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PUCO

06-653-EL-ORD

June 17, 2009

**Via Fed Ex**

Public Utilities Commission of Ohio  
Docketing Division  
180 East Broad Street  
Columbus, OH 43215-3793

**Re: In the Matter of the Commission's Review of Chapters 4901:1-9, 4901:1-10, 4901:1-21, 4901:1-22, 4901:1-23, 4901:1-24 and 4901:1-25 of the Ohio Administrative Code.**

Dear Sir/Madam:

Enclosed please find for filing the original and (11) eleven copies of The Dayton Power and Light Company's Response to Ohio Home Builders Association's Procedurally Improper Request for Reconsideration.

Please time-stamp and return the extra copy in the self addressed stamped envelope provided. If you have any questions, please call Judi L. Sobecki at 937-259-7171.

Sincerely,

Jenna Johnson-Holmes  
Administrative Assistant

Enclosures

**This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.**  
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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

2009 JUN 18 PM 12:02

In the Matter of the Commission's Review of     )  
 Chapters 4901:1-9, 4901:1-10, 4901:1-21,     )  
 4901:1-22, 4901:1-23, 4901:1-24 and     )  
 4901:1-25 of the Ohio Administrative Code     )

Case No. 06-653-EL-ORD **RU CO**


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**THE DAYTON POWER AND LIGHT COMPANY'S RESPONSE TO OHIO  
HOME BUILDERS ASSOCIATION'S PROCEDURALLY IMPROPER  
REQUEST FOR RECONSIDERATION**

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The time period for filing comments, reply comments, and applications for rehearing in this rule making proceeding has ended. All parties have had ample opportunity to comment, express concerns, and otherwise advocate their respective positions—including the Ohio Home Builders Association ("OHBA"). Despite these due process protections by the Commission which have benefitted all interested parties in this proceeding, the OHBA wants to expand its right to be heard to a level above and beyond the rights of other stakeholders. The Dayton Power and Light Company ("DP&L") respectfully submits that OHBA's efforts at this expansion, as embodied in OHBA's June 1, 2009 letter filed in this docket, should be rejected.

Although DP&L would not always consider underground service as a premium service DP&L opposes a change in the rule that would never allow underground service to be considered a premium service. DP&L supports the well reasoned and thoughtfully presented arguments set forth in the June 11, 2009 Memorandum of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company Contra Ohio Home Builders Association, Inc. Letter Requesting that the Commission Reconsider its Line Extension Rules and Remove Underground Facilities

from its Definition of Premium Services Prior to Finalization. DP&L likewise urges the Commission to view OHBA's letter for what it clearly is: an impermissible second application for rehearing advocating the very same position which the OHBA has already articulated twice before and which the Commission has already rejected twice before.<sup>1</sup>

Specifically, OHBA first argued in its reply comments that the definition of "premium services" should no longer include underground facilities.<sup>2</sup> The Commission rejected that argument the first time when it adopted rule amendments in which "Premium Services" were defined to include underground facilities.<sup>3</sup>

OHBA had the opportunity to formally articulate its position a second time in its Application for Rehearing, and indeed the primary basis underlying the OHBA's Application for Rehearing was the issue of including underground facilities within the definition of premium services.<sup>4</sup> Carefully considering the proposal made by OHBA's Application on this subject, the Commission expressly rejected it, holding:

OHBA requests that the Commission modify the definition [of premium services] to remove "underground construction" as a premium service. . . From the arguments presented, we are not persuaded that a change is warranted in our definition of "Premium Service." We still believe that installation of underground facilities should be deemed a premium service.<sup>5</sup>

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<sup>1</sup> To be clear, DP&L does not object to OHBA's right to advocate its position. This is a right all interested parties have. DP&L objects to OHBA attempts to expand its right to be heard beyond that which is permitted by law and beyond the rights held by every other party participating in this proceeding which did abide by the rules.

<sup>2</sup> Reply Comments of Ohio Home Builders, Inc., at 2.

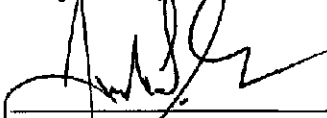
<sup>3</sup> Finding and Order, November 5, 2008.

<sup>4</sup> Application for Rehearing of Ohio home Builders Association, Inc., at 1 and pages 4-6.

<sup>5</sup> Entry on Rehearing, May 6, 2009, at ¶ 8. (Emphasis added)

OHBA now tries for a third bite at the apple, making the identical request which was twice before rejected: "OHBA requests that the Commission reconsider its line extension rules and remove underground facilities from its definition of premium services prior to finalization."<sup>6</sup> OHBA's position is not something that was unarticulated or overlooked in this proceeding. It was briefed (twice), tacitly rejected once, and expressly rejected by the Commission a second time. OHBA received fair consideration and its efforts to expand its right to be heard beyond those of the other stakeholders is inappropriate and should be summarily rejected.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been served either electronically or via first class mail, postage prepaid, this 17<sup>th</sup> day of June, 2009 upon the following:

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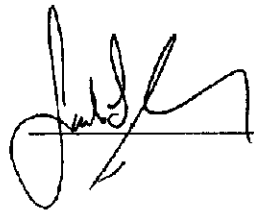
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