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September 9, 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 SEP 10 AM 10:21  
PUCO

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

Dear Docketing Clerk:

Enclosed for filing are an original and twenty (20) copies of The Dayton Power and Light Company's Memorandum in Opposition to the Motion to Establish a Procedural Schedule and Hearing Date by The Office of the Ohio Consumers' Counsel in the above-captioned matter.

Very truly yours,

  
Jeffrey S. Sharkey

JSS/tes  
Enclosures

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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	:	

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**THE DAYTON POWER AND LIGHT COMPANY'S MEMORANDUM IN OPPOSITION  
TO THE MOTION TO ESTABLISH A PROCEDURAL SCHEDULE AND  
HEARING DATE BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC") has filed a Motion to Establish a Procedural Schedule and Hearing Date, in which OCC asks the Commission to set dates for a technical conference, the filing of comments and testimony, and a hearing. The Commission should deny OCC's Motion for the following separate and independent reasons:

First, OCC's Motion violates the February 24, 2009 Stipulation and Recommendation in this matter that OCC signed and the Commission approved. That Stipulation provides that DP&L would develop and file independent business cases for its AMI and Smart Grid plans. Stipulation, ¶ 4. That Stipulation establishes a clear procedure for the filing and review of DP&L's plans:

- Prior to filing, "DP&L shall consult with interested Signatory Parties to seek their advice with regard to the costs and benefits of the Company's AMI and Smart Grid business cases." Stipulation, ¶ 4.b.
- "The AMI and Smart Grid business cases that demonstrate a positive benefit cost analysis will be filed in this docket no later than September 1, 2009." Stipulation, ¶ 4.b.
- DP&L's filing shall be "reviewed by the Commission's Staff and approved by the Commission. Staff will endeavor to complete its review in the fourth quarter of 2009 so that the rider may be implemented January 1, 2010." Stipulation, ¶ 4.b.

The Stipulation thus establishes a clear procedure for review of DP&L's filing. That procedure does not include a technical conference, the filing of testimony or a hearing.<sup>1</sup>

Stipulation, ¶ 2 confirms that the parties did not intend to conduct a hearing to review DP&L's amended AMI and Smart Grid plans. Stipulation, ¶ 2 addresses DP&L's fuel rider, and expressly provides that annual adjustments to the fuel rider "will be subject to due process, including audits and hearings." There is no similar provision in Stipulation, ¶ 4 (which addresses AMI and Smart Grid), demonstrating that the parties to the Stipulation (including OCC) did not intend for DP&L's AMI or Smart Grid plans to be reviewed in a full hearing.

OCC signed the Stipulation, and agreed to a process by which DP&L's revised AMI and Smart Grid plans would be reviewed. DP&L does not object if OCC wishes to file specific comments on DP&L's plans. However, the Commission should not alter the procedural process to which OCC agreed.

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<sup>1</sup> OCC's request for a technical conference (p. 3) is unnecessary for the additional reason that Stipulation, ¶ 4.b provides that DP&L shall meet and confer with the parties to discuss DP&L's filing, which OCC concedes (pp. 3-4) has occurred.

Second, OCC's reliance (Motion, pp. 2-3) on this Commission's August 19, 2009 Entry in a Duke Energy Ohio case (09-543-GE-UNC) is misplaced. In the prior related proceeding, Duke and OCC (and others) signed a Stipulation that provided that Rider DR-IM (to recover Duke's Smart Grid investment) "shall be initially set at zero. Thereafter, such charge shall be subject to an applicable annual second quarter due process." October 27, 2008 Stipulation and Recommendation, ¶ 11.a (Case No. 08-920-EL-SSO). That Duke Stipulation specifically provided that the review shall "includ[e] an opportunity for hearing." *Id.* ¶ 11. Accord: Duke Stipulation and Recommendation, ¶ 14 (Case No. 07-589-GA-AIR) (providing for a "hearing" to review Duke's Smart Grid plan for gas). The parties to Duke's Stipulations thus agreed to a procedure that included a hearing. The parties to DP&L's Stipulation did not. OCC's reliance on the Commission's Entry in the Duke matter is thus misplaced.

Third, there is not enough time to conduct a hearing. The Stipulation in this matter provides that DP&L's Infrastructure Investment Rider ("IIR") is to be implemented by January 1, 2010. It is not possible to conduct a hearing on December 7, 2009 (OCC's requested date), complete post-hearing briefing, complete Commission review of the record and arguments made, and still implement the IIR by January 1, 2010. (The reason that there is not sufficient time to conduct a hearing, of course, is that the parties to the Stipulation did not intend for there to be a hearing and did not leave time in the agreed schedule for one.)

Fourth, there is no need for a hearing. DP&L's initial application included extensive information regarding DP&L's AMI and Smart Grid plans.<sup>2</sup> OCC deposed DP&L's

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<sup>2</sup> DP&L Application, Book II, Chapter 3 (AMI plan); DP&L Application, Book II, Chapter 4 (Smart Grid plan); Direct Testimony of Karen Garrison (describing DP&L's information technology plans); Direct Testimony of Jeffrey E. Teuscher (describing DP&L's AMI and Smart Grid plans).

witnesses, and OCC filed testimony on DP&L's AMI and Smart Grid plans.<sup>3</sup> DP&L's AMI and Smart Grid plans did not change materially from its initial filing. OCC thus has more than enough information that it can use to file comments on DP&L's AMI and Smart Grid plans. Further, the Commission and its Staff now have extensive experience regarding AMI and Smart Grid, and additional testimony and a hearing would not assist the Commission or its Staff to review DP&L's plans.

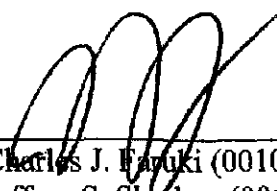
In short, the Stipulation in this case -- which OCC signed and the Commission approved -- establishes a procedure to review DP&L's revised AMI and Smart Grid plans. That procedure does not include a technical conference, the filing of testimony, or a hearing. If OCC has comments on DP&L's revised AMI and Smart Grid plans, then OCC should file those comments immediately. The Commission, however, should not set dates for a technical conference, for the filing of testimony, or for a hearing.

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<sup>3</sup> Direct Testimony Stephen W. Pullins. That testimony was withdrawn pursuant to Stipulation, ¶ 34. While the testimony thus has no evidentiary value, the fact that OCC filed that testimony demonstrates that OCC understands DP&L's plans.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing The Dayton Power and Light Company's Memorandum in Opposition to the Motion to Establish a Procedural Schedule and Hearing Date by The Office of the Ohio Consumers' Counsel has been served via electronic mail upon the following counsel of record, this 9th day of September, 2009:

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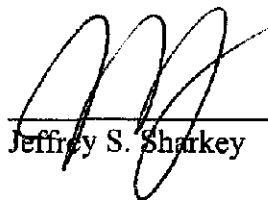
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