

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the)	Case No. 15-1830-EL-AIR
Dayton Power and Light Company for an)	
Increase in Electric Distribution Rates.)	

In the Matter of the Application of the)	Case No. 15-1831-EL-AAM
Dayton Power and Light Company for)	
Approval to Change Accounting Methods.)	

In the Matter of the Application of the)	Case No. 15-1832-EL-ATA
Dayton Power and Light Company for Tariff)	
Approval.)	

**THE DAYTON POWER AND LIGHT COMPANY'S
MEMORANDUM IN OPPOSITION TO
THE OFFICE OF THE OHIO CONSUMERS'
COUNSEL'S MOTION TO COMPEL**

On March 25, 2016, The Dayton Power & Light Company ("DP&L") responded to the majority of the Office of the Ohio Consumers' Counsel's ("OCC") requests in the Eighth Set of Interrogatories and Document Requests ("Eighth Set"). Declaration of Jeffrey S. Sharkey ("Sharkey Dec."), ¶ 13 (attached as Exhibit A) On March 30, 2016, DP&L responded to most of the remaining requests contained in the Eighth Set and most of the responses to OCC's Ninth Set of Interrogatories and Document Requests ("Ninth Set"). As of March 30, only 10 requests out of 96 remained unanswered, and DP&L responded to 4 of those 10 on April 6 -- now only 6 requests remain outstanding. These responses will be forthcoming as soon as possible. OCC's Motion to Compel Responses to Discovery ("OCC's Motion to Compel") should be denied because OCC already has or soon will have the responses it seeks.

To put the Motion to Compel in context, DP&L has required only three extra days for the majority of the Eighth Set and eight extra days (which included the Easter holiday) for much of the remaining responses with more time needed for only 10 of them. A few extra days should not result in the tolling of the 275-day period to decide, which is the remedy OCC requests.

I. DP&L Has Already Responded to OCC's Discovery Requests and Has Produced a Tremendous Amount of Information In this Case

OCC has not painted an accurate picture of discovery in this case. Nowhere in OCC's motion to compel does it mention the principal reason why DP&L needed a few more days to respond to OCC's Eighth and Ninth Sets of discovery requests: namely, that DP&L was busy responding to 404 discovery requests as part of OCC's Sixth and Seventh Sets of Interrogatories and Document Requests ("Sixth and Seventh Sets"). DP&L provided responses to the Sixth and Seventh Sets on March 22, 2016, but required more time to respond to the Eighth and Ninth Sets, which by themselves contain 96 discovery requests. Sharkey Dec., ¶ 12.

On March 3, 2016, DP&L requested more time to respond to the Eighth and Ninth Sets, which were originally due on March 16, 2016. Sharkey Dec., ¶ 6. OCC responded that DP&L could have until March 22, which was the same day that DP&L's responses to OCC's mammoth Sixth and Seventh Sets were due. Id. DP&L asked for more time to respond to the Eighth and Ninth Sets, but OCC would not agree to more time. Id. ¶¶ 6, 8. OCC wanted all 500 requests due on the same day. Id. ¶¶ 5-6.

DP&L responded to the Sixth and Seventh Sets on March 22, and it served partial responses to the Eighth Set on March 25 and most of the rest of the responses, as well as most of

the Ninth Set, on March 30. Sharkey Dec., ¶¶ 12, 13. At most, OCC has experienced a minor delay caused by its demand that all 500 responses are due on the same day.

DP&L explained why OCC's impatience conflicted with the hard reality of facts.

On March 4, 2016, and again on March 18, DP&L wrote the following to OCC:

"In order that you not think that DP&L is deliberately dilatory in discovery, allow me to explain the company's workload in both this case and the recently-filed ESP case.¹ First, the people at DP&L with knowledge to respond to discovery requests must respond to requests not only from OCC, but also from Staff. Second, to date, Staff has served over 130 Data Requests (many that are multi-part), and OCC has served 509 interrogatories and 195 requests for production; in addition OCC has repeatedly asked where various documents are and DP&L has had, repeatedly, to explain to OCC how to locate documents with Bates number ranges, even though the organization of those documents is simple. Third, many of the Staff Data Requests and OCC's discovery requests are not simple, and require significant efforts, such as assembly of data for certain time periods, or updates in tabular or schedule form. Fourth, many of the DP&L personnel who must work on discovery requests are the same people who assembled the recently-filed ESP case. These facts are, simply put, the facts of life in a pair of complex cases before the Commission. OCC can continue to express its impatience, but the fact remains that DP&L's employees are working hard to respond, doing the best that they can."

Sharkey Dec., ¶ 7.

DP&L has provided OCC with a very large amount of information in this case. In addition to responding to over 700 interrogatories and document requests from OCC, it has also responded to over 140 Data Requests from PUCO Staff (and provided copies of all of those responses to OCC). It has also responded to numerous requests from other intervenors (and

¹ On February 22, 2016, DP&L filed Case No. 16-0395-EL-SSO, et al. ("the ESP case"), which is another complex case pending before the PUCO. Some of the Company's employees that would be available to work on responses to OCC's discovery requests in this case also have responsibilities in the ESP case.

provided copies to OCC). In addition to hundreds of interrogatory answers, DP&L has provided to OCC over 8341 pages of documents. Sharkey Dec., ¶ 2 Even that number does not capture the total amount of data produced to OCC, as over 400 of those "pages" consist of detailed spreadsheets, each with many rows and columns, active formulas, and multiple tabs within each "page." DP&L has not been dilatory in responding to OCC's discovery requests.

OCC accuses DP&L of delaying its responses by "weeks, and sometimes months." OCC's Motion to Compel, p. 2. This accusation is misleading. What OCC fails to mention is that several of its requests were overly broad and OCC had to narrow the requests. Once framed properly, DP&L provided documents responsive to the narrower request. In some cases, OCC did not narrow its requests for several weeks or sometimes months. OCC, then, was responsible for those delays.

II. OCC is Responsible for Its Own Time Crunch; No Extension Should Be Given

OCC could have avoided creating this bottleneck. This case was filed at the end of November 2015. After nearly two months, OCC made only 44 discovery requests. At the end of January, OCC made another 160 requests. Yet, it was not until mid-February – two and one-half months after the case was filed -- that OCC started generating massive requests. It sought 404 categories in its Sixth and Seventh Sets and then 96 more in its Eighth and Ninth Sets. Sharkey Dec., ¶¶ 3, 5. OCC could have generated earlier requests, rather than waiting two and one-half months. Given the volume, it cannot be a surprise that DP&L needed a few extra days to respond.

OCC could also have made fewer requests. Staff has made 157 requests for information, but OCC has made over four times that number – in addition to receiving a copy of

everything that Staff received. Many of OCC's requests are excessive and unnecessary, but DP&L is trying to be responsive.

III. OCC's Authorities Do Not Support Extending the 275-Day Statutory Deadline

R.C. 4909.42 gives the Commission 275 days to decide this rate case. OCC seeks to toll this period, but it has not demonstrated sufficient reason for tolling it.

OCC relies on four distinguishable cases. In two of those cases, the Commission merely "reserved the right" to extend the deadline. In the Matter of the Application of Cent. Tel. Co. of Ohio for Auth. to Increase & Adjust its Rates & Charges, No. 84-1431-TP-AIR, 1985 Ohio PUC LEXIS 1879, at *2-3 (May 29, 1985) (reserving the right to extend the deadline, in dicta, because the applicant did not provide testimony explaining several adjustments in its two-month application update); In the Matter of the Application of The Toledo Edison Co. to File an Application for an Increase in Rates for Elec. Serv., No. 85-554-EL-AIR, 1985 Ohio PUC LEXIS 375, at *2-3 (July 23, 1985) (reserving the right to extend the deadline, in dicta, if the applicant did not provide supplemental information relating to management policies, practices and organization by the time of its two-month application update). In only one instance did the Commission actually extend the deadline. In the Matter of the Application of Lake Buckhorn Util., Inc. for an Increase in Rates & Charges, No. 86-518-WW-AIR, 1988 Ohio PUC LEXIS 387, at *5-6 (April 5, 1988) (extending the deadline because the applicant repeatedly sought extensions of time to file its two-month application update).² In each of those three cases, however, the utility failed to file a complete two-month update to its application. Here, DP&L's

² While the Commission claims the power to toll the 275-day deadline, it has not cited any authority to disregard that statutory requirement. Discount Cellular, Inc. v. Pub. Util. Comm., 112 Ohio St.3d 360, 2007-Ohio-53, 859 N.E.2d 957, ¶ 51. ("The PUCO, as a creature of statute, has no authority to act beyond its statutory powers.").

application was complete when it was filed and no two-month update was required. The Commission has already ruled that DP&L's application satisfied the requirements of R.C. 4909.17 through 4909.19, as well as the Standard Filing Requirements. Jan. 27, 2016 Entry, p. 2. Consequently, those three cases are distinguishable.

In the fourth case cited by OCC, the Commission did not even decide whether, or under what circumstances, to extend the deadline. In the Matter of the Application of Cincinnati Bell Tel. Co. for Auth. to Increase & Adjust its Rates & Charges & to Change Regulations & Practices Affecting the Same, No. 84-1272-TP-AIR, 1985 Ohio PUC LEXIS 1860, at *4 (May 7, 1985). In that case, the Staff asked the Commission to consider an extension because it was unable to review certain confidential documents until 78 days after they were requested. Id. at *2-3. The Commission declined to answer that question after Staff received those documents and was able to continue with its investigation. Id. at *4.

Here, DP&L required a few extra days, not 78. Sharkey Dec., ¶¶ 12-13. Furthermore, unlike in Cincinnati Bell, the few extra days that DP&L needed to respond to OCC's hundreds of discovery requests has not threatened the ability of the Commission or Staff to evaluate DP&L's rate case. Thus, the cases cited by OCC do not support an extension of the 275-day deadline imposed by R. C. 4909.42.

For the foregoing reasons, OCC's Motion to Compel should be denied, and its request to toll the 275-day deadline should also be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing The Dayton Power and Light Company's Memorandum in Opposition to The Office of the Ohio Consumers' Counsel's Motion to Compel has been served via electronic mail upon the following counsel of record, this 6th day of April, 2016:

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for an Increase in its Electric Distribution Rates	:	Case No. 15-1830-EL-AIR
In the Matter of the Application of The Dayton Power and Light Company for Accounting Authority	:	Case No. 15-1831-EL-AAM
In the Matter of the Application of Dayton Power and Light Company for Approval of Revised Tariffs	:	Case No. 15-1832-EL-ATA

DECLARATION OF JEFFREY S. SHARKEY

I, Jeffrey S. Sharkey, declare as follows:

1. My name is Jeffrey S. Sharkey, and I am a partner at Faruki Ireland & Cox P.L.L. I am one of the attorneys representing Applicant The Dayton Power and Light Company ("DP&L") in this matter, and I have personal knowledge of the following:

2. OCC has served upon DP&L eleven sets of discovery requests that include 593 Interrogatories and 1230 Requests for Production of Documents. DP&L has produced 8,341 pages of documents to OCC, including over 400 detailed spreadsheets.

3. OCC's Sixth and Seventh Sets of discovery requests, which were served on the same day (the Seventh Set includes confidential information) are particularly voluminous – they include 300 Interrogatories and 104 Requests for Production of Documents. By agreement with OCC, DP&L's deadline to respond to those sets was March 22, 2016.

EXHIBIT A

4. On February 22, 2016, DP&L filed Case No. 16-0395-EL-SSO ("the ESP case"). Some of the Company's employees that would be available to work on responses to OCC's discovery requests in this case also have responsibilities in the ESP case.

5. On February 25, 2016, OCC served its Eighth and Ninth Sets of discovery requests on DP&L. Those sets include 65 Interrogatories and 31 Requests for Production of Documents. DP&L's deadline to respond to those sets – without an extension – would have been March 16, 2016.

6. On March 3, 2016, Marty Foos and I spoke with Jodi Bair, lead counsel for OCC. I explained to her that DP&L's employees were working diligently to respond to the 404 requests in OCC's Sixth and Seventh Sets by the March 22, 2016 deadline, and that DP&L would not be able to respond to the Eighth and Ninth Sets by March 16. I asked Ms. Bair for a twenty-day extension; she offered a six-day extension until March 22. We did not agree that March 22 would be sufficient. We told her that we would get back to her regarding the time needed in addition to the six days she agreed to provide.

7. On March 4, 2016, Marty Foos sent an email to Ms. Bair, copying me and others, that explained DP&L's efforts to provide the requested information:

"In order that you not think that DP&L is deliberately dilatory in discovery, allow me to explain the company's workload in both this case and the recently-filed ESP case. First, the people at DP&L with knowledge to respond to discovery requests must respond to requests not only from OCC, but also from Staff. Second, to date, Staff has served over 130 Data Requests (many that are multi-part), and OCC has served 509 interrogatories and 195 requests for production; in addition OCC has repeatedly asked where various documents are and DP&L has had, repeatedly, to explain to OCC how to locate documents within Bates number ranges, even though the organization of those documents is simple. Third, many of the Staff Data Requests and OCC's discovery requests are not simple, and require significant efforts, such as assembly of data for certain time periods, or

updates in tabular or schedule form. Fourth, many of the DP&L personnel who must work on discovery requests are the same people who assembled the recently-filed ESP case. These facts are, simply put, the facts of life in a pair of complex cases before the Commission. OCC can continue to express its impatience, but the fact remains that DP&L's employees are working hard to respond, doing the best that they can."

8. On March 14, 2016, Mr. Foos and I again spoke to Ms. Bair. We requested an extension until March 30, 2016 to respond to OCC's Eighth and Ninth Sets. Ms. Bair said that an extension to March 30 was not acceptable. We then discussed with Ms. Bair the possibility that DP&L could serve its responses to the Eighth and Ninth Sets on a rolling basis, so that OCC would, for example, receive half of DP&L's responses to the Eighth and Ninth Sets on March 25, and the other half on March 30; no agreement was reached on that issue.

9. Since our March 4, 2016, email to OCC, the number of Staff Data Requests has grown to more than 150.

10. On March 17, 2016, I spoke again to Ms. Bair. I explained to her that DP&L planned to provide roughly half of the responses to OCC's Eighth and Ninth Sets on March 25, and it could provide the remaining responses on March 30. Ms. Bair stated that she had met with OCC's management, and that she could not agree to an extension beyond March 22 for OCC's Eighth and Ninth Sets.

11. On March 18, 2016, Mr. Foos sent an email to Ms. Bair, copying me and others, explaining that "DP&L is doing everything that it can to respond to OCC's discovery requests as quickly as possible," and quoting in its entirety the paragraph reproduced in Paragraph 7 of this Declaration.

12. On March 22, 2016, DP&L served objections and responses to OCC's Sixth and Seventh Sets, including over 700 pages of responsive documents, and objections to OCC's Eighth and Ninth Sets.

13. DP&L served objections and responses to a majority of the responses to OCC's Eighth Set on March 25, 2016, and served most of the remaining responses to OCC's Eighth Set and Ninth Sets on March 30, 2016. DP&L served responses to 4 of the last 10 remaining requests on April 6, 2016, and is working diligently on the last 6 of them.

14. Throughout this process, Marty Foos and I have kept OCC updated as to the status. I contacted Jodi Bair on March 22, 2016, and explained the expected schedule for DP&L's production as I understood it. On March 31, 2016, Marty Foos and I spoke with Chris Healey of OCC, and Marty Foos spoke with Chris Healey again on April 5, 2016, to update OCC as to the status of the production.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated April 6, 2016.

/s/ Jeffrey S. Sharkey
Jeffrey S. Sharkey

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Summary: Memorandum The Dayton Power and Light Company's Memorandum in Opposition to The Office of the Ohio Consumers' Counsel's Motion to Compel electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company