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**Legal Department**

(937)259-7348 Direct Dial  
(937)259-7178 Telefax  
e-mail: Athan.Vinolus@DPLInc.com

August 16, 2000

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**VIA FACSIMILE AND OVERNIGHT MAIL**

Fax # 614-466-0313  
Daisy Crockron  
PUCO – Docketing Division  
180 East Broad Street, 10<sup>th</sup> Floor  
Columbus, Ohio 43215

Re: Case No. Case No. 99-1687-EL-ETP

Dear Ms. Crockron:

Enclosed please find the original plus 26 copies of the Motion Of The Dayton Power And Light Company To Establish Effective Date For Implementation Of The Universal Service Rider. This document was sent via facsimile for filing in the above-referenced proceeding on Wednesday, August 16, 2000. Please date stamp with Wednesday's filing date the additional copy that is enclosed and return it to me in the self-addressed and stamped envelope provided.

Thank you for your assistance and your attention to this matter.

Very truly,

Athan A. Vinolus  
Associate Counsel

Enclosure

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The Dayton Power and Light Company • P.O. Box 8825 • Dayton, Ohio 45401

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

**RECEIVED**  
**AUG 1 8 2000**  
DOCKETING DIVISION  
PUCO

In the Matter of the Application of the	)	
Dayton Power & Light Company for	)	
Approval of its Transition Plan, for	)	Case No. 99-1687-EL-ETP
The Opportunity to Receive Transition	)	Case No. 99-1688-EL-AAM
Revenues, for Approval to Change	)	Case No. 99-1689-EL-ATA
Accounting Methods, and Approval to	)	
Amend its Tariff.	)	
In the Matter of the Application of	)	
FirstEnergy Corp. on Behalf of	)	
Ohio Edison Company, The	)	Case No. 99-1212-EL-ETP
Cleveland Electric Illuminating	)	Case No. 99-1213-EL-ATA
Company and The Toledo Edison	)	Case No. 99-1214-EL-AAM
Company for Approval for Their	)	
Transition Plans and for Authorization	)	
To Collect Transition Revenues.	)	
In the Matter of the Application of	)	
The Cincinnati Gas & Electric Company	)	Case No. 99-1658-EL-ETP
For Approval of its Electric Transition Plan	)	Case No. 99-1659-EL-ATA
Approval of Tariff Changes and New	)	Case No. 99-1660-EL-ATA
Tariffs, Authority to Modify Current	)	Case No. 99-1661-EL-AAM
Accounting Procedures, and Approval	)	Case No. 99-1662-EL-AAM
To Transfer its Generating Assets to an	)	Case No. 99-1663-EL-UNC
Exempt Wholesale Generator.	)	
In the Matter of the Applications of	)	
Columbus Southern Power Company	)	Case No. 99-1729-EL-ETP
And Ohio Power Company for Approval	)	Case No. 99-1730-EL-ETP
Of Their Electric Transition Plans and	)	
For Receipt of Transition Revenues.	)	
In the Matter of the Application of	)	
Monongahela Power Company dba	)	Case No. 00-02-EL-ETP
Allegheny Power for Approval of an	)	
Electric Transition Plan.	)	

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**MOTION OF THE DAYTON POWER AND  
LIGHT COMPANY TO ESTABLISH EFFECTIVE DATE  
FOR IMPLEMENTATION OF THE  
UNIVERSAL SERVICE RIDER**

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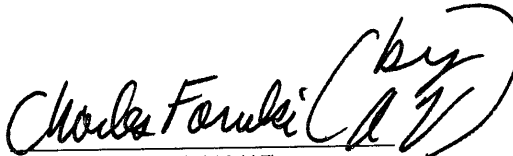
The Dayton Power and Light Company ("DP&L") moves for an order establishing January 1, 2001 as the implementation date on which DP&L must apply its Universal Service Fund ("USF") rider. As more fully set forth in the attached Memorandum in Support, several statutory prerequisites for implementation of USF rider rates have not occurred, or have been delayed. Therefore impediments prevent DP&L from completing by September 1, 2000 the programming requirements necessary for DP&L's billing system. Accordingly, the proposed effective September 1, 2000 implementation date of the USF rider is unreasonable.

Therefore DP&L requests that the Commission make effective the applicable USF rider on January 1, 2001, and allow the applicable Percentage of Income Payment Plan Program ("PIPP") stay in effect until such date.

Respectfully submitted,



Athan A. Vinolus (0040174)  
Associate Counsel  
THE DAYTON POWER AND LIGHT  
COMPANY  
MacGregor Park  
1065 Woodman Avenue  
Dayton, OH 45432  
Telephone: (937) 259-7348  
Telecopier: (937) 259-7178  
E-Mail athan.vinolus@DPLinc.com



Charles J. Faruki (0010417)  
Trial Attorney  
Paul L. Horstman (0010452)  
FARUKI GILLIAM & IRELAND P.L.L.  
500 Courthouse Plaza, S.W.  
10 North Ludlow Street  
Dayton, Ohio 45402  
Telephone: (937) 227-3705  
Telecopier: (937) 227-3717  
E-Mail: cfaruki@fgilaw.com

Counsel for The Dayton Power  
and Light Company

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**MEMORANDUM IN SUPPORT**

**I. BACKGROUND**

As of the filing of the instant motion, the Ohio Department of Development (“ODOD”) is in the final stages of promulgating rules to govern the USF and low-income customer assistance programs. While ODOD’s proposed rules were filed and refiled at the Joint Committee on Agency Rule Review (“JCARR”), the rules have not yet become effective and cannot not be effective any earlier than August 25, 2000. The delays in finalizing ODOD’s rules have prevented DP&L from programming its computers in time to implement the requirements of these rules before January.

DP&L has taken measures to program its billing system to meet the anticipated requirements of ODOD’s rules. However, as the rules have evolved, so have the requirements that will be placed on DP&L’s billing system. An additional complication is the fact that DP&L currently maintains several unique programs within its PIPP program that are not statewide programs. These unique programs include DP&L’s PIPP crediting Program, DP&L’s fresh start program, and DP&L’s equalized payment plan under the PIPP program. Under ODOD’s pending rules and administration of the low-income customer assistance programs, it is unclear which, if any, of DP&L’s specialized programs will continue. If DP&L is to continue to furnish its additional benefits for low-income customers, then these program costs must be considered. The rules do not address how DP&L will be reimbursed if it should maintain these programs. Yet a further complication is that DP&L has both gas and electric customers and a sophisticated crediting system under these programs. The rules fail to address comprehensively all of the issues associated with these programs.

The rules require that utilities enter into written agreements with ODOD. ODOD's pending rule 122-12-2-01 (A) would define the "Agreement" as:

"the agreement to be entered into by and between the director [of ODOD] and each electric distribution utility,... which will set forth specific provisions that shall govern the relationship between the two entities."

See also, ODOD pending rules 122:12-2-01 (A), (B), (C)(2), (C)(3), (D), 122:12-2-04 (H), (I) and 122:12-2-05. The draft written agreements were only late last week proposed to the utilities. DP&L is depending on the content and details of the final written agreement to assure reimbursement for these programs and to determine the future of some of DP&L's specialized programs.

Since so many details and requirements have been in limbo, DP&L cannot complete the programming of its billing system, and will not be able to do so until it knows how these outstanding issues will be resolved. With only two weeks left before the proposed USF rider is proposed to be implemented, DP&L will not have time to program its billing system to implement the proposed USF rate by September 1, 2000.

Further, there are numerous statutory prerequisites that have not occurred sufficiently prior to the proposed implementation date of the proposed USF rate. Therefore, DP&L requests that the PUCO establish January 1, 2001 as the implementation date for DP&L's USF rider rate. DP&L will continue applying its PIPP rider rate until that time. That date is also appropriate because it is the starting date of competitive retail electric service.

## II. ARGUMENT

### A. Due To The Missed and Delayed Statutory Prerequisites, The Implementation of The Proposed USF Rider on September 1, 2000 is Unlawful and Unreasonable

Ohio Revised Code ("R.C.") § 4928.51 establishes, *inter alia*, the USF into which universal services are to be deposited. R.C. § 4928.52 describes the component revenues of the USF. R.C. § 4928.53 authorizes the Director of ODOD to administer the low-income customer

assistance programs. Further, R.C. § 4928.53 (B)(1) mandates that ODOD adopt rules by March 1, 2000 in order to carry out R.C. §§ 4928.51 through 4928.58. There are numerous prerequisites in R.C. §§ 4928.51 through 4928.53 that either have not occurred or have been delayed. Accordingly, the implementation of the USF rider should not take place until January 1, 2001.

1. ODOD Failed To Meet The R.C. § 4928.53 (B)(1) Prerequisite To Promulgate Rules

R.C. § 4928.53 (B)(1) states, in pertinent part, that

“Not later than March 1, 2000, the director [of ODOD]... shall adopt rules to carry out sections 4928.51 to 4928.58 of the Revised Code and ensure the effective and efficient administration and operation of the low-income customer assistance programs. The rules shall take effect on the (sic) July 1, 2000.” (Emphasis added.)

As stated above, there was a statutory mandate and prerequisite that ODOD adopt rules to carry out, *inter alia*, R.C. §§ 4928.51 through 4928.53. Such rules were not adopted by March 1, 2000 and were not in effect by July 1, 2000. In fact, such rules are currently pending before the JCARR. Certainly, the General Assembly established the above-mentioned deadlines in order to allow utilities, as well as ODOD, adequate time to make programming changes and to take other difficult and time-consuming measures to satisfy the mandates of those rules. The statute allowed utilities at least four months to take action to implement the USF rider. While the ODOD’s pending rules have undergone repeated modifications and refilings, utilities have not yet been provided any time in which to expend resources on programming changes and other measures, to comply with the adopted rules and implement the proposed USF rider. (It would not have been prudent for DP&L to expend resources on expensive programming changes based on proposed rules that were consistently evolving.)

Thus the most fundamental prerequisites of adopting rules and establishing a USF rider rate have not yet occurred. Accordingly, this Commission should provide DP&L sufficient time

to satisfy ODOT's rules, once they are promulgated, and establish an implementation date of January 1, 2001 for DP&L's USF rider.

2. The USF Rider Is a Rider on Retail Electric Distribution Service Rate As Determined By the Commission Under R.C. Chapter 4928, And Such Rates Have Not Yet Been Determined

R.C. § 4928.52 (A) states, in part:

"The universal service rider shall be a rider on retail electric distribution service rates as such rates are determined by the public utilities commission pursuant to this chapter." (Emphasis added).

The above prerequisite only allows the USF rider to be applicable to retail electric distribution service rates that have been determined by the Commission pursuant to R.C. Chapter 4928. The Commission has not yet issued any Order under R.C. Chapter 4928 determining DP&L's retail electric distribution service rates. It is unlikely that such a determination will be made by September 1, 2000. Accordingly, there are no such determined rates for DP&L upon which to apply the proposed USF rate.

Therefore, the Commission should establish an implementation date of January 1, 2001 on which the USF rider should be applied to DP&L's retail electric distribution service rates determined by this Commission.

3. An Audit To Create DP&L's Baseline for the PIPP Program Component of the Low-Income Assistance Programs Has Not Occurred

In order to determine what revenues should be included in the USF rider, R.C. § 4928.51(D) requires that an audit of each utility should have been completed by July 1, 2000, for the purpose of establishing a baseline for the PIPP program component of the low-income assistance programs. Such an audit has not occurred. Additional time may be necessary to determine whether DP&L's baseline for the PIPP program component of low-income assistance programs is reasonably accurate. Accordingly, the implementation date for DP&L's USF rider should be January 1, 2001.

4. A September 1, 2000 Implementation Date of the Proposed USF Rider is Unlawful Because The R.C. §§ 4909.18 and 4909.19 Procedural Prerequisites of Public Notice and Hearing Have Not Occurred

It is well established that the Commission may not increase rates without publication of notice and an opportunity for hearing for objecting parties. R.C. §§ 4909.18 and 4909.19. In the present matter, DP&L's current Percentage of Income Payment Plan Program rate is 0.0005700. ODOD's proposed USF rider rate will increase this cost to consumers to 0.0005835. Failing to follow the Commission's statutory procedures for increasing customer rates could jeopardize the legality of such rates. Accordingly, the Commission should not implement the proposed USF rider until the Commission's procedural prerequisites have been satisfied.

B. This Commission Should Establish DP&L's USF Rider Implementation Date as January 1, 2001 Because An Earlier Implementation Date Is Unreasonable Due To Real and Substantial Programming Impediments

As demonstrated, numerous outstanding issues must be resolved before DP&L can complete programming changes for its billing system. First, the ODOD did not timely promulgate rules to establish the parameters of the billing system in order for DP&L to meet ODOD's expectations and requirements. Second, details of the requirements and answers to questions pertaining to the reimbursement of DP&L for its specialized programs and the future, if any, of these programs must be addressed in the agreement with ODOD. Only after these impediments are removed can DP&L complete the programming necessary for its billing system. The programming cannot be accomplished by September 1, 2000.

DP&L should not be expected to commit resources to complete programming to meet requirements that may be changed, or to meet assumptions as to reimbursement of specialized programs when such programs may not exist in the future. It would be unreasonable for DP&L or its customers to pay for programming and reprogramming of DP&L's billing system. (Even if it were possible to do so, DP&L should not be required to program its billing system for an



interim period until January 1, 2001, and then reprogram the system to meet different requirements after that date.)

DP&L should be provided with adequate time to accomplish programming to meet requirements of final rules that are in effect and to satisfy the terms of the yet-to-be-negotiated executed agreement with ODOD. Accordingly, this Commission should establish an implementation date of January 1, 2001 for DP&L's USF rider.

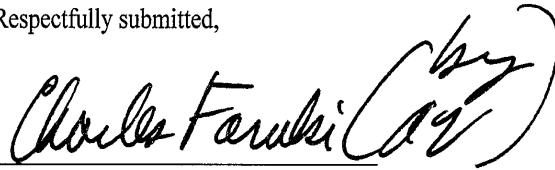
### CONCLUSION

DP&L requests that this Commission establish January 1, 2001 as the implementation date for DP&L's USF rider, and allow DP&L's PIPP program to be applicable until January 1, 2001.

Respectfully submitted,



Athan A. Vinolus (0040174)  
Associate Counsel  
THE DAYTON POWER AND LIGHT  
COMPANY  
MacGregor Park  
1065 Woodman Avenue  
Dayton, OH 45432  
Telephone: (937) 259-7348  
Telecopier: (937) 259-7178  
E-Mail [athan.vinolus@DPLinc.com](mailto:athan.vinolus@DPLinc.com)



Charles J. Faruki (0010417)  
Trial Attorney  
Paul L. Horstman (0010452)  
FARUKI GILLIAM & IRELAND P.L.L.  
500 Courthouse Plaza, S.W.  
10 North Ludlow Street  
Dayton, Ohio 45402  
Telephone: (937) 227-3705  
Telecopier: (937) 227-3717  
E-Mail: [cfaruki@fgilaw.com](mailto:cfaruki@fgilaw.com)

Counsel for The Dayton Power  
and Light Company

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion of The Dayton Power and Light company to Establish Effective Date for Implementation of the Universal Service Rider, has been served via electronic mail to the following counsel of record, this 16<sup>th</sup> day of August 2000:

John W. Bentine, Esq.  
Chester Willcox and Saxbe  
Suite 900  
17 South High Street  
Columbus, OH 43215-3413

Sally W. Bloomfield, Esq.  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215-4291

Samuel C. Randazzo, Esq.  
McNees, Wallace & Nurick  
Suite 1700  
21 East State Street  
Columbus, OH 43215

Terry Etter, Esq.  
Ohio Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, OH 43215-3485

Ed Hess  
PUCO  
180 E. Broad Street  
Columbus, OH 43215-3793

Ellis Jacobs  
Legal Aid Society of Dayton  
Suite 500  
333 W. First Street  
Dayton, OH 45402-3031

Howard Petricoff, Esq.  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
Post Office Box 1008  
Columbus, OH 43216-1008

Janine L. Migden, Esq.  
Senior Director, State Governmental Affairs  
Enron Corp.  
400 Metro Place North, Suite 310  
Dublin, OH 43017

John R. Doll, Esq.  
Logothetis Pence & Doll  
Suite 1100  
111 West First Street  
Dayton, OH 45402-1156

Jutta Martin, Esq.  
Assistant Attorney General  
180 E. Broad St., 7<sup>th</sup> Floor  
Columbus, OH 43215

Robert P. Mone, Esq.  
Scott A. Campbell, Esq.  
Thompson Hine & Flory LLP  
7<sup>th</sup> Floor  
10 West Broad Street  
Columbus, OH 43215

David C. Rinebolt  
Ohio Partners For Affordable Energy  
4<sup>th</sup> Floor, Suite 5  
337 South Main Street  
Post Office Box 1793  
Findlay, OH 45840

Paul F. Forshay, Esq.  
Keith R. McCrea, Esq.  
Sutherland Asbill & Brennan LLP  
1275 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2415

Peter Trombley  
Shell Energy Services Co., L.L.C.  
Post Office Box 4402  
Houston, TX 77210

Craig G. Goodman, Esq.  
President  
National Energy Marketers Association  
333 K Street, N.W., Suite 425  
Washington, DC 20007

Maureen R. Grady, Esq.  
369 S. Roosevelt Avenue  
Columbus, OH 45209

Wanda M. Schiller, Esq.  
Strategic Energy, L.L.C.  
Two Gateway Center  
Pittsburgh, PA 15222

Richard L. Sites  
Staff Legal Counsel  
OHA: The Association for Hospitals and  
Health Systems also doing business as the  
Ohio Hospital Association  
155 East Broad Street, 15th Floor  
Columbus, OH 43215-3620

Scott H. Strauss, Esq.  
David B. Lieb, Esq.  
Spiegel & McDiarmid  
1350 New York Avenue, NW  
Suite 1100  
Washington, DC 20005-4798

Judith B. Sanders  
Bell, Royer & Sanders Co., LPA  
33 South Grant Avenue  
Columbus, OH 43215

Vicki L. Deisner, Esq.  
Ohio Environmental Council  
1207 Grandview Ave. Room 201  
Columbus, OH 43212-3449

Jeffrey L. Small, Esq.  
Chester, Willcox & Saxbe LLP  
17 South High Street, Suite 900  
Columbus, OH 43215

William M. Ondrey Gruber, Esq.  
2714 Leighton Road  
Shaker Heights, OH 44120

Jodi M. Elsass-Locker, Esq.  
Assistant Attorney General  
77 South High Street, 29<sup>th</sup> Floor  
Columbus, OH 43215

  
Charles J. Faruki