approval of deferral accounting authority that will permit DP&L to record on its books an asset for an unspecified amount in uncollected revenues discounted rates. It is DP&L's stated intention to include this asset in rates that will be collected from other customers, including residential customers, at a future date—meaning that DP&L seeks to have other customers and not its shareholders pay the discounts to the select commercial customers.

The commercial customers that allegedly would benefit from DP&L's proposed tariff are those that would occupy a large commercial space following a vacancy of no less than twelve months and who take generation service from the Company.<sup>1</sup> In other

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<sup>1</sup> Application Exhibit A, Original Sheet No. D37, Page 1 of 2.

words, DP&L is tying its competitive generation service to its monopoly distribution service. DP&L proposes to discount half of the distribution demand charges to such customers for a maximum of twenty-four months.<sup>2</sup>

On November 5, 2007, the Office of the Ohio Consumers' Counsel ("OCC") moved to intervene in the above-captioned docket in order to represent the interests of the approximately 450,000 residential electric customers of DP&L. OCC stated its legal position in this case, explaining (in principal part) that the plan proposed by DP&L is discriminatory, predatory, and fails to recognize the separation of its distribution and generation functions—all of which make the proposed plan unlawful and unreasonable for consumers. OCC issued an initial set of discovery, and confirmed that the Company intends to seek collection of deferrals from residential customers in future rate proceedings.<sup>3</sup>

On November 20, 2007, DP&L submitted a Memorandum in Response ("Memo Contra") in which it presented a lengthy argument against the legal positions in OCC's Motion to Intervene and Protest. This Reply responds to DP&L's Memo Contra.

## **II. ARGUMENT**

### **A. DP&L's Proposed Tariff Is Discriminatory.**

DP&L's proposed tariff revision violates both R.C. 4905.33 and R.C. 4905.35 by providing reduced charges to a select few eligible customers. R.C. 4905.33(A) states:

No public utility shall *directly or indirectly*, or by any special rate, rebate, drawback, or other device or method, *charge, demand,*

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<sup>2</sup> Id.

<sup>3</sup> DP&L's Answers and Objections to Interrogatories and Requests for Production of Documents Propounded upon DP&L by the OCC, First Set, Interrogatory Response No. 2 (attached).

*collect, or receive from any person, firm, or corporation a greater or lesser compensation for any services rendered, or to be rendered, except as provided in Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923. of the Revised Code, than it charges, demands, collects, or receives from any other person, firm, or corporation for doing a like and contemporaneous service under substantially the same circumstances and conditions.*<sup>4</sup>

R.C. 4905.35 prohibits the Company from giving “undue or unreasonable preference or advantage to any ... corporation ...” Specifically with regard to the electric industry and corporate separation, the Commission’s rules state that an “electric utility shall provide comparable access to products and services . . . and . . . shall be prohibited from unduly discriminating in the offering of its products and/or services.”<sup>5</sup> R.C. 4928.02(A) requires that “nondiscriminatory” retail electric service must be ensured.

The Company’s Memo Contra attempts to fashion a cost basis for its proposal to treat customers differently based upon whether the customer qualifies for the proposed program. DP&L alleges that there are “measurable differences in furnishing service to the participating customers.”<sup>6</sup> Discounts are proposed for customers who take up commercial residence in locations if the customers utilize DP&L’s generation service.<sup>7</sup> The receipt of DP&L’s generation service as opposed to service provided by a competitive retail electric service provider does not render the DP&L *distribution* service less costly for the Company to provide.

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<sup>4</sup> Emphasis added.

<sup>5</sup> Ohio Adm. Code 4901:1-20-16(G)(4)(i) (“Code of Conduct”).

<sup>6</sup> Memo Contra at 7.

<sup>7</sup> Application, Exhibit A, Original Sheet No. D37, Page 1 of 2.

The discount of distribution rates under DP&L's proposed program is also dependent upon the length of time that the commercial location has remained vacant.<sup>8</sup> DP&L's comparison between the cost of serving customers in a newly constructed commercial space with those customers in a vacant commercial space is not responsive to the OCC's argument that the program is discriminatory.<sup>9</sup> The cost of providing distribution service to the commercial customers of two *existing* locations (i.e. substantially the same circumstances), one vacant longer,<sup>10</sup> demonstrates that the program does not provide a cost justification for differences in distribution charges.

The Memo Contra does not rebut OCC's argument that the Company's proposed tariff is discriminatory once appropriate comparisons are made between prospective program participants and other customers. The identity of a generation service provider and the length of time a facility remains vacant do not provide legally defensible bases upon which rates may be differentiated. The proposed tariff is discriminatory and should be rejected.

**B. DP&L's Proposed Tariff Is Predatory and Therefore Unlawful.**

DP&L's response to OCC's argument that the proposal violates R.C. 4905.33(B) is that the Company intends to discount "the distribution component of rates, which is not a competitive service."<sup>11</sup> But R.C. 4905.33(B) provides: "No public utility shall furnish free service or service for less than actual cost for the purpose of destroying competition." The Company proposes to provide distribution service to certain

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<sup>8</sup> Id.

<sup>9</sup> Memo Contra at 7-8.

<sup>10</sup> Application, Exhibit A, Original Sheet No. D37, Page 1 of 2.

<sup>11</sup> Memo Contra at 9.

customers for less than the cost of that service, as that cost was presented to the PUCO in previous rate-setting proceedings to support the existing tariff rates. While furnishing competitive generation service for less than the cost of providing that generation service is prohibited, the statute is not limited by its terms to that situation. As long as DP&L operates without full structural separation between its distribution and generation functions, its discriminatory *distribution* proposal is also predatory in furtherance of complete dominance of the market for generation service.

DP&L's predatory proposal is illegal and should be rejected.

**C. DP&L's Memo Contra Does Not Address the Company's Failure to Implement the Separation of Distribution and Generation Functions Required by Law.**

DP&L's Memo Contra shows no recognition that Ohio law governing the regulation of electric utilities changed in 1999 and that it may not mix its distribution and generation businesses. The Supreme Court of Ohio has stated:

With the advent of customer choice of a generator of electricity under S.B. 3, it became necessary for electric utilities to unbundle the three service components and their own components, so that customers could evaluate offers from competitive generators. Unbundling of the service components also ensured that an electric utility would not subsidize the competitive generation portion of its business by allocating generation expenses to the regulated distribution service provided by the utility. Conversely, it ensures that distribution service could not subsidize the generation portion of the business. In short, *each service component was required to stand on its own.*<sup>12</sup>

As proposed in DP&L's Application, the Customer must receive generation service under DP&L's applicable standard generation service tariff to be eligible for the

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<sup>12</sup> *Migden-Ostrander v. Pub. Util. Comm.*, 102 Ohio St. 3d 451, 452-453 (August 11, 2004) (emphasis added).

distribution demand charge discount.<sup>13</sup> DP&L's Memo Contra boldly states that its program "permits a recovery of the fixed generation . . . costs that were initially incurred to serve what are now vacant premises."<sup>14</sup> Distribution and generation rates must be viewed separately under the paradigm that follows from passage of electric restructuring legislation in 1999. As explained by the Supreme Court of Ohio, tying together the provision of distribution and generation is illegal.

DP&L's Memo Contra makes inappropriate comparisons with programs that were approved by the Commission before the regulation of electric generation service was changed in 1999. These examples are totally inapplicable to the OCC's position that the Company has not properly respected the separation of distribution and generation service.<sup>15</sup>

DP&L also states a strained comparison between its proposal and a Duke Energy program.<sup>16</sup> Contrary to DP&L's implication, the Duke Energy plan does not appear to require a program participant to receive its generation service from Duke Energy. DP&L's Memo Contra quotes language from Duke Energy's tariff that was added following Duke Energy's initial application to clarify billing for *applicable* customers. Language was added to Duke Energy's initially proposed tariff language to distinctly separate any effect of the utility's discounts from generation service. The section of Duke Energy's tariff that is quoted in the Memo Contra (i.e. "[t]he customer will

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<sup>13</sup> Application, Exhibit A, Original Sheet No. D37, Page 1 of 2.

<sup>14</sup> Memo Contra at 9.

<sup>15</sup> See, e.g., OCC Motion to Intervene and Protest at 9–10. (November 5, 2007).

<sup>16</sup> Memo Contra at 5.



pay . . .”<sup>17</sup>) does not define which customers are eligible for the tariff. The eligibility requirements for Duke Energy’s program are set forth on the first page of the program’s tariff under “Availability.”<sup>18</sup> Program availability is not restricted to those customers who receive generation service from Duke Energy. Any other result would be contrary to Ohio law.

DP&L may not tie the provision of generation service to its provision of distribution service. The Company’s proposed tariff is illegal.

**D. Any PUCO Adoption of DP&L’s Proposal Should Include a Provision that the Order is Not a State Action that Would Shield DP&L from United States Antitrust Law.**

DP&L’s proposed tariff is discriminatory, predatory, and fails to recognize the separation of its distribution and generation functions. It ties eligibility for distribution service discounts to the purchase of DP&L’s generation service.<sup>19</sup> If, against law and reason, DP&L’s proposed tariff is approved, then DP&L cannot be permitted to later use any such approval as a state action shield against lawsuits under the nation’s antitrust laws. In the past, the Commission has included a provision in its orders specifically stating that the Commission’s approval is not a “state action” that might help to insulate the petitioners from the provision of any state or federal laws which prohibit the restraint of free trade.<sup>20</sup>

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<sup>17</sup> Id.

<sup>18</sup> Duke Energy Ohio, P.U.C.O. Electric No. 19, Sheet No. 101.1, Page 1 of 2. The Company’s citation to this first page is incorrect. The Company quotes from Page 2 of 2, under the section entitled “NET MONTHLY BILLING.”

<sup>19</sup> Memo Contra at 9.

<sup>20</sup> *In re Joint Petition of CG&E and Ohio Power Regarding the Transfer of Utility Assets*, Case No. 05-1429-EL-ATR, Order at 6-7. (March 20, 2006). (“ORDERED, That the approvals set forth in this finding and order do not constitute state action for the purposes of antitrust laws. It is not our intent to insulate CG&E from the provisions of any state or federal laws which prohibit the restraint of free trade....”)

If DP&L's proposed tariff is approved, the Commission should include a provision regarding "state action."

**E. DP&L's Memo Contra Fails to Address PUCO Policy and Precedent Regarding Deferrals and Economic Development.**

DP&L's Memo Contra also does not address the Commission's policy regarding limiting deferrals.<sup>21</sup> While the Company's proposed tariff is illegal, the Commission has stated that its policy regarding deferrals limits them to situations where the applicant demonstrates both an exigent circumstance and good reason for the deferrals.<sup>22</sup> DP&L's Memo Contra does not provide any basis to support its position that other customers should pay for this program.

Moreover, DP&L has provided no evidence in its application or Memo Contra to support its claim that this rider will provide economic development in the region. In prior cases, regarding economic development special contracts and their subsequent delta revenues, the PUCO has stated its policy. Before a special contract can be recommended for approval as an economic development project that residential and other customers will be required to subsidize, the contract must go through a comprehensive analysis by the PUCO staff.<sup>23</sup> Part of that analysis includes a review of the increase in load and jobs created.<sup>24</sup> The process for this economic development rider should include proof with the same analysis. DP&L has not provided any factual support for its proposed rider. Thus, DP&L has failed to provide adequate information by which the Company's proposals can

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<sup>21</sup> See, e.g., OCC Motion to Intervene and Protest at 10-11. (November 5, 2007).

<sup>22</sup> Id. at 10, citing *In re FirstEnergy Generation Charge Adjustment Rider*, Case No. 05-704-EL-ATA, Order at 17-18 (January 4, 2006).

<sup>23</sup> *In re Toledo Edison Application to Increase Certain of Its Rates and Charges*, Case No. 95-299-EL-AIR, Order at 45 (April 11, 1996).

<sup>24</sup> Id.

be evaluated regarding the PUCO's criteria for economic development rates. DP&L has not met its burden of proof under R.C. 4909.18.

DP&L's request has policy and ratemaking ramifications aside from the fact that the PUCO would violate Ohio law were the Commission to grant the Application. Throughout our state where public utilities provide service (in urban and rural areas), there are vacant buildings in locations where those with a financial interest, including utilities, could claim that economic development should be funded through other customers' rates. It is not clear where this approach may end, if the approach does indeed involve subsidizing commercial lease arrangements, and if the PUCO were to accept utilities' proposals that do not provide support that proves a benefit to other customers.

Equally problematic, where should the requests begin? Without further analysis of the rider, the true beneficiary of the subsidy cannot be determined. While the Commission fortunately has a technical staff, the expertise of the PUCO is not in evaluating commercial real estate lease prices and the effect of those prices on tenant acquisition. Nor is the PUCO situated to know (nor did DP&L prove) that the selected landlords and tenants will be more deserving than other landlords and tenants with vacant property who are not among those eligible. Nor is the PUCO situated to know (nor did DP&L prove) that the proposed subsidized discounts for rent will be realized dollar for dollar by tenants. Nor is the PUCO situated to know (nor did DP&L prove) that the eligible landlords will be more deserving than competing landlords with rented properties who may already have taken their own actions at their own expense to obtain tenants.

Importantly, the PUCO's precedent is to not allow utilities to collect from customers more than half of the delta revenues for the economic development rate.<sup>25</sup> In this case, delta revenues would be the amount other customers would have to pay to subsidize the discount for commercial customers. Therefore and at a minimum, the PUCO should not allow deferrals of more than half the delta revenues because the PUCO would at most require just half the forgone revenues to be subsidized by customers (though the OCC emphasizes that no deferrals should be allowed at all in this instance).

Denying deferrals is consistent with Financial Accounting Standard ("FAS") 71, paragraph 9, which precludes utilities and auditors from booking deferrals if it is not "probable" there will be collection from customers. FAS 71, paragraph 9 states in pertinent part:

An enterprise shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

a. it is probable that future revenue *in an amount at least equal to the capitalized cost* will result from inclusion of that cost in allowable costs for rate-making purposes. . . .<sup>26</sup>

Collection from customers is not probable because DP&L's proposal is a violation of law and reason, and at most (under PUCO precedent) only half the deferrals would be allowed for collection from customers (if anything at all is allowed).

#### **F. The OCC's Recommendations Are Timely.**

DP&L's Memo Contra incorrectly asserts that OCC's arguments concerning deferrals are premature and that they would be more appropriate in future cost recovery

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<sup>25</sup> Id.

<sup>26</sup> Emphasis added.

proceedings related to the Company's proposal.<sup>27</sup> DP&L supports its position by relying upon discretion built into R.C. 4905.13 regarding the accounting practices of utilities and a 1987 decision by the Supreme Court of Ohio.<sup>28</sup> However, recent Supreme Court of Ohio precedent, in a case that involved DP&L on a deferral issue, recognized the OCC's right to oppose deferrals.<sup>29</sup>

The residential customers will be affected by the Company's proposal and there are legal issues that the Commission should address before embarking upon any course of action. As stated previously, DP&L has confirmed that it intends to seek collection of these deferrals from residential customers in future rate proceedings.<sup>30</sup> In 2006, the Supreme Court of Ohio rejected DP&L's argument that the OCC's arguments regarding Commission approval of deferrals were premature or presented any question of "ripeness."<sup>31</sup> The Court stated: "The fact that subsequent orders may result in more direct effect does not mean that the orders allowing accounting-procedure changes are not final."<sup>32</sup> As a legal matter, the OCC's arguments are not premature.

Moreover, a review of the Company's proposal at this time will save time and has the potential to prevent needless litigation over a proposal that is legally deficient.

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<sup>27</sup> Memo Contra at 11.

<sup>28</sup> Id., citing *Ohio Consumers' Counsel v. Pub. Util. Comm.* (1987), 32 Ohio St. 3d 263, 271 ("[The Ohio Supreme Court] generally will not interfere with the accounting practices set by the Commission").

<sup>29</sup> *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St. 3d, 384, 389, 2006-Ohio-5853 at ¶25.

<sup>30</sup> DP&L's Answers and Objections to Interrogatories and Requests for Production of Documents Propounded upon DP&L by the OCC, First Set, Interrogatory Response No. 2 (attached).

<sup>31</sup> *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St. 3d, 384, 389, 2006-Ohio-5853 at ¶25.

<sup>32</sup> Id.

Reviewing the proposal now may prevent or reduce the amount of litigation that would likely occur in “any future proceeding by DP&L in which DP&L actually makes the application to recover the costs. . . .”<sup>33</sup> As stated above, DP&L has provided no support and failed in its burden of proof to demonstrate that this program can be successful and would save the Company or customers money. A review at this time should demonstrate the futility of such a program. The OCC’s arguments are not premature.

### **III. CONCLUSION**


As set forth in the OCC’s Motion to Intervene and herein, the Application should be rejected on both legal and policy grounds. DP&L’s proposed tariff is discriminatory, predatory, and fails to recognize the legally required separation of its distribution and generation functions under statutes and rules including R.C. 4928.17. DP&L does not demonstrate the need for such a program, does not prove that residential customers who would be asked to pay for the program would receive an adequate benefit, and does not explain any exigent circumstances that might support the Company’s proposal. Until and unless DP&L can prove an adequate benefit to customers who would be asked to pay for the program, the Application should be denied.

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<sup>33</sup> Memo Contra at 11.


Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Reply to DP&L's Memorandum Contra OCC Motion to Intervene and Protest has been served upon the below-stated counsel, via regular U.S. Mail, postage prepaid, this 30<sup>th</sup> day of November, 2007.

  
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Case No. 07-1079-EL-ATA

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**DP&L'S ANSWERS AND OBJECTIONS TO INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS PROPOUNDED UPON THE  
DAYTON POWER & LIGHT COMPANY  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,  
FIRST SET**

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Dayton Power & Light Company ("DP&L") hereby responds, pursuant to Sections 4901-1-19 and 4901-1-20 of the Ohio Administrative Code, to the First Set of Interrogatories and Requests for Production of Documents propounded by the Office of the Ohio Consumers' Counsel ("OCC").

**GENERAL OBJECTIONS COMMON TO ALL INTERROGATORIES**

1. DP&L objects to and declines to respond to each and every discovery request to the extent that it seeks information that is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. Ohio Admin. Code § 4901-1-16(B).

2. DP&L objects to and declines to respond to each and every discovery request to the extent that it is harassing, unduly burdensome, oppressive or overbroad. Ohio Admin. Code §§ 4901-1-16(B) and 4901-1-24(A).

3. DP&L objects to each and every discovery request to the extent that it seeks information that is privileged by statute or common law, including privileged communications between attorney and client or attorney work product. Ohio Admin. Code § 4901-1-16(B). Such material or information shall not be provided, and any inadvertent disclosure of material or information protected by the attorney-client privilege, the work product doctrine or any other privilege or protection from discovery is not intended and should not be construed to constitute a waiver, either generally or specifically, with respect to such information or material or the subject matter thereof.

4. DP&L objects to each and every interrogatory and request to the extent it may seek information that is proprietary. Ohio Admin. Code § 4901-1-24(A). To the extent each and every interrogatory and request seeks information constituting or relating to trade secrets or other confidential research, development, commercial or competitive information, DP&L objects and declines to provide such information, unless a protective agreement satisfactory to counsel for DP&L is agreed to by the parties.

5. To the extent that the interrogatories seek relevant information which may be derived from the business records of DP&L or from an examination or inspection of such records and the burden of deriving the answer is the same for the requesting party as it is for DP&L, DP&L shall specify the records from which the answer may be derived or ascertained and afford the requesting party the opportunity to examine or inspect such records. Ohio Admin. Code § 4901-1-19(D).

6. DP&L objects to and declines to respond to each and every discovery request to the extent that it calls for information that is not in DP&L's current possession,

custody, or control or could be more easily obtained through third parties or other sources. Ohio Admin. Code § 4901-1-19(C) and 4901-1-20(D). DP&L also objects to and declines to respond to each and every discovery request that seeks information that is already on file with the Public Utilities Commission of Ohio. To the extent that each and every discovery request seeks information available in pre-filed testimony, pre-hearing data submissions and other documents that DP&L has filed with the Commission in the pending or previous proceedings, DP&L objects and declines to respond to it. Ohio Admin. Code § 4901-1-16(G).

7. The production of any documents by DP&L does not and shall not constitute any admission concerning a document, its content, or the evidentiary sufficiency of the document, including but not limited to authentication, best evidence, relevance or hearsay.

8. DP&L reserves its right to redact certain information from documents produced in discovery. All documents that have been redacted will be stamped as such.

9. DP&L objects to each and every request to the extent that it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning, and may, therefore, make responses misleading or incorrect.

10. All responses of DP&L to the discovery requests of the requesting party are made subject to and without waiving these objections common to all interrogatories and document requests.

11. DP&L objects to the definitions provided by the requesting party to the extent that they seek to impose obligations on DP&L beyond, or different than, those imposed by the Commission's rules and regulations applicable to this proceeding or otherwise permitted by law.

12. DP&L objects to the instructions provided by the requesting party to the extent that they seek to impose obligations on DP&L beyond, or different than, those imposed by the Commission's rules and regulations applicable to this proceeding or otherwise permitted by law.

### **INTERROGATORIES**

INT-1. Referring to the Application at Exhibit C-1, in what FERC account(s) would the Company record the deferred incentive amounts?

#### **RESPONSE:**

The Company proposes to account for the deferred incentive amounts as follows:

1. Periodically assess the deferred incentive amounts owed to customers.

Debit            Account 182.3, Other Regulatory Assets

Credit           Account 253, Other Deferred Credits

2. Customers complete requirements for deferred incentive payments after requisite service period.

- a. Customers receive incentive payments through a Company check.

Debit            Account 253, Other Deferred Credits

Credit           Account 131, Cash

Witness Responsible: Timothy Henry

INT-2. Referring to the Application at Exhibit C-1, in the rate proceedings in which DP&L would seek to recover the deferred incentive amounts under the Company's proposal, does the Company anticipate that such amounts will be allocated to residential customers?

**RESPONSE:** Yes

Witness Responsible: Dona Seger-Lawson

INT-3. If the Company's response to OCC Interrogatory No. 2 is affirmative, what percentage of the deferred incentive amount would be allocated to residential customers under the Company's proposal?

**RESPONSE:** The specific allocation factors have not yet been determined.

Witness Responsible: Dona Seger-Lawson

INT-4. What is the Company's estimate, by year, of the total dollar amount of incentives that it would provide under the Building Redevelopment Incentive Program?

**RESPONSE:** Objection. DP&L objects to this request because it is unduly burdensome in that it seeks information which is speculative and virtually impossible to ascertain at this time with precision. Subject to all specific and general objections, DP&L estimates that in 2009 the incentive payouts would total approximately \$209,000, in 2010 the incentive payouts would total approximately \$418,000.

Witness Responsible: Scott Michaelson

INT-5.           What is the Company's estimate, by year, of how many customers would participate in the Building Redevelopment Incentive Program?

**RESPONSE:** Objection. DP&L objects to this request because it is unduly burdensome in that it seeks information which is speculative and virtually impossible to ascertain at this time with precision. Subject to all specific and general objections, DP&L estimates that in 2008, 18 Customers would join the program, in 2009 an additional 18 customers would join the program.

Witness Responsible: Scott Michaelson

INT-6.           Referring to the Application at Exhibit C-1, what is meant by "The program is a five year program"?

**RESPONSE:** Objection. DP&L objects to this request because it is unduly burdensome in that it asks DP&L to define terms in the Rider Application which speak for themselves. Subject to all specific and general objections, DP&L states that "The program is a five year program" means generally that Customers shall enter into agreement with the Company stating that expected load meets or exceeds all of the set criteria and it is intended to continue to meet such criteria for a minimum period of 5 years from the time new service is initiated.

Witness Responsible: Dona Seger-Lawson

INT-7. Referring to the Application at Exhibit C-1, Description of Tariff Changes, how will the Economic Development Rider "advance the economic growth in the West Central Ohio"?

**RESPONSE:** Objection. DP&L objects to this request because it is unduly burdensome in that it asks DP&L to define terms in the Rider Application which speak for themselves. Subject to all specific and general objections, DP&L states that the Economic Development Rider will advance the economic growth in the West Central Ohio in numerous way, including without limitation by providing incentives for businesses to move in the Dayton area, which will result in increased property and tax revenues. Moreover, these new businesses will create additional jobs and decrease the unemployment rate in West Central Ohio. In addition, please see DP&L's Memorandum in Opposition to Motion to Intervene and Protest of Office of Ohio Consumers' Counsel, filed November 19, 2007, which details additional advancements in economic growth in West Central Ohio which are expected to flow from the Rider.

Witness Responsible: Dona Seger-Lawson

INT-8. What governmental officials and public employees (i.e. regardless of level or form of government) has DP&L had communications with regarding the Economic Development Program (i.e. identify the officials and employees and identify the communications, noting the definition of "identify" in the Instructions for Answering)?

**RESPONSE:** In the developmental stages of this program DP&L involved two Montgomery County employees, Erik Collins (*Economic Development Manager*) and

Hal Hunter (Economic Development and Business First Representative). In those discussions DP&L acquired valuable input as to how such a program would benefit the Community by bringing in new businesses and jobs into Montgomery County. Montgomery County made several suggestions which were incorporated to improve the impact of the program.

Witness Responsible: Scott Michaelson

INT-9. Which customers have DP&L representative talked to about the building Economic Development Program, and what customers have told DP&L they will apply for the program (i.e. identify the commercial entity and identify the communications, noting the definition of "identify" in the Instructions for Answering)?

**RESPONSE:** DP&L has not been in contact with any customers regarding this program.

Witness Responsible: Scott Michaelson



**REQUESTS FOR PRODUCTION OF DOCUMENTS**

RPD-1. Please provide a copy of all discovery served upon DP&L by PUCO Staff in this proceeding and the responses to that discovery. This is a continuing request to be updated when additional requests are submitted by PUCO Staff.

**RESPONSE:** No discovery has been served upon DP&L by PUCO Staff.

RPD-2. Please provide a copy of all discovery served upon DP&L by other parties in this proceeding, and the responses to that discovery. This is a continuing request to be updated when additional requests are submitted by other parties.

**RESPONSE:** No discovery has been served upon DP&L by other parties.

RPD-3. Please provide a copy of all documents and workpapers provided to the Commission in connection with these cases. This is a continuing request to be updated when additional documents are provided to the Commission.

**RESPONSE:** All documents provided to Commission in connection with the case were filed in docket No: 07-1079-EL-ATA.

RPD-4. Referring to the Application at Exhibit B, Original Sheet No. D37, page 2 of 2, under the heading "CONTRACT," please provide a copy of the referenced service agreement (in its latest form).

**RESPONSE:** Please see attachment RPD-4.

RPD-5. Please provide a copy of all documents and workpapers supporting the Application.

**RESPONSE:** All documents and workpapers supporting the application were provided in docket No: 07-1079-EL-ATA.

RPD-6. Please provide a copy of all documents and workpapers relating to the Company's response to OCC Interrogatory No. 1 regarding the FERC account(s) for recording the deferred incentive amounts.

**RESPONSE:** The FERC accounts proposed to be used for recording customer deferred incentive payments were based on account descriptions contained in the Code of Federal Regulations (CFR), Chapter 1, Subchapter C, Part 101, Uniform system of accounts prescribed for public utilities and licensees subject to the provisions of the Federal Power Act, which is publicly available.

RPD-7. Please provide a copy of all documents and workpapers relating to the Company's response to OCC Interrogatory No. 3 regarding percentage of the deferred incentive amount that would be allocated to residential customers.

**RESPONSE:** Objection, this request is premature in that the specific allocation factors have not yet been determined. Subject to all specific and general objections, none.

RPD-8. Please provide a copy of all documents and workpapers relating to the Company's response to OCC Interrogatory No. 4 regarding the estimated total dollar amount of incentives.

**RESPONSE:** See attachment RPD-8

RPD-9. Please provide a copy of all documents and workpapers relating to the Company's response to OCC Interrogatory No. 5 regarding the estimate of how many customers would participate in the Building Redevelopment Incentive Program.

**RESPONSE:** DP&L used publicly available information about available properties and estimated that 20% of such properties could be filled with the help of an incentive.

RPD-10. Please provide a copy of all documents and workpapers relating to the Company's response to OCC Interrogatory No. 6 regarding the Company's description of the program as a five year program.

**RESPONSE:** All documents responsive to this request have been filed in docket No: 07-1079-EL-ATA and are public records which are readily available to the requesting party.

RPD-11. Please provide a copy of all documents and workpapers relating to the Company's statement, see OCC Interrogatory No. 7, that approval of the Economic Development Rider will "advance the economic growth in the West Central Ohio."

**RESPONSE:** Objection. This request calls for the production of documents which are protected by the attorney-client privilege and/or the attorney work product doctrines.

Subject to all specific and general objections, please see DP&L's Memorandum in Opposition to Motion to Intervene and Protest of Office of Ohio Consumers' Counsel, filed November 19, 2007 in Case No. 07-1079-EL-ATA, and is publicly available.

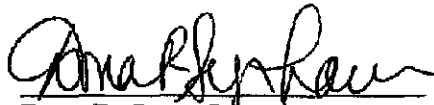
RPD-12. Please provide a copy of all documents and workpapers relating to the Company's response to OCC Interrogatory No. 8.

**RESPONSE:** None.

RPD-13. Please provide a copy of all documents and workpapers relating to the Company's response to OCC Interrogatory No. 9.

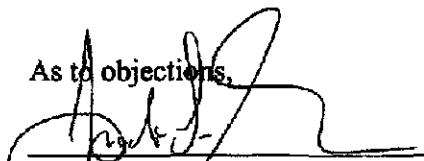
**RESPONSE:** None.

Respectfully submitted,



Dona R. Seger-Lawson  
Director, Regulatory Operations  
The Dayton Power and Light Company  
1065 Woodman Drive  
Dayton, OH 45432

As to objections,



Judi L. Sobecki  
Attorney for The Dayton Power and Light  
Company  
1065 Woodman Drive  
Dayton, OH 45432  
937-259-7171  
[Judi.Sobecki@DPLINC.com](mailto:Judi.Sobecki@DPLINC.com)

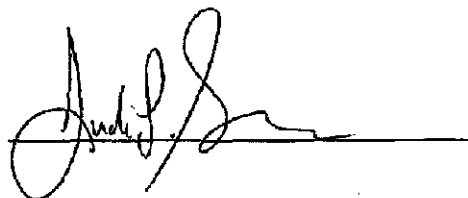
**CERTIFICATE OF SERVICE**

The foregoing has been served upon the following individuals this 26<sup>th</sup> day of  
November, 2007 via ordinary U.S. mail, postage prepaid, (also electronically upon  
Assistant Consumers' Counsel):

Jeffrey L. Small  
Gregory Poulos  
Assistant Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
[small@occ.state.oh.us](mailto:small@occ.state.oh.us)  
[poulos@occ.state.oh.us](mailto:poulos@occ.state.oh.us)

Duane Luckey  
Public Utilities Commission of Ohio  
180 E. Broad St., 9<sup>th</sup> Fl.  
Columbus, OH 43215

David C. Rinebolt  
Colleen L. Mooney  
231 West Lima Street  
P.O. Box 1793  
Findlay, OH 45839-1793



**ELECTRIC DISTRIBUTION SERVICE  
BUILDING REDEVELOPMENT INCENTIVE PROGRAM  
SERVICE AGREEMENT**

This Service Agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between \_\_\_\_\_, ("Customer") and The Dayton Power and Light Company, an Ohio Corporation, ("DP&L"). In consideration of the mutual covenants, terms and conditions set forth herein, the parties hereto agree as follows:

1. **DP&L'S ELECTRIC DISTRIBUTION SERVICE BUILDING REDEVELOPMENT INCENTIVE PROGRAM TARIFF.** Customer agrees to comply with the terms and conditions in DP&L's Electric Distribution Service Building Redevelopment Incentive Program Tariff, PUCO No. 17, Sheet No. D37 ("Tariff Sheet No. D37") and all other applicable provisions of DP&L's Tariff PUCO No. 17 on file with the Public Utilities Commission of Ohio ("Commission"), attached hereto and made a part hereof, and any amendments made thereof.

2. **INCENTIVE.** If the Customer meets the Incentive Threshold Demand and fulfills other applicable criteria as set forth in Tariff Sheet No. D37 for 12 consecutive months, DP&L agrees to provide an incentive payment to the Customer consistent with the Tariff Sheet No. D37 as in effect at the time the incentive payment is made. Further, based on an expectation that the Customer will meet other applicable criteria as set forth in Tariff Sheet No. D37 for 12 consecutive months, the Customer is provisionally granted a 50% reduction in DP&L's standard security deposit requirement. If this expectation is not fulfilled, Customer may be required to provide an additional security deposit pursuant to Tariff Sheet No. D37.

3. **INCENTIVE THRESHOLD DEMAND.** The specific Incentive Threshold Demand as described generally in Tariff Sheet No. D37, and required to be met by the undersigned Customer shall be a Billing Demand of \_\_\_\_\_ kW.

4. **DEMAND EXPECTATION.** Customer hereby makes the express representation that the expected load meets or exceeds all of the criteria set forth herein and in Tariff Sheet No. D37 and that Customer intends to continue to meet such criteria for a minimum period of 5 years from the time new service is initiated. Customer understands that this representation is material to DP&L's decision to enter into this Agreement and DP&L is reasonably relying upon this representation as an inducement for DP&L to enter into this Agreement.

5. **SITE SELECTION.** Customer hereby makes the express representation that the expected incentive associated with DP&L's Electric Distribution Service Building Redevelopment Incentive Program is a major factor taken into consideration in the Customer's site selection process. Customer understands that this representation is material to DP&L's decision to enter into this Agreement and DP&L is reasonably relying upon this representation as an inducement for DP&L to enter into this Agreement.

6. **SERVICE.** All Transmission, Distribution, Generation, and Ancillary Services of DP&L are rendered under and subject to the Rules and Regulations contained within the applicable Schedules along with any terms and conditions set forth in this Agreement between DP&L and the Customer. In order to satisfy the tariff requirement set forth in Tariff Sheet No.

D37 the Customer must take service under the applicable Standard Offer Generation service, Sheet No. G12 or G13.

7. **MODIFICATION.** DP&L's Tariff, including rates and incentive payments, are subject to change from time-to-time by order of the Commission. This Agreement shall be deemed to be modified automatically in conformity to any such order of the Commission as it relates to DP&L's Tariff.

8. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and/or assigns, but Customer shall not transfer or assign any of the rights hereby granted without prior written consent of DP&L.

9. **TERM.** This Agreement shall take effect as of the billing month proceeding the date of the agreement and remain in effect for five years thereafter.

10. **NOTICES.** All notices under this Agreement shall be in writing and shall be sent by either: (1) US Certified, registered or express mail, postage prepaid; or (2) private express carrier to:

The Dayton Power and Light Company  
1900 Dryden Road  
Dayton, OH 45439  
Attn.: Scott Michaelson

Customer Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

or such other address as either party may hereinafter designate in writing to the other.

11. **RELATED LOAD.** Customer makes the express representation that the following is a complete list of entities and locations receiving electric service from DP&L, which are related to Customer, including but not limited to predecessors, subsidiaries, divisions, parents, and all other affiliated corporations up to and including Customer's most senior parent company, along with any entity wholly owned, directly or indirectly, by Customer's most senior parent company:

[Specify "None" or list along with Billing Demand, using separate sheet if necessary]

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Billing Demand: \_\_\_\_\_

Customer understands that this representation is material to DP&L's decision to enter into this Agreement and DP&L is reasonably relying upon this representation as an inducement for DP&L to enter into this Agreement.

IN WITNESS WHEREOF, the parties have caused this Service Agreement to be executed as of the day and year first above written.

**THE DAYTON POWER AND LIGHT COMPANY**

By: \_\_\_\_\_

**CUSTOMER:** \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_



### RPD-8

Percentage of Available Facilities	10.0%	10.0%
Participating Facilities	18	18

	<u>2008</u>	<u>2009</u>	<u>2010</u>
Assumed Typical Customers Distribution Demand Revenue			
Secondary Small (315.0 KW)	\$14,735		
Secondary Medium (472.5 KW)	\$22,102		
Secondary Large (945.0 KW)	\$44,204		
Primary Small (500 KW)	\$11,043		
Primary Medium (1,000 KW)	\$22,086		
Primary Large (2,000 KW)	\$44,171		
Characteristics of Available Properties			
Secondary Small	72		
Secondary Medium	38		
Secondary Large	37		
Primary Small	14		
Primary Medium	8		
Primary Large	7		
Distribution Demand Revenue			
Secondary Small	\$106,090	\$106,090	
Secondary Medium	\$83,988	\$83,988	
Secondary Large	\$163,556	\$163,556	
Primary Small	\$15,460	\$15,460	
Primary Medium	\$17,669	\$17,669	
Primary Large	\$30,920	\$30,920	
Total Distribution Demand Revenue	\$417,682	\$417,682	
Eligible Discount	\$208,841	\$208,841	
Maximum Incentive payment		\$208,841	\$417,682