

**FARUKI IRELAND & COX P.L.L.**

ATTORNEYS AT LAW

CHARLES J. FARUKI  
D. JEFFREY IRELAND  
JEFFREY T. COX  
RONALD I. RAETHER, JR.  
PAUL L. HORSTMAN  
THOMAS R. KRAEMER  
LAURA A. SANOM  
JEFFREY S. SHARKEY  
MARTIN A. FOOS

500 COURTHOUSE PLAZA, S.W.  
10 NORTH LUDLOW STREET  
DAYTON, OHIO 45402

Jeffrey S. Sharkey  
(937) 227-3747  
jsharkey@ficlaw.com

BRADLEY D. ANDERSON  
JACQUELINE V. BROWN  
CHAD E. BURTON  
DONALD E. BURTON  
MELINDA K. BURTON  
JOHN A. FISCHER  
CORI R. FUNK  
ROBERT W. GURRY  
R. HOLTZMAN HEDRICK  
ROBERT W. KIEFABER  
KATHERINE A. MILTNER  
REBECCA M. OWEN  
TIMOTHY G. PEPPER  
K. LYNN POSEY  
ANDREW J. REITZ  
ERIN E. RHINEHART  
ADAM V. SADLOWSKI  
MARK I. SEDOR  
ANGELA M. SINKOVITS  
NICHOLAS M. SMITH  
ERIC P. VOIGT  
KATRINA L. WAHL  
BRIAN D. WRIGHT

ROBERT P. BARTLETT, JR.

January 16, 2007

**FEDERAL EXPRESS**

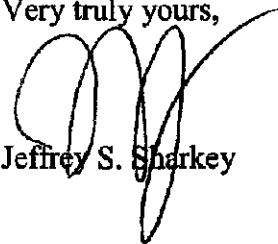
The Public Utilities Commission of Ohio  
Attention: Renee Jenkins  
Docketing Division  
180 East Broad Street  
10th Floor  
Columbus, OH 43215

RE: AT&T Ohio v. The Dayton Power and Light Company,  
PUCO Case No. 06-1509-EL-CSS

Dear Ms. Jenkins:

Enclosed are an original and twelve copies of The Dayton Power and Light Company's Motion to Strike AT&T Ohio's Unauthorized Reply Memorandum or, in the Alternative, Motion for Leave to File Surreply Memorandum in Opposition to Motion for Emergency Relief in the above-captioned matter (which was fax filed on Tuesday, January 16, 2007). Please return one file-stamped copy of the document to me in the enclosed self-addressed, stamped envelope.

Very truly yours,

  
Jeffrey S. Sharkey

JSS/tes  
Enclosures

cc: Michael T. Sullivan, Esq. (w/enclosure; via electronic mail and U.S. mail)  
Jon F. Kelly, Esq. (w/enclosure; via electronic mail and U.S. mail)  
Jack B. Richards, Esq. (w/enclosure; via e-mail)  
Douglas J. Behr, Esq. (w/enclosure; via e-mail)  
Thomas B. Magee, Esq. (w/enclosure; via e-mail)  
Gregory E. Kunkle, Esq. (w/enclosure; via e-mail)  
Charles J. Faruki, Esq. (w/enclosure)

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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

AT&T OHIO,

Complainant,

v.

THE DAYTON POWER AND LIGHT  
COMPANY,

Respondent.

CASE NO. 06-1509-EL-CSS

PUCO

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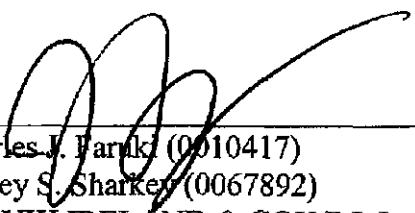
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**THE DAYTON POWER AND LIGHT COMPANY'S MOTION TO STRIKE  
AT&T OHIO'S UNAUTHORIZED REPLY MEMORANDUM  
OR, IN THE ALTERNATIVE, MOTION FOR LEAVE TO FILE SURREPLY  
MEMORANDUM IN OPPOSITION TO MOTION FOR EMERGENCY RELIEF**

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Pursuant to Ohio Admin. Code § 4901-1-12, The Dayton Power and Light Company ("DP&L") hereby moves to strike the Reply Memorandum of AT&T Ohio in Support of Motion for Emergency Relief ("Reply"), because no such pleading is permitted under the Ohio Administrative Code. If, however, the Commission does not strike AT&T's unauthorized and abusive pleading, DP&L moves for leave to file a surreply memorandum in order to address the unfounded and misleading new facts and arguments raised in AT&T Ohio's Reply. The grounds for this motion are set forth fully in DP&L's supporting memorandum attached to this motion.

Respectfully submitted,



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Charles J. Faruki (0010417)  
Jeffrey S. Sharkey (0067892)  
FARUKI IRELAND & COX P.L.L.  
500 Courthouse Plaza, S.W.  
10 North Ludlow Street  
Dayton, OH 45402  
Telephone: (937) 227-3705  
Telecopier: (937) 227-3717  
E-Mail: cfaruki@ficlaw.com

Jack Richards (to be admitted pro hac vice)  
Douglas J. Behr (to be admitted pro hac vice)  
Thomas B. Magee (to be admitted pro hac vice)  
KELLER AND HECKMAN LLP  
1001 G Street, NW, Suite 500 West  
Washington, DC 20001  
Telephone: (202) 434-4100  
Telecopier: (202) 434-4646  
E-Mail: richards@khlaw.com

Attorneys for Respondent  
The Dayton Power And Light Company

**MEMORANDUM IN SUPPORT OF  
THE DAYTON POWER AND LIGHT COMPANY'S MOTION TO STRIKE  
AT&T OHIO'S UNAUTHORIZED REPLY MEMORANDUM OR,  
IN THE ALTERNATIVE, MOTION FOR LEAVE TO FILE SURREPLY  
MEMORANDUM IN OPPOSITION TO MOTION FOR EMERGENCY RELIEF**

The Dayton Power and Light Company ("DP&L") submits this memorandum in support of its Motion to Strike AT&T Ohio's Unauthorized Reply Memorandum or, in the Alternative, Motion for Leave to File Surreply Memorandum in Opposition to Motion for Emergency Relief.

On or about December 28, 2006, AT&T Ohio filed a Motion for Emergency Relief ("Motion") specifically requesting "emergency relief" from the Commission to remedy what AT&T Ohio claimed to be "immediate and irreparable" injury. Motion at ¶¶ 2-4 and 6-10. Because AT&T Ohio's Motion requested an expedited ruling from the Commission, expedited and limited briefing is provided for under Ohio Admin. Code § 4901-1-12(C). In compliance with these rules, DP&L filed its opposition to AT&T's Motion within seven business days, less than half the time normally provided for opposing a motion.<sup>1</sup> AT&T was not entitled to reply to that opposition "unless specifically requested by the commission, the legal director, the deputy legal director, or the attorney examiner." No such request was made. AT&T Ohio's Reply therefore violates the Commission's procedural rules and must be stricken.

If, however, the Commission chooses not to enforce its procedural regulations and instead accepts AT&T Ohio's unauthorized Reply, DP&L respectfully requests leave to respond to that pleading with a Surreply. A Surreply would assist DP&L in overcoming the procedural disadvantage caused by AT&T Ohio's unauthorized Reply and would enable DP&L to address

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<sup>1</sup> Because the opposition was required to be filed within seven calendar days, and because AT&T Ohio filed its Motion just before the New Year's Eve weekend and holiday, counsel for DP&L were required to spend much of the weekend and holiday preparing its opposition. DP&L doubts that the timing of, and nature of, AT&T's filing was happenstance.

the many new facts and arguments raised by AT&T Ohio for the first time in its unauthorized pleading, including, among other things:

1. AT&T Ohio's repeated and serious mischaracterizations of claimed "admissions" in DP&L's filings, including the erroneous and prejudicial claim that "DP&L actually admits in its pleadings that its rental rate violates the plain language of the Joint Agreement;"
2. AT&T Ohio's repeated and serious mischaracterizations of claimed concessions by DP&L in its filings due to DP&L supposedly "failing to address" certain of AT&T Ohio's unsupported claims;
3. AT&T Ohio's attempt to explain why AT&T Ohio has not paid the default joint use rental rate ("Deficiency Payment") in full, which would have made this proceeding unnecessary, by claiming without any support that DP&L has engaged in "blackmail;"
4. AT&T Ohio's mounting efforts to entangle the Commission in a contract interpretation and financial dispute that is properly before the Montgomery County Court of Common Pleas;
5. AT&T Ohio's increasingly evident intent to ask the Commission to improperly reform a contract under which the parties have been operating for over 75 years and with which AT&T Ohio has no real intention of complying; and
6. AT&T Ohio's astounding contention that it need not support its Motion with any evidence, because this is an "emergency."<sup>2</sup>

Accordingly, for the reasons set forth above, DP&L respectfully moves that the Commission strike AT&T Ohio's unauthorized Reply or, in the alternative, permit DP&L to respond to that Reply with a Surreply that will address in detail these and other unfounded and misleading new arguments by AT&T Ohio.

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<sup>2</sup> See, e.g., *Procter & Gamble Co. v. Stoneham*, 140 Ohio App. 3d 260, 267-68, 747 N.E.2d 268, 273 (Ohio App. Ct. 2000) (any party seeking a preliminary injunction must prove the required elements by "clear and convincing evidence" unless a statute specifically dispenses with this requirement).

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'CF', is written over a horizontal line.

Charles J. Faruki (0010417)

Jeffrey S. Sharkey (0067892)

FARUKI IRELAND & COX P.L.L.

500 Courthouse Plaza, S.W.

10 North Ludlow Street

Dayton, OH 45402

Telephone: (937) 227-3705

Telecopier: (937) 227-3717

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Jack Richards (to be admitted pro hac vice)

Douglas J. Behr (to be admitted pro hac vice)

Thomas B. Magee (to be admitted pro hac vice)

KELLER AND HECKMAN LLP

1001 G Street, NW, Suite 500 West

Washington, DC 20001

Telephone: (202) 434-4100

Telecopier: (202) 434-4646

E-Mail: richards@khlaw.com

Attorneys for Respondent

The Dayton Power And Light Company

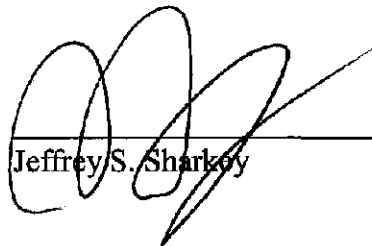
**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing The Dayton Power and Light Company's Motion to Strike AT&T Ohio's Unauthorized Reply Memorandum or, in the Alternative, Motion for Leave to File Surreply Memorandum in Opposition to Motion for Emergency Relief has been served via electronic mail and regular U.S. mail, postage prepaid, upon the following counsel of record, this 16th day of January, 2007:

Michael T. Sullivan, Esq.  
Kara K. Gibney, Esq.  
MAYER, BROWN, ROWE & MAW LLP  
71 South Wacker Drive  
Chicago, IL 60606

Jon F. Kelly, Esq.  
Mary Ryan Fenlon, Esq.  
AT&T OHIO  
150 East Gay Street, Rm. 4-A  
Columbus, OH 43215

Attorneys for Complainant  
AT&T OHIO

  
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Jeffrey S. Sharkov