

FILE

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January 6, 2009

VIA FEDERAL EXPRESS

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

RECEIVED-DOCKETING DIV
2009 JAN -7 AM 10:14
PUCO

Re: DP&L Case Nos. 08-1094-EL-SSO, et al.

Dear Docketing Clerk:

Enclosed are an original and twenty (20) copies 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 a Two-Week Extension of Time in the above-captioned matter that was filed via facsimile on January 6, 2009.

Very truly yours,



R. Holtzman Hedrick

RHH/tes
Enclosures

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Technician SM Date Processed JAN 07 2009



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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV
2009 JAN -7 AM 10:14
PUCO

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-SSO
	:	
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 of 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.

Respectfully submitted,

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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,

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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:

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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-SSO
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

**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,

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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:

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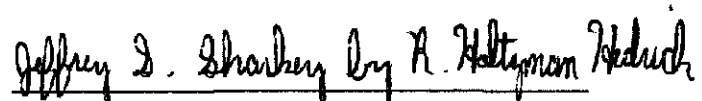
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Jeffrey S. Sharkey

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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

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>>> "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
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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

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