

FILE

5



Working For You Today And Tomorrow

Legal Department
1065 Woodman Drive
Dayton, Ohio 45432

RECEIVED-DOCKETING DIV

2002 DEC 23 AM 11:13

PUCO

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

December 20, 2002

Daisy Crockron
PUCO - Docketing Division
180 East Broad Street, 10th Floor
Columbus, Ohio 43215

RE: Case No. 02-2627-AU-COI

Dear Ms. Crockron:

Enclosed please find for filing in the above-referenced proceedings the original plus 15 copies of The Dayton Power and Light Company's Memorandum Contra The Request For Public Hearings Filed By the Consumers For Fair Utility Rates, *et al.* Please date stamp the additional copy that is also enclosed and return it to me in the enclosed, self-addressed and stamped envelope.

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

Very truly,

A handwritten signature in cursive script, appearing to read "Athan A. Vinolus".

Athan A. Vinolus
Associate Counsel

Enclosure

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business
Technician AMW Date Processed 12/23/02

PUCOCoverLtr

The Dayton Power and Light Company • P.O. Box 8825 • Dayton, Ohio 45401
1065 Woodman Drive • Dayton, Ohio 45432

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission)
Investigation of the Financial Condition of)
Ohio's Regulated Public Utilities)

Case No.: 02-2627-AU-COI

**THE DAYTON POWER AND LIGHT COMPANY'S MEMORANDUM
CONTRA THE REQUEST FOR PUBLIC HEARINGS FILED BY THE
CONSUMERS FOR FAIR UTILITY RATES, ET AL.**

Pursuant to Ohio Administrative Code ("O.A.C.") Rule 4901-1-12, The Dayton Power and Light Company ("DP&L") files this memorandum contra to the Request For Public Hearings Filed By The Consumers For Fair Utility Rates, Empowerment Center of Greater Cleveland, and The Neighborhood Environmental Coalition (collectively "Movants"). For the reasons set forth more fully below, the Public Utilities Commission of Ohio ("PUCO" or "the Commission") should deny the request of the Movants. A public hearing, with presentations by utilities as to their financial soundness and to "educate the public and the rate payers about deregulation," would be improper in the present proceeding. Movants' Request at p.1. A public hearing would also raise concerns regarding confidential and competitively sensitive financial information of the utilities. The Commission should maintain this proceeding as simply that - a Commission investigation and not a public forum to second-guess and quiz utilities on proprietary competitive information.

I. MEMORANDUM CONTRA MOVANTS' REQUEST

A. The Commission's Present Investigation Is An Improper Method For Consumer Education On Deregulation Matters

As part of Movants' request, they state that "public hearings would be an opportunity to educate the public and the rate payers about deregulation." Movants' Request at p. 1. Amended

Substitute Senate Bill No. 3 ("SB3") provides other specific measures for consumer education. Particularly, Ohio Revised Code ("R.C.") Section 4928.42 requires that the utilities spend in the aggregate up to thirty-three million dollars on consumer education on electric restructuring. Such expenditures and education efforts have begun and will continue in the future. The present Commission investigation as to the financial condition of public utilities must not be transformed into deregulation education hearings. Accordingly, the Commission should deny Movants' request.

B. Public Hearings Are Not The Appropriate Forum To Investigate Proprietary Information

When the Commission started this present investigation, it recognized that it may involve inquiries into sensitive information of utilities. In its October 10, 2002 Entry in this proceeding, the Commission indicated that the parties should assume that the Commission would afford adequate protection to proprietary and competitively sensitive information. See, Entry at pp. 1-2, paragraph No. 4. Public hearings would certainly complicate the protection of such information and could defeat such assurances by the Commission. Further, public hearings in this proceeding raise additional concerns into potential discovery issues in other legal proceedings that are taking place before tribunals other than the Commission. There could be efforts by parties to turn such public hearings into question and answer sessions to supplement their discovery in those other legal proceedings.

Accordingly, the Commission should conduct its investigation and provide the protection necessary for proprietary information. It is the Commission's duty, not the Movants' or public's duty, to conduct this investigation pursuant to its limited statutory authority to ensure the financial soundness of public utilities. The Commission's October 10, 2002 Entry in this proceeding simply sought comments on the breadth of the investigation that the Commission was


about to undertake, and did not indicate this proceeding was to be an adversarial proceeding, a discovery free-for-all, or one needing any form of public hearing.

DP&L also points out that none of the supporting materials attached to Movants' Request involve DP&L. No basis is shown in the Request to include DP&L in any public hearing.

CONCLUSION

For the above reasons, DP&L requests that the Commission deny Movants' Request for public hearing.

Respectfully submitted,



ATHAN A. VINOLUS (0040174)
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, Ohio 45432
Telephone: (937) 259-7348
Facsimile: (937) 259-7178
Athan.Vinolus@DPLinc.com

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of The Dayton Power and Light Company's Memorandum Contra The Request For Public Hearings Filed By The Consumers For Fair Utility Rates, (*et al.*) was served by regular U.S. Mail, postage prepaid, this 20th day of December, 2002 upon the following:

Robert N. Fronek
4205 Chester Ave.
Cleveland, OH 44103

Filed on behalf of Utility Workers
Union of America

Terry L. Etter, Esq.
10 West Broad Street, Ste. 1800
Columbus, OH 43215-3485

Counsel for Ohio Consumers'
Counsel

Helen L. Liebman
Jones, Day, Reavis & Pogue
41 S. High Street, Ste. 1900
Columbus, OH 43215

Counsel for The East Ohio Gas
Company dba Dominion East Ohio

James W. Burk, Esq.
76 South Main Street
Akron, OH 44308

Counsel for FirstEnergy Corp.

Gary A. Jack, Esq.
1310 Fairmont Avenue
Fairmont, WV 26554

Counsel for Monongahela Power Co.
dba Allegheny Energy

Samuel C. Randazzo, Esq.
McNees, Wallace & Nurick
Fifth Third Center
21 East State Street Suite 910
Columbus, Oh 43215

Counsel for The Industrial Energy
Users-Ohio

Daniel R. Conway, Esq.
Porter, Wright, Morris & Arthur
41 South High Street
Columbus, OH 43215

Counsel for Century Tel of Ohio

Joseph R. Stewart, Esq.
50 West Broad Street, Ste. 3600
Columbus, OH 43215

Counsel United Telephone Company
of Ohio dba Sprint

Stephen B. Seiple
200 Civic Center Drive
P.O. Box 117
Columbus, OH 43216-0117

Counsel for Columbia Gas of Ohio,
Inc.

William B. Schuck
2352 McCauley Court
Columbus, OH 43220

Counsel for Competition Ohio

Christopher J. Wilson, Esq.
201 East Fourth Street, Suite 102-620
Cincinnati, OH 45202

Counsel for Cincinnati Bell
Telephone Company

Gretchen J. Hummel, Esq.
McNees, Wallace & Nurick
Fifth Third Center
21 East State Street, Suite 1700
Columbus, OH 43215-4228

Counsel for Vectren Energy Delivery
of Ohio

Douglas W. Trabaris, Esq.
222 W. Adams Street, Ste. 1500
Chicago, IL 60606

Counsel for AT&T
Communications of Ohio, Inc.

John J. Kirn, Jr., Esq.
1223 West Sixth Street
Cleveland, OH 44113

Counsel for The Consumers for
Fair Utility Rates, *et al.*

Marvin I. Resnik, Esq.
1 Riverside Plaza
Columbus, OH 43215

Counsel for Columbus Southern
Power Co. and Ohio Power Co.

Jon F. Kelly, Esq.
150 E. Gay St., Room 4-A
Columbus, OH 43215

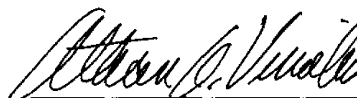
Counsel for SBC Ameritech

John J. Finnigan, Jr., Esq.
2500 Atrium II
P.O. Box 960
Cincinnati, OH 45201-0960

Counsel for CG&E

Thomas E. Lodge, Esq.
Thomson Hine LLP
10 West Broad Street, Ste. 700
Columbus, OH 43215-3435

Counsel for Verizon North, The
Ohio Telecome Association and
Alltel Ohio and Western Reserve
Telephone Company



Athan A. Vinolus