

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Amendment of Rules )  
4901:2-5-01 and 4901:2-5-02 and )  
Rescission of Rules 4901:2-5-03, 4901:2- ) Case No. 07-1095-TR-ORD  
5-05 and 4901:2-5-06, Ohio )  
Administrative Code. )

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PUCO

APPLICATION FOR REHEARING AND MOTION FOR LEAVE OF THE  
DAYTON POWER AND LIGHT COMPANY

The Dayton Power and Light Company ("DP&L"), pursuant to Revised Code ("R.C.") section 4903.10 and the Rule 4901-1-35 of the Ohio Administrative Code (O.A.C.) hereby respectfully requests rehearing of the Commission's Entry of June 9, 2010 ("Entry") in the above-captioned proceeding. The Entry is unreasonable in the following respects:

1. The Commission erred in amending O.A.C. § 4901:2-5-01 to remove the exemption of certain motor vehicles from the Ohio motor carrier safety regulations; and
2. The Commission erred in only delaying enforcement of the revised rule, rather than re-opening a comment period in light of the lack of notice and resulting lack of comments filed by any interested parties.

DP&L also respectfully requests that it be granted leave to file this Application for Rehearing pursuant to R. C. § 4903.10. DP&L is not a party to this proceeding; however, as the Commission acknowledged in the Entry, DP&L along with Ohio's other "traditional utility companies" is an affected party by the changes to the rules resulting from this proceeding. Just cause for granting leave exists, as DP&L was not served with notice of the proposed rule change, and in fact only recently learned of it

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through discussions with other members of the electric industry. Moreover, as the Commission noted in the Entry, no comments to the proposed rules were filed. The lack of notice led to DP&L not having its interests adequately represented or considered in the proceeding. The reasons in support of this application are more fully explained in the attached memorandum.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Judi L. Sobecki', is written over a horizontal line.

Judi L. Sobecki (0067186)

Randall V. Griffin (0080499)

The Dayton Power and Light Company

1065 Woodman Drive

Dayton, OH 45432

Telephone: (937) 259-7171

Facsimile: (937) 259-7178

Email: [judi.sobecki@dplinc.com](mailto:judi.sobecki@dplinc.com)

Attorney for the Dayton Power and Light Company

## **MEMORANDUM IN SUPPORT**

As explained in the Entry, the Commission - - believing its action was making its rules consistent with certain federal rules - - adopted an earlier Entry that amended a crucial definition in O.A.C. § 4901:2-5-01. In its prior form, that rule had exempted certain motor vehicles from the Ohio motor carrier safety regulations.<sup>1</sup> That exemption extended to many private motor carriers, including those operated by many public utilities in Ohio, including DP&L. The change in the rule deleted this exemption. The effect of the removal of the exemption is that approximately 65 vehicles operated by DP&L with a gross vehicle weight between 10,001 and 26,000 pounds that were not previously subject to motor carrier safety regulatory and enforcement jurisdiction are now subject to it. As noted in the Entry, these new regulations may include commercial drivers licensing requirements, log book requirements, and medical certifications, none of which previously applied to these vehicles.

The public utilities in Ohio, including DP&L, have an excellent motor vehicle safety records and an extension of PUCO motor carrier safety enforcement requirements to vehicles operated by Ohio utilities is unnecessary and would create an undue burden on operations. Moreover, there is no indication that Ohio's long standing exemption of utility vehicles would place in jeopardy any aspect of federal funding for Ohio's motor carrier safety program.

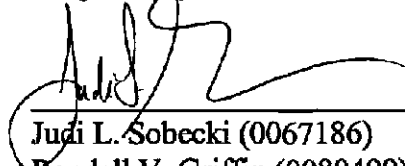
The Entry states that the rule change was inadvertently filed in its final form and took effect on October 1, 2009, but that the Commission had planned an education and

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<sup>1</sup> Former Ohio Admin. Code § 4901:2-5-02(B) provided, in its last sentence, as follows: "Motor vehicle does not include any vehicle operated within Ohio in intrastate commerce by a private motor carrier as defined in section 4923.20 of the Revised Code, which is not a commercial motor vehicle as defined in 49 C.F.R. 383.5, as effective on March 29, 2006, as amended."

outreach program to assist the entities that would be newly subject to the rule. DP&L is unaware of any such program yet being implemented. Merely delaying enforcement of a revised rule that is unnecessary and overly burdensome upon the utility industry in Ohio is not a sufficient resolution to the lack of notice to interested parties and resulting inability to comment on the proposed changes that would represent a significant departure from prior practices with respect to utility vehicles. On rehearing, the Commission should revisit the need for the underlying definition change, and again adopt the exemption set forth in the previous rule. Reinstating that exemption will preserve the previous system, under which the affected public utilities and the public that they serve have operated effectively and safely for many years.

Respectfully submitted,

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