

In the Matter of the Review of the )  
Reconciliation Rider of The Dayton )  
Power and Light Company )

Case No. 20-165-EL-RDR

**MOTION AND MEMORANDUM IN SUPPORT OF MOTION OF  
THE DAYTON POWER AND LIGHT COMPANY  
TO QUASH NOTICE OF DEPOSITION WITHOUT PREJUDICE**

The Dayton Power and Light Company (“DP&L”), pursuant to Ohio Administrative Code (“OAC”) 4901-1-12, hereby moves to quash the Notice of Deposition served by the Ohio Office of the Consumers’ Counsel (“OCC”) on January 7, 2021. DP&L submits that OCC’s Notice of Deposition is premature and unnecessary. It should be quashed at this time, subject to renewal only if this proceeding is set for evidentiary proceedings and other, less intrusive, means of discovery prove to be insufficient for OCC to obtain the information it seeks for such evidentiary proceedings.

## MEMORANDUM IN SUPPORT OF MOTION TO QUASH

OCC's notice of deposition is premature and unnecessary. DP&L has already offered to respond in writing to the specific questions that OCC set forth in its Notice of Deposition. DP&L, in fact, will commit here that, subject to normal privileges and normal objections on grounds of relevance or other valid grounds for objection, it will respond in writing to any and all reasonable document requests and interrogatories that OCC may wish to propound with respect to the issues raised in this proceeding.

DP&L has already provided OCC with responses to 19 interrogatories and eight document requests. To the extent, OCC seeks additional information with respect to those interrogatories and document requests, DP&L remains willing to respond to reasonable follow-up interrogatories and document requests. To the extent that OCC is unsatisfied with one or

more of DP&L's prior responses, the appropriate remedy is a motion to compel. There is no need to schedule a deposition to obtain the information that OCC seeks.

Moreover, this proceeding is not currently established as an evidentiary, adversarial proceeding. The Commission established this proceeding so that an outside auditor could examine DP&L's books and records and to prepare a report.<sup>1</sup> That has occurred. An Entry by the Attorney Examiner has permitted comments to be filed, which has also occurred.<sup>2</sup> But this case has not been set for evidentiary hearings. In the absence of that, a deposition is premature – it cannot produce probative relevant evidence for use in an evidentiary hearing.

DP&L recognizes that the Public Utilities Commission of Ohio ("PUCO" or "Commission") has promulgated no specific rules defining the exact circumstances under which depositions are necessary or appropriate. But DP&L also notes that the general practice before both the Commission and Ohio courts is that other, less intrusive means of discovery are preferred at least as the initial steps in a litigated matter.

### **Conclusion.**

DP&L respectfully moves that OCC's Notice of Deposition be quashed at this time, without prejudice. OCC may choose to renew its Notice of Deposition if this proceeding becomes set for evidentiary hearings and if OCC is unable to obtain through DP&L's voluntary willingness to provide responses in writing to reasonable interrogatories and documents requests.

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<sup>1</sup> *In the Matter of the Review of the Reconciliation Rider of The Dayton Power and Light Co.*, Case No. 20-165-EL-RDR, Entry, Jan. 29, 2020.

<sup>2</sup> *Id.*, Entry at ¶ 16, Nov. 30, 2020.

Respectfully submitted,

/s/ *Randall V. Griffin*

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January 15, 2021

## CERTIFICATE OF SERVICE

I, hereby certify that a copy of the foregoing was served via electronic transmission upon the following parties of record this 15<sup>th</sup> day of January 2021.

/s/ *Randall V. Griffin*

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Summary: Motion to Quash Notice of Deposition electronically filed by Mr. Randall V Griffin on behalf of The Dayton Power and Light Company