

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of	:	Case No. 12-426-EL-SSO
The Dayton Power and Light Company for	:	
Approval of Its Electric Security Plan	:	
	:	
In the Matter of the Application of	:	Case No. 12-427-EL-ATA
The Dayton Power and Light Company for	:	
Approval of Revised Tariffs	:	
	:	
In the Matter of the Application of	:	Case No. 12-428-EL-AAM
The Dayton Power and Light Company for	:	
Approval of Certain Accounting Authority	:	
	:	
In the Matter of the Application of	:	Case No. 12-429-EL-WVR
The Dayton Power and Light Company for	:	
the Waiver of Certain Commission Rules	:	
	:	
In the Matter of the Application of	:	Case No. 12-672-EL-RDR
The Dayton Power and Light Company	:	
to Establish Tariff Riders	:	

**THE DAYTON POWER AND LIGHT COMPANY'S REPLY MEMORANDUM IN
RESPONSE TO JOINT MOVANTS' MEMORANDUM IN OPPOSITION TO THE
DAYTON POWER AND LIGHT COMPANY'S WAIVER REQUEST**

On November 8, 2012, The Dayton Power and Light Company ("DP&L") filed a Supplement to Its ESP Application ("Supplement Application") that, among other things, requested waivers under Ohio Admin. Code § 4901:1-35-02 with regard to Paragraph (B) of Ohio Admin. Code § 4901:1-36-04 (which requires that a transmission cost recovery rider be avoidable by all customers who chose alternative generation suppliers) because DP&L will be charged by PJM for the components proposed for inclusion in TCRR-N for all shopping and non-shopping customers, making recovery on a non-bypassable basis appropriate.¹

¹ The Dayton Power and Light Company's Supplement to Its ESP Application, p. 2.

On November 21, 2012, Joint Movants² filed a Memorandum in Opposition to DP&L's request that its transmission cost recovery rider be non-bypassable. Joint Movants argue that DP&L has not shown "good cause" for such a waiver.³ In the alternative, the Joint Movants request that the Commission not grant DP&L's waiver request until after the evidentiary hearing.⁴ As shown below, Joint Movants' Memorandum in Opposition is flawed for multiple reasons and is without merit.

First, as a preliminary matter, there is no procedural vehicle for the Memorandum in Opposition as the Commission's rules do not permit Joint Movants to file an opposition brief to DP&L's Supplement Application. The Commission's rules provide that a party is permitted to file an opposition brief only to a motion filed in a proceeding. Ohio Admin. Code § 4901:1-12(B)(1). Here, DP&L filed its request for waiver as part of its Supplement Application. Based on this factor alone, the Commission should disregard Joint Movants' Memorandum in Opposition.

Second, DP&L never asked that its waiver requests be granted in advance of an evidentiary hearing – DP&L's request was to be considered as part of DP&L's whole ESP Application and therefore is subject to discovery and cross-examination at an evidentiary hearing. In sum, DP&L does not request that the Commission grant DP&L's waiver requests outright at this time, as Joint Movants erroneously assume.

² The Joint Movants include Honda of America Manufacturing, Inc., Industrial Energy Users-Ohio, the OMA Energy Group, the Ohio Partners for Affordable Energy, SolarVision, LLC, Wal-Mart Stores East, LP, and Sam's East, Inc.

³ Joint Movants' Memorandum in Opposition to The Dayton Power and Light Company's Waiver Request ("Memorandum in Opposition"), pp. 3-7.

⁴ Id. at 7-8.

Third, the Commission has previously approved requests by other Ohio utilities that Network Integration Transmission Service ("NITS") costs be recovered through a non-bypassable charge. May 25, 2011 Opinion & Order, pp. 4, 7, 16 (Case No. 11-2641-EL-RDR); August 25, 2010 Opinion & Order, pp. 12, 46 (Case No. 10-388-EL-SSO). The assertion in the Memorandum in Opposition that DP&L's request is without support or precedent is thus plainly incorrect.

Fourth, DP&L has shown in the testimony of Claire Hale that "good cause" exists with regard to DP&L's request that its transmission cost recovery rider be made non-bypassable. The rationale for the waiver request was indeed provided in Ms. Hale's testimony:

"Currently the Company charges NITS costs to standard service offer (SSO) customers, while CRES providers pay DP&L (through PJM) for NITS to deliver energy to the retail customers that they serve. NITS, therefore, already functions as a non-bypassable charge. With the proposed TCRR-N, these charges will be paid by the Company to PJM for all shopping and SSO load, and therefore will be recovered from the customers in the Company's non-bypassable rider."

Claire Hale Testimony, p. 4, lines 2-7.

If DP&L is to assume costs for all customers (regardless of shopping), then DP&L must be able to recover those costs from all customers. Consequently, DP&L has shown "good cause" for a waiver of the Ohio Administrative Code requirement that the TCRR be bypassable.

Fifth, it is the responsibility of the CRES providers and their customers to ensure that shopping customers are not charged twice for the same transmission services. This same issue of waiver was addressed in the Duke and FirstEnergy cases (Case No. 11-2641-EL-RDR; Case No. 10-388-EL-SSO), and DP&L filed an MRO Application in this case on March 30,

2012; thus CRES providers and customers have been on notice of this issue for some time. Moreover, CRES providers (not DP&L) are responsible for the charges they recover from customers, and not double billing them.

Last, Joint Movants concede that the price-to-compare is largely out of DP&L's control (with the implementation of a CBP) and will continue to fluctuate with Fuel, RPM, TCRR-B, and AER.⁵ Ms. Hale testimony does not contradict this fact (at no point did Ms. Hale claim the TCRR-N would "stabilize the price-to-compare"). Nevertheless, as discussed above, every CRES provider has its own method of pricing NITS for their customers. Moving this portion of transmission charges from a bypassable rate (charged differently to customers by every provider) to a non-bypassable rate (charged consistently to the customers from the utility) simply removes that variation in pricing from the price-to-compare between DP&L and different CRES providers. The remaining price-to-compare, which may still fluctuate, will be based on a smaller set of products and should naturally include less variation between offers.

For these foregoing reasons, the Commission should reject the arguments made in the Joint Movants' Memorandum in Opposition.

⁵ Memorandum in Opposition, p. 6.

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 The Dayton Power and Light Company's Reply Memorandum in Response to Joint Movants' Memorandum in Opposition to The Dayton Power and Light Company's Waiver Request has been served via electronic mail upon the following counsel of record, this 27th day of November, 2012:

Samuel C. Randazzo, Esq.
Frank P. Darr, Esq.
Matthew R. Pritchard, Esq.
Joseph E. Olikier, 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

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.

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

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 O. 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.

David F. Boehm, Esq.
Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street Suite 1510
Cincinnati, OH 45202-4454
dboehm@BKLLawfirm.com
mkturtz@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.

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

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.

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 W. McNamee, Esq.
Assistant Attorney General
Devin D. 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

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
mwhite@igsenergy.com

Attorneys for Interstate Gas Supply, Inc.

Steven M. Sherman, Esq. Counsel of Record
Joshua D. Hague, Esq.
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.

Melissa R. Yost, Esq., (Counsel of Record)
Maureen R. Grady, Esq.
Assistant Consumers' Counsel
Office of The Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
yost@occ.state.oh.us
grady@occ.state.oh.us

Attorneys for Office of the Ohio Consumers'
Counsel

Christopher L. Miller, Esq.
(Counsel of Record)
Gregory H. Dunn, Esq.
ICE MILLER LLP
250 West Street
Columbus, OH 43215
Christopher.Miller@icemiller.com
Gregory.Dunn@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

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

Christopher L. Miller, Esq.
Gregory J. Dunn, Esq.
Alan G. Starkoff, Esq.
ICE MILLER LLP
2540 West Street
Columbus, OH 43215
Christopher.Miller@icemiller.com
Gregory.Dunn@icemiller.com

Attorneys for Direct Energy Services, LLC
and Direct Energy Business, LLC

M. Howard Petricoff, Esq.
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
mhpeticoff@vorys.com
smhoward@vorys.com

Attorneys for Exelon Generation Company, LLC,
Exelon Energy Company, Inc., Constellation
Energy Commodities Group, Inc., and
Constellation NewEnergy, Inc.
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

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.

Matthew W. Warnock, Esq.
J. Thomas Siwo, Esq.
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
mwarnock@bricker.com
tsiwo@bricker.com

Attorneys for The Ohio Manufacturers'
Association Energy Group

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

Cynthia Fonner Brady, Esq.
Assistant General Counsel
EXELON BUSINESS SERVICES COMPANY
4300 Winfield Road
Warrenville, IL 60555
Cynthia.Brady@constellation.com

Attorney for Constellation
an Exelon Company

Edmund J. Berger, Esq. (admitted *pro hac vice*)
Office of The Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
berger@occ.state.oh.us

Attorneys for Office of the Ohio Consumers'
Counsel

Scott C. Solberg, Esq.(admitted *pro hac vice*)
Eimer Stahl LLP
224 South Michigan Avenue, Suite 1100
Chicago, OH 60604
ssolberg@eimerstahl.com

Attorney for Exelon Generation
Company, LLC

Stephen Bennett, Manager
State Government Affairs
300 Exelon Way
Kenneth Square, PA 19348
stephen.bennett@exeloncorp.com

s/ Jeffrey S. Sharkey
Jeffrey S. Sharkey

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/27/2012 5:07:02 PM

in

Case No(s). 12-0426-EL-SSO, 12-0427-EL-ATA, 12-0428-EL-AAM, 12-0429-EL-WVR, 12-0672-EL-RDR

Summary: Reply The Dayton Power and Light Company's Reply Memorandum in Response to Joint Movants' Memorandum in Opposition to The Dayton Power and Light Company's Waiver Request electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company