

**FILE  
FAX**

18

RECEIVED-BOOKETING DIV

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO 2009 JAN -6 AM 10:25

In the Matter of the Application of  
The Dayton Power and Light Company for  
Approval of Its Electric Security Plan

Case No. 08-1094-EL-SSUCO

In the Matter of the Application of  
The Dayton Power and Light Company for  
Approval of Revised Tariffs

Case No. 08-1095-EL-ATA

In the Matter of the Application of  
The Dayton Power and Light Company for  
Approval of Certain Accounting Authority  
Pursuant to Ohio Rev. Code Section 4905.13

Case No. 08-1096-EL-AAM

In the Matter of the Application of  
The Dayton Power and Light Company for  
Approval of Its Amended Corporate  
Separation Plan

Case No. 08-1097-EL-UNC

**MOTION OF THE DAYTON POWER AND LIGHT COMPANY FOR LEAVE TO FILE  
MEMORANDUM IN REBUTTAL TO REPLIES OF HONDA AND CARGILL, AND OF  
OCC TO DP&L MEMORANDUM IN OPPOSITION TO MOTION FOR TWO-WEEK  
EXTENSION OF TIME**

The Dayton Power and Light Company, Inc. ("DP&L") moves for leave to file a Rebuttal Memorandum ("Rebuttal") regarding a two-week extension of time for the remainder the Commission's procedural schedule. The brief Rebuttal Memorandum responds to (1) the joint Reply of Honda of America MFG., Inc. ("Honda") and Cargill, Incorporated ("Cargill"), and (2) the Reply of The Office of the Ohio Consumers' Counsel ("OCC") regarding the time extension (collectively, "Replies"). DP&L requests leave to file the Rebuttal Memorandum, which is attached as Exhibit 1, so that it may respond to and correct inaccurate assertions made in the Replies.

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 SM Date Processed JAN 06 2009

Respectfully submitted,

Judi L. Sobecki (0067186)  
THE DAYTON POWER AND LIGHT  
COMPANY  
1065 Woodman Drive  
Dayton, OH 45432  
Telephone: (937) 259-7171  
Telecopier: (937) 259-7178  
Email: judi.sobecki@dplinc.com

*Charles J. Faruki by R. William Hedrick (0078424)*

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  
Email: cfaruki@fielaw.com

Attorneys for The Dayton Power and Light  
Company

**MEMORANDUM IN SUPPORT OF THE MOTION OF THE DAYTON POWER AND  
LIGHT COMPANY FOR LEAVE TO FILE MEMORANDUM IN REBUTTAL TO  
REPLIES OF HONDA AND CARGILL, AND OF OCC TO DP&L MEMORANDUM IN  
OPPOSITION TO MOTION FOR TWO-WEEK EXTENSION OF TIME**

DP&L requests leave to file a brief, two-page Rebuttal Memorandum regarding a requested time extension in response to the Replies filed by Honda/Cargill and OCC on January 5, 2009. The Rebuttal Memorandum will aid the Commission in ruling upon Honda and Cargill's joint motion by directly responding to and correcting assertions made in the Replies of Honda/Cargill and the OCC. DP&L's Rebuttal Memorandum is necessary to correct inaccurate statements and misleading impressions left by the Reply of Honda and Cargill, and to respond to one point of OCC.

Respectfully submitted,

Judi L. Sobecki (0067186)  
THE DAYTON POWER AND LIGHT  
COMPANY  
1065 Woodman Drive  
Dayton, OH 45432  
Telephone: (937) 259-7171  
Telecopier: (937) 259-7178  
Email: judi.sobecki@dpline.com

*Charles J. Faruki by R. Holtzman Hedrich (0078424)*

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  
Email: cfaruki@ficlaw.com

Attorneys 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 for Leave to File Memorandum in Rebuttal to Replies of Honda and Cargill, and of OCC to DP&L Memorandum in Opposition to Motion for Two-Week Extension of Time has been served via electronic mail upon the following counsel of record, this 6th day of January, 2009:

Samuel C. Randazzo, Esq.  
Lisa G. McAlister, Esq.  
Joseph M. Clark, Esq.  
MCNEES WALLACE & NURICK LLC  
21 East State Street, 17th Floor  
Columbus, OH 43215-4228

Attorneys for Industrial Energy Users-Ohio

John W. Bentine, Esq.  
Matthew S. White, Esq.  
Mark S. Yurick, Esq.  
CHESTER WILLCOX & SAXBE LLP  
65 East State Street, Suite 1000  
Columbus, OH 43215

Attorneys for The Kroger Company

Jacqueline L. Roberts, Esq.  
Michael E. Idzkowski, Esq.  
Richard Reese, Esq.  
Gregory J. Poulos, Esq.  
OFFICE OF OHIO CONSUMERS' COUNSEL  
10 West Broad Street, Suite 1800  
Columbus, OH 43215

David Boehm, Esq.  
Michael L. Kurtz, Esq.  
BOEHM, KURTZ & LOWRY  
36 East Seventh Street Suite 1510  
Cincinnati, OH 45202-4454

Attorney for Ohio Energy Group, Inc.

David C. Rinebolt, Esq.  
Colleen L. Mooney, Esq.  
OHIO PARTNERS FOR AFFORDABLE ENERGY  
231 West Lima Street  
Findlay, OH 45839-1793

M. Howard Petricoff, Esq.  
Stephen M. Howard, Esq.  
Michael J. Settineri, Esq.  
VORYS, SATER, SEYMOUR AND PEASE LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, OH 43216-1008

Cynthia A. Fonner, Esq.  
Senior Counsel  
CONSTELLATION ENERGY RESOURCES, LLC  
550 West Washington Blvd., Suite 300  
Chicago, IL 60661

Attorneys for Constellation NewEnergy, Inc. and  
Constellation Energy Commodities Group, Inc.

David I. Fein  
Vice President, Energy Policy - Midwest  
CONSTELLATION ENERGY GROUP, INC.  
550 West Washington Blvd., Suite 300  
Chicago, IL 60661

Tasha Hamilton  
Manager, Energy Policy  
CONSTELLATION ENERGY GROUP, INC.  
111 Market Place, Suite 600  
Baltimore, MD 21202

Henry Eckhart, Esq.  
50 West Broad Street, Suite 2117  
Columbus, OH 43215-3301

Robert Ukeiley, Esq.  
LAW OFFICE OF ROBERT UKEILEY

435R Chestnut Street, Suite 1  
Berea, KY 40403

Attorneys for Sierra Club Ohio Chapter  
Ned Ford  
539 Plattner Trail  
Beavercreek, OH 45430

Richard L. Sites, Esq.  
General Counsel and Senior Director of Health Policy  
Ohio Hospital Association  
155 East Broad Street, 15th Floor  
Columbus, OH 43215-3620

Attorney for The Ohio Hospital Association

Craig I. Smith, Esq.  
Attorney at Law  
2824 Coventry Road  
Cleveland, OH 44120

Attorney for Cargill, Incorporated

Larry Gearhardt, Esq.  
Chief Legal Counsel  
OHIO FARM BUREAU FEDERATION  
280 North High Street  
P.O. Box 182383  
Columbus, OH 43218-2383

Attorney for The Ohio Farm Bureau Federation

Thomas J. O'Brien, Esq.  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, OH 43215-4291

Attorney for The Ohio Manufacturers' Association

Patrick Bonfield, Esq.  
John Danish, Esq.

Christopher L. Miller, Esq.  
Gregory H. Dunn, Esq.

Andre T. Porter, Esq.  
SCHOTTENSTEIN ZOX & DUNN CO., LPA  
250 West Street  
Columbus, OH 43215

Attorneys for The City of Dayton

M. Howard Petricoff, Esq.  
Stephen M. Howard, Esq.  
Michael J. Settineri, Esq.  
VORYS, SATER, SEYMOUR AND PEASE LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, OH 43216-1008

Attorneys for Honda of America Mfg., Inc.

Barth E. Royer, Esq.  
BELL & ROYER CO., LPA  
33 South Grant Avenue  
Columbus, OH 43215-3927

Gary A. Jeffries, Esq.  
Dominion Resources Services, Inc.  
501 Martindale Street, Suite 400  
Pittsburgh, PA 15212-5817

Attorneys for Dominion Retail, Inc.

Barth E. Royer, Esq.  
BELL & ROYER CO., LPA  
33 South Grant Avenue  
Columbus, OH 43215-3927

Nolan Moser, Esq.  
Air & Energy Program Manager  
The Ohio Environmental Council  
1207 Grandview Avenue, Suite 201  
Columbus, OH 43212-3449

Trent A. Dougherty, Esq.  
The Ohio Environmental Council  
1207 Grandview Avenue, Suite 201  
Columbus, OH 43212-3449

Todd Williams, Esq.  
4534 Douglas Road  
Toledo, OH 43613

Attorneys for The Ohio Environmental Council

Jeffrey S. Sharkey by R. Holtzman Hedrick  
Jeffrey S. Sharkey

203730.1



BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In The Matter of The Application of	:	Case No. 08-1094-EL-SSO
The Dayton Power And Light Company For	:	
Approval of Its Electric Security Plan	:	
	:	
In The Matter of The Application of	:	Case No. 08-1095-EL-ATA
The Dayton Power And Light Company For	:	
Approval of Revised Tariffs	:	
	:	
In The Matter of The Application of	:	Case No. 08-1096-EL-AAM
The Dayton Power And Light Company For	:	
Approval of Certain Accounting Authority	:	
Pursuant To Ohio Rev. Code Section 4905.13	:	
	:	
In The Matter of The Application of	:	Case No. 08-1097-EL-UNC
The Dayton Power And Light Company For	:	
Approval of Its Amended Corporate	:	
Separation Plan	:	

---

**MEMORANDUM OF THE DAYTON POWER AND LIGHT COMPANY  
IN REBUTTAL TO REPLIES OF HONDA AND CARGILL, AND OF OCC TO  
DP&L MEMORANDUM IN OPPOSITION TO MOTION FOR  
TWO-WEEK EXTENSION OF TIME**

---

The Dayton Power and Light Company ("DP&L") files this Rebuttal Memorandum to correct three inaccurate statements and misleading impressions left by the Reply of Honda and Cargill, and to respond to one point of OCC.

1. The statement in the Honda/Cargill Reply (p. 2) that deposition dates "for January 2009 [are] still undetermined" is inaccurate. Before receipt of the Reply, on January 5, 2008, DP&L served all parties with a deposition schedule.
2. The moving parties Honda and Cargill have not sought any depositions of DP&L, during the holidays or otherwise. Its statement (p. 2) about the

unavailability of witnesses is, accordingly, misleading. Honda and Cargill admit that they have not even finished reading the Application and accompanying materials in the case filing; DP&L wrote that its witnesses would be available for depositions in January, and for these parties to complain of the unavailability of an unnamed deponent during the holidays is a specious argument. "We are still reading the filing" is not "good cause."

3. With respect to the Honda/Cargill statement (p. 2) about DP&L requesting an extension of time to respond to discovery, the fact is that DP&L has responded to hundreds of OCC discovery requests and asked for a short extension as to only a few of them, to which OCC agreed. The fact remains that Honda and Cargill have yet done nothing besides start to read the filing, and file a motion for a two-week extension of time.

4. Only one point in OCC's Reply warrants comment. The Attorney Examiner wants the parties to work out extensions as to discovery which is what OCC and DP&L have done. OCC refers (p. 2) to a two-week extension as to certain discovery requests; the facts are that for OCC's Seventh Set of Discovery, DP&L had a one-week extension, and for OCC's Eighth Set, DP&L received three days. At no time in December did OCC tell DP&L that the extension to which OCC agreed would, as its Reply now asserts (p. 2), hinder its ability to prepare testimony. To the contrary, the December 23, 2008 email from Ms. Roberts attached as Exhibit A undermines OCC's argument because it shows that in reality, OCC did not want depositions then either: "We're not making deposing attorneys available then either, so that works out!" she wrote.

Respectfully submitted,

Judi L. Sobecki (0067186)  
THE DAYTON POWER AND LIGHT  
COMPANY  
1065 Woodman Drive  
Dayton, OH 45432  
Telephone: (937) 259-7171  
Telecopier: (937) 259-7178  
Email: judi.sobecki@dplinc.com

*Charles J. Faruki by R. Hultman Hedrick (0078424)*

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  
Email: cfaruki@ficlaw.com

Attorneys for The Dayton Power and Light  
Company

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Memorandum of The Dayton Power and Light Company in Rebuttal to Reply of Honda and Cargill to DP&L Memorandum in Opposition to Motion for Two-Week Extension of Time has been served via electronic mail upon the following counsel of record, this \_\_\_\_ day of January, 2009:

Samuel C. Randazzo, Esq.  
Joseph M. Clark, Esq.  
MCNEES WALLACE & NURICK LLC  
21 East State Street, 17th Floor  
Columbus, OH 43215-4228

Attorneys for Industrial Energy Users-Ohio

John W. Bentine, Esq.  
Matthew S. White, Esq.  
Mark S. Yurick, Esq.  
CHESTER WILLCOX & SAXBE LLP  
65 East State Street, Suite 1000  
Columbus, OH 43215

Attorneys for The Kroger Company

Jacqueline L. Roberts, Esq.  
Ann Hotz, Esq.  
Richard Reese, Esq.  
Michael E. Idzkowski, Esq.  
OFFICE OF OHIO CONSUMERS' COUNSEL  
10 West Broad Street, Suite 1800  
Columbus, OH 43215

David Boehm, Esq.  
BOEHM, KURTZ & LOWRY  
36 East Seventh Street Suite 1510  
Cincinnati, OH 45202-4454

Attorney for Ohio Energy Group, Inc.

David C. Rinebolt, Esq.  
Colleen L. Mooney, Esq.  
OHIO PARTNERS FOR AFFORDABLE ENERGY  
231 West Lima Street  
Findlay, OH 45839-1793

M. Howard Petricoff, Esq.  
Stephen M. Howard, Esq.  
VORYS, SATER, SEYMOUR AND PEASE LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, OH 43216-1008

Cynthia A. Fonner, Esq.  
Senior Counsel  
CONSTELLATION ENERGY RESOURCES, LLC  
550 West Washington Blvd., Suite 300  
Chicago, IL 60661

Attorneys for Constellation NewEnergy, Inc. and Constellation Energy  
Commodities Group, Inc.

David I. Fein  
Vice President, Energy Policy - Midwest  
CONSTELLATION ENERGY GROUP, INC.  
550 West Washington Blvd., Suite 300  
Chicago, IL 60661

Tasha Hamilton  
Manager, Energy Policy  
CONSTELLATION ENERGY GROUP, INC.  
111 Market Place, Suite 600  
Baltimore, MD 21202

Henry Eckhart, Esq.  
50 West Broad Street, Suite 2117  
Columbus, OH 43215-3301

Robert Ukeiley, Esq.  
LAW OFFICE OF ROBERT UKEILEY  
435R Chestnut Street, Suite 1  
Berea, KY 40403

Attorneys for Sierra Club Ohio Chapter

Ned Ford  
539 Plattner Trail  
Beavercreek, OH 45430

Richard L. Sites, Esq.  
General Counsel and Senior Director of Health Policy  
Ohio Hospital Association  
155 East Broad Street, 15th Floor  
Columbus, OH 43215-3620

Attorney for The Ohio Hospital Association

Craig I. Smith, Esq.  
Attorney at Law  
2824 Coventry Road  
Cleveland, OH 44120

Attorney for Cargill, Incorporated

Larry Gearhardt, Esq.  
Chief Legal Counsel  
OHIO FARM BUREAU FEDERATION  
280 North High Street  
P.O. Box 182383  
Columbus, OH 43218-2383

Attorney for The Ohio Farm Bureau Federation

Thomas J. O'Brien, Esq.  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, OH 43215-4291

Attorney for The Ohio Manufacturers' Association

Patrick Bonfield, Esq.  
John Danish, Esq.  
Christopher L. Miller, Esq.  
Gregory H. Dunn, Esq.  
Andre T. Porter, Esq.  
SCHOTTENSTEIN ZOX & DUNN CO., LPA  
250 West Street  
Columbus, OH 43215

Attorneys for The City of Dayton

M. Howard Petricoff, Esq.  
Stephen M. Howard, Esq.  
Michael J. Settineri, Esq.  
VORYS, SATER, SEYMOUR AND PEASE LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, OH 43216-1008

Attorneys for Honda of America Mfg., Inc.

Barth E. Royer, Esq.  
BELL & ROYER CO., LPA  
33 South Grant Avenue  
Columbus, OH 43215-3927

Gary A. Jeffries, Esq.  
Dominion Resources Services, Inc.  
501 Martindale Street, Suite 400  
Pittsburgh, PA 15212-5817

Attorneys for Dominion Retail, Inc.


Barth E. Royer, Esq.  
BELL & ROYER CO., LPA  
33 South Grant Avenue  
Columbus, OH 43215-3927

Nolan Moser, Esq.  
Air & Energy Program Manager  
The Ohio Environmental Council  
1207 Grandview Avenue, Suite 201  
Columbus, OH 43212-3449

Trent A. Dougherty, Esq.  
The Ohio Environmental Council  
1207 Grandview Avenue, Suite 201  
Columbus, OH 43212-3449

Todd Williams, Esq.  
4534 Douglas Road  
Toledo, OH 43613

Attorneys for The Ohio Environmental Council

  
Jeffrey S. Sharkey

203714.1



**Sharkey, Jeffrey S.**

---

**From:** Jackie Roberts [roberts@occ.state.oh.us]  
**Sent:** Tuesday, December 23, 2008 11:13 AM  
**To:** Sharkey, Jeffrey S.  
**Subject:** RE: DP&L ESP 08-1094 et al. - OCC's Notice to Take Depositions/Request for Production of Documents

We're not making deposing attorneys available then either, so that works out! I am guessing we would like to start 1/6, but let's talk after Christmas.

Thanks,

Jackie

Jacqueline Lake Roberts  
Assistant Consumers' Counsel  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, 18th Floor  
Columbus, OH 43215  
Tel: 614.466.8574  
Fax: 614.466.9475  
Direct Dial: 614.466.4207

Confidentiality Notice - This communication is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender, at the telephone number listed above, and destroy all copies of this communication.

>>> "Sharkey, Jeffrey S." <JSharkey@ficlaw.com> 12/23/2008 9:36 AM >>>  
Counsel:

This email is to notify you that DP&L will not be making witnesses available on December 29. Depositions for DP&L's witnesses will be scheduled for January 2009, but exact dates and times have not been determined.

Have a Happy Holidays!

Jeff Sharkey.

-----Original Message-----

**From:** Debra Bingham [mailto:bingham@occ.state.oh.us]  
**Sent:** Friday, December 19, 2008 5:04 PM  
**To:** BarthRoyer@aol.com; DRinebolt@aol.com; henryeckhart@aol.com; dhoehm@bkllawfirm.com; mkurtz@bkllawfirm.com; tobrien@bricker.com; cmooney2@columbus.rr.com; Cynthia.A.Fonner@Constellation.com; jbentine@cwsllaw.com; mwhite@cwsllaw.com; myurick@cwsllaw.com; Gary.A.Jeffries@com.com; judi.sobecki@dplino.com; Faruki, Charles J.; Sharkey, Jeffrey S.; Ned.Ford@fuse.net; Williams.todd@gmail.com; rukailey@igc.org; jclark@mwncmh.com; lmcaster@mwncmh.com; sam@mwncmh.com; LGearhardt@offb.org; ricks@ohanet.org; Thomas.Lindgren@puc.state.oh.us; thomas.mcnamee@puc.state.oh.us; aporter@srd.com; cmiller@srd.com; gdunn@srd.com; nmoser@theoc.org; trent@theoc.org; mjsattineri@vorys.com; mhpeticoff@vssp.com; smhoward@vssp.com; wis29@yahoo.com  
**Subject:** DP&L ESP 08-1094 et al. - OCC's Notice to Take Depositions/Request for Production of Documents

Attached please find OCC's Notice to Take Deposition and Request for Production of Documents, which has been filed with the PUCO. If you have any questions, please contact our office.

Thank you.

EXHIBIT A

Deb Bingham  
Administrative Assistant  
The Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215  
614-466-1311 - phone  
614-466-9475 - facsimile  
bingham@occ.state.oh.us

CONFIDENTIALITY NOTICE:

THIS COMMUNICATION IS INTENDED ONLY FOR THE PERSON OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN CONFIDENTIAL AND/OR PRIVILEGED LEGAL GOVERNMENTAL MATERIAL. ANY UNAUTHORIZED REVIEW, USE, DISCLOSURE OR DISTRIBUTION IS PROHIBITED. IF YOU ARE NOT OR BELIEVE THAT YOU ARE NOT THE INTENDED RECIPIENT OF THIS COMMUNICATION, DO NOT READ IT. PLEASE REPLY TO THE SENDER ONLY AND INDICATE THAT YOU HAVE RECEIVED THIS MESSAGE, THEN IMMEDIATELY DELETE IT AND ALL OTHER COPIES OF IT. THANK YOU.

<PRE><font size=2><FONT FACE="Tahoma">The information contained in this e-mail is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, attorney's work product and/or exempt from disclosure under applicable law. If the reader of this<BR>message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us by replying to this message and then delete it, in its entirety,<BR>from your system. Although this e-mail and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is<BR>accepted by Faruki Ireland & Cox P.L.L. for any loss or damage arising in any way from its use.</FONT></FONT></PRE>