

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**PUCO**

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan.	) ) )	Case No. 08-1094-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.	) ) )	Case No. 08-1095-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code §4905.13.	) ) ) ) )	Case No. 08-1096-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Amended Corporate Separation Plan.	) ) ) )	Case No. 08-1097-EL-UNC

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**REPLY MEMORANDUM  
TO  
DAYTON POWER & LIGHT'S OPPOSITION TO HONDA MFG., INC. AND  
CARGILL INCORPORATED MOTION FOR EXTENSION OF TIME  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC") hereby submits this Reply to the Memorandum in Opposition of Dayton Power & Light ("DP&L") to a two-week extension requested by Honda MFG., Inc. and Cargill, Incorporated, ("Honda Motion"). OCC is clarifying and replying to representations made by DP&L regarding OCC's position concerning the Motion for Extension.

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First, OCC reiterates that it wholly supports a two-week extension in this case as represented in the Honda motion.<sup>1</sup> Such a two-week extension would compensate OCC for the extra two-weeks taken by DP&L to respond to OCC's discovery in late December, which DP&L indicated was due to the holidays.<sup>2</sup> The extra two-weeks taken by DP&L to respond to OCC's discovery hindered OCC's ability to prepare testimony due January 12, 2009, pursuant to the procedural order in this case.

Second, the PUCO should be aware that DP&L inappropriately used its preliminary discussion with OCC about a three-day extension to oppose<sup>3</sup> Honda's motion that OCC, in fact, supports. OCC did engage in discussions with DP&L counsel as to how to address OCC's need to prepare testimony without the requisite discovery responses or with very little time with DP&L's discovery responses. Specifically, DP&L informed OCC that the Company would respond to all OCC discovery sent in the last half of December by January 5 and January 7. The delayed response would in some cases give OCC only three-working days to review the responses and draft the corresponding testimony (January 12). In this context, OCC and DP&L informally discussed, without a conclusion, possible extension options that would allow OCC at least a minimum amount of time to review DP&L's untimely discovery responses and prepare OCC's testimony. DP&L acknowledged that OCC was entitled to some relief in terms of an extension. But in the absence of an agreement between OCC and DP&L on the matter, DP&L should not have been using in its memorandum the unresolved discussion with OCC as a means to oppose Honda's request which DP&L knew OCC

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<sup>1</sup> Honda Motion at 4.

<sup>2</sup> E-mail about the vacations.

<sup>3</sup> DP&L Memorandum in Opposition at 2, 3.

supported<sup>4</sup>. Whatever DP&L intended by using the words “to which DP&L agreed” regarding its proposed three-day extension,”<sup>5</sup> it should be understood that OCC had not reached agreement with DP&L—and OCC supports the two-week extension.

Moreover, OCC disputes the statement by DP&L that “parties that are diligent can meet the schedule for the hearings.”<sup>6</sup> OCC has been diligent, but without the necessary information requested in discovery to evaluate the DP&L case, it is not possible to determine what expert witnesses should offer testimony on which issues. Finally, in the event the two-week extension is not granted and OCC required an extension on the filing of its testimony, OCC is concerned about the impact on the Staff of not receiving OCC testimony until a few days before it is required to file testimony.

DP&L also stated in its reply to Honda’s Motion that if the Motion were granted “there would be an unprecedented and unnecessarily long 123-day lag time between DP&L’s initial filing and the evidentiary hearing....”<sup>7</sup> But it should be noted that two of the other three ESP cases are ongoing and have consumed considerable amounts of time by many of the parties involved in this case. It should also be noted that every party other than DP&L has been involved in the AEP, FirstEnergy and Duke cases. While OCC has been diligent with discovery, even DP&L which has only this case to litigate has not managed to keep the procedural deadlines.

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<sup>4</sup> While OCC appreciates DP&L’s offer not to object to an extension for OCC (and presumably the Staff), OCC recognizes that any extension granted by the Commission should not be detrimental to any other party.

<sup>5</sup> DP&L Memorandum in Opposition at 3.

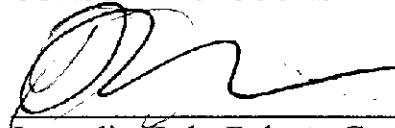
<sup>6</sup> Id.

<sup>7</sup> Id at 4.

In conclusion, OCC urges the two-week extension requested in the Honda motion be granted and clarifies its position regarding certain statements by DP&L.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply Memorandum to Dayton Power & Light's Opposition to Honda Mfg., Inc. and Cargill Incorporated Motion for Extension of Time by the Office of the Ohio Consumers' Counsel was served via electronic transmittal to the persons listed below on this 5th day of January, 2009.



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