

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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**MEMORANDUM OF THE DAYTON POWER AND LIGHT COMPANY ON  
EVIDENTIARY QUESTION**

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This Commission has not held that strict compliance with the Ohio Rules of Evidence is necessary with respect to expert testimony, even where the underlying data and documents were not introduced into evidence. In the Matter of the Complaint of Pro Se Commercial Properties, No. 07-1306-EL-CSS, 2008 Ohio PUC LEXIS 677, at \*16-18 (November 5, 2008) (rejecting argument that expert testimony should be excluded because it relied on data and documents that were not introduced into evidence; ruling that “the Commission is granted very broad discretion in the conduct of its hearings and is not bound by the Ohio Rules of Evidence” and that witness “qualified as an expert [because] the information referenced in his testimony . . . was based on facts perceived by him during his investigation of

this matter. Further, his testimony was prefiled in advance of the hearing, in accordance with Commission rules.”) (citing Greater Cleveland Welfare Rights Org. Inc. v. Pub. Util. Comm. (1982), 2 Ohio St.3d 62); In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of The Dayton Power & Light Company and Related Matters, No. 86-07-EL-EFC, 1987 Ohio PUC LEXIS 107, at \*32-33 (February 18, 1987) (admitting expert testimony and evidence; holding that “[w]ithin the context of the discretionary powers vested in the Commission, the Supreme Court of Ohio has found consistently that the Commission, being an administrative body, is not and should not be inhibited by the strict rules as to the admissibility of evidence which prevail in courts”) (citations omitted).

For example, in admitting expert hearsay testimony, the Commission has stated:

“[T]he Commission is not strictly bound by the Ohio Rules of Evidence. When the Commission has deemed it appropriate, it has allowed the admission of hearsay testimony. We would also note that hearsay rules are designed, in part, to exclude evidence, not because it is not relevant or probative, but because of concerns regarding jurors' inability to weigh evidence appropriately. These concerns are inapplicable to administrative proceedings before the Commission. As the Commission has that expertise, it can and did give the appropriate weight to testimony and evidence in this case.”

In the Matter of the Complaint of Pro Se Commercial Properties, 2008 Ohio PUC LEXIS 677, at \*18.

Indeed, in not being strictly bound by the Ohio Rules of Evidence, the Commission has “recognize[d] that there is a great distinction between the qualifications of an expert witness on the one hand, and the merit, weight and relevancy of the testimony of such a witness on the other hand.” In the Matter of the Regulation of the Electric Fuel Component

Contained within the Rate Schedules of The Dayton Power & Light Company and Related Matters, No. 86-07-EL-EFC, 1987 Ohio PUC LEXIS 107, at \*34-35.

Respectfully submitted,

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Summary: Memorandum of The Dayton Power and Light Company on Evidentiary Question electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company