

FILE

FARUKI IRELAND & COX P.L.L.

9

ATTORNEYS AT LAW

500 Courthouse Plaza, S.W. 10 North Ludlow Street Dayton, Ohio 45402 937-227-3700 Fax 937-227-3717

R. Holtzman Hedrick
(937) 227-3727
rhedrick@ficlaw.com

January 8, 2009

VIA FEDERAL EXPRESS

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

RECEIVED-DOCKETING DIV
2009 JAN -9 AM 9:46
PUCO

Re: The Dayton Power and Light Company,
PUCO Case Nos. 08-1094-EL-SSO, et al.

Dear Docketing Clerk:

Enclosed are an original and twenty (20) copies of the Memorandum of The Dayton Power and Light Company in Opposition to Motion to Intervene and Request for Leave to File Motion to Intervene Out of Time of The Edgemont Neighborhood Coalition in the above-captioned matter that was filed via facsimile on January 8, 2009.

Very truly yours,

R. Holtzman Hedrick
R. Holtzman Hedrick

RHH/tes
Enclosures

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 09 2009



TRUSTED WISDOM. EXTRAORDINARY RESULTS.

ficlaw.com

FILE

RECEIVED-DOCKETING DIV

2009 JAN -9 AM 9:46

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

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
OPPOSITION TO MOTION TO INTERVENE AND REQUEST FOR LEAVE TO FILE
MOTION TO INTERVENE OUT OF TIME
OF THE EDGEMONT NEIGHBORHOOD COALITION**

The Commission should not allow a latecomer to intervene a month after the deadline. Ohio Admin. Code § 4901-1-11(E) provides that "[a] motion to intervene will not be considered timely if it is filed later than . . . any specific deadline established by order of the commission for purposes of a particular proceeding." The Code further mandates that "[a] motion to intervene which is not timely will be granted only under extraordinary circumstances." Ohio Admin. Code § 4901-1-11(F). There are no such extraordinary circumstances here. The fact that Edgemont Neighborhood Coalition ("Edgemont") was "unaware of the November 26, 2008 entry" setting December 10, 2008 as the deadline for motions to intervene does not constitute an extraordinary circumstance. Motion to Intervene ("Motion"), p. 2.

Edgemont's Motion, filed January 7, 2009, comes almost a full month after the December 10, 2008 deadline to intervene set by the Commission. Contrary to Edgemont's assertion that "the proceeding has just commenced," this matter, which is on a compressed schedule, was commenced on October 10, 2008 -- nearly three months ago. The evidentiary hearing begins in less than three weeks (18 days from the date of this filing).

Further, Edgemont's interest in this matter is adequately represented by other intervenors, most notably the Ohio Partners for Affordable Energy ("OPAE") and the Office of the Ohio Consumers' Counsel ("OCC"). Indeed, Edgemont's goal that "rates paid by customers be reasonable, that service be adequate," and that the adopted measures are "effective and consistent" with SB 221, are the goals of all of the intervenors to this action. Edgemont describes itself as a "community organization representing low-income rate payers in the largest urban area in the DP&L territory" and provides bill counseling and home weatherization assistance. Motion, pp. 1-2. These interests completely align with the interests of another intervenor, OPAE, who is "charged with advocating for low-income residents[.]" OPAE Motion to Intervene, pp. 2-3. Like Edgemont, OPAE "also provides essential services in the form of bill payment assistance programs and weatherization" assistance to low-income residents. In addition to OPAE, the OCC has been aggressively advocating on behalf of all residential consumers of electricity within DP&L's service territory. Accordingly, the interests of Edgemont are more than adequately represented in this proceeding.

Finally, as to the late-filing intervenors that Edgemont references (Motion, p. 2) in the recent Duke ESP filing (Case No. 09-920-EL-SSO), the circumstances surrounding the intervention in that case materially differ from the circumstances here. In the Duke case, the intervenors at issue ("Comercial Group") filed their motion to intervene only five days after the

deadline, and 63 days before Duke's evidentiary hearing -- not a month after the deadline and 19 days before the evidentiary hearing, which Edgemont attempts to do here.

Allowing additional intervenors at this late stage is prejudicial to DP&L as it diligently prepares for the upcoming depositions and hearing. Edgemont has failed to establish the "extraordinary circumstances" required to justify its attempt to enter the proceedings at this point, and the Commission should deny Edgemont's Motion as untimely.

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 (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 Opposition to the Motion to Intervene and Request for Leave to File Motion to Intervene Out of Time of The Edgemont Neighborhood Coalition has been served via electronic mail upon the following counsel of record, this 8th 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

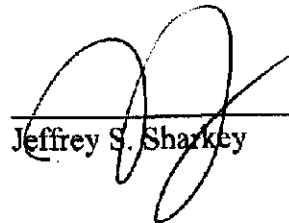
Attorneys for The Ohio Environmental Council

Ellis Jacobs
Advocates for Basic Legal Equality, Inc.
333 West First Street, Suite 500B
Dayton, OH 45402

Attorney for The Edgemont Neighborhood Coalition

Thomas Lindgren, Esq.
Thomas McNamee, Esq.
Assistant Attorney General
Public Utilities Section
180 East Broad Street
Columbus, OH 43215

Office of the Ohio Attorney General



Jeffrey S. Sharkey