

FILE

PUCO EXHIBIT FILING

36

2011 MAR 16 PM 4:28

RECEIVED BOOKETING DIV

PUCO

Date of Hearing: 3/1/11

Case No. 10-734-EL-AEC

PUCO Case Caption: In the matter of the  
Application of The Dayton Power  
Light Co for approval of a  
Unique Arrangement with Caterpillar Inc

List of exhibits being filed: response to  
OCC-1 Interrogatories + request for  
Documents

Joint 1 - Stipulation + Recommendation

DPL-1 - application of DP+L for  
approval

DPL-2 Direct Testimony of  
Dona R Seger-Lawson

Reporter's Signature: Dolores Geyro

Date Submitted: 3/7/11

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 AD Date Processed 3/16/11

TOTAL P.01

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the matter of :  
 The Application of the :  
 Dayton Power and Light : 10-734-EL-AEC  
 Company for Approval of a :  
 Unique Arrangement with :  
 Caterpillar, Inc. :

- - -

PROCEEDINGS

before Henry H. Phillips-Gary and Jonathan Tauber,  
 Hearing Examiners, at the Public Utilities Commission  
 of Ohio, 180 East Broad Street, Room 11-C, Columbus,  
 Ohio, called at 10:00 a.m. on Tuesday, March 1, 2011.

- - -

ARMSTRONG & OKEY, INC.  
 222 East Town Street, 2nd Floor  
 Columbus, Ohio 43215-5201  
 (614) 224-9481 - (800) 223-9481  
 Fax - (614) 224-5724

- - -

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The       )  
Dayton Power and Light Company for       )  
Approval of a Unique Arrangement with       ) Case No. 10-734-EL-AEC  
Caterpillar Inc.                                )

---

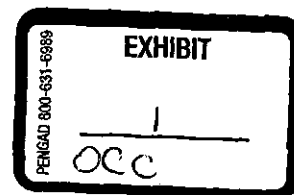
**THE DAYTON POWER AND LIGHT COMPANY'S SUPPLEMENTAL  
RESPONSE TO THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
FIRST SET**

---

Pursuant to Ohio Admin. Code §§ 4901-1-19, 4901-1-20 & 4901-1-22, The  
Dayton Power and Light Company ("DP&L") responds to The Office of The Ohio  
Consumers' Counsel's ("OCC") Interrogatories and Requests for Production of  
Documents, First Set, as follows:

**GENERAL OBJECTIONS**

1. DP&L objects to and declines to respond to each and every discovery  
request to the extent that it seeks information that is irrelevant and is not reasonably  
calculated to lead to the discovery of admissible evidence. Ohio Admin. Code § 4901-1-  
16(B).
2. DP&L objects to and declines to respond to each and every discovery  
request to the extent that it is harassing, unduly burdensome, oppressive or overbroad.  
Ohio Admin. Code §§ 4901-1-16(B) and 4901-1-24(A).
3. DP&L objects to each and every discovery request to the extent that it  
seeks information that is privileged by statute or common law, including privileged



communications between attorney and client or work product. Ohio Admin. Code § 4901-1-16(B). Such material or information shall not be provided, and any inadvertent disclosure of material or information protected by the attorney-client privilege, the work product doctrine or any other privilege or protection from discovery is not intended and should not be construed to constitute a waiver, either generally or specifically, with respect to such information or material or the subject matter thereof.

4. DP&L objects to each and every discovery request to the extent that it may seek information that is proprietary. Ohio Admin. Code § 4901-1-24(A).

5. To the extent that interrogatories seek relevant information that may be derived from the business records of DP&L or from an examination or inspection of such records and the burden of deriving the answer is the same for the Office of the Ohio Consumers' Counsel as it is for DP&L, DP&L may specify the records from which the answer may be derived or ascertained and afford the Office of the Ohio Consumers' Counsel the opportunity to examine or inspect such records. Ohio Admin. Code § 4901-1-19(D).

6. DP&L objects to and declines to respond to each and every interrogatory that can be answered more efficiently by the production of documents or by the taking of depositions. Under the comparable Ohio Civil Rules, "[a]n interrogatory seeks an admission or it seeks information of major significance in the trial or in the preparation for trial. It does not contemplate an array of details or outlines of evidence, a function reserved by rules for depositions." Penn Cent. Transp. Co. v. Armco Steel Corp., 27 Ohio Misc. 76, 77, 272 N.E.2d 877, 878 (Montgomery Cty. 1971). As Penn further

noted, interrogatories that ask one to "describe in detail," "state in detail," or "describe in particulars" are "open end invitation[s] without limit on its comprehensive nature with no guide for the court to determine if the voluminous response is what the party sought in the first place." Id., 272 N.E.2d at 878.

7. DP&L objects to and declines to respond to each and every discovery request to the extent that it calls for information that is not in DP&L's current possession, custody, or control or could be more easily obtained through third parties or other sources. Ohio Admin. Code § 4901-1-19(C) and 4901-1-20(D). DP&L also objects to and declines to respond to each and every discovery request that seeks information that is already on file with the Public Utilities Commission of Ohio or the Federal Energy Regulatory Commission. To the extent that each and every discovery request seeks information available in pre-filed testimony, pre-hearing data submissions and other documents that DP&L has filed with the Commission in the pending or previous proceedings, DP&L objects and declines to respond to it. Ohio Admin. Code § 4901-1-16(G).

8. The production of any documents by DP&L does not and shall not constitute an admission concerning a document, its content, or the evidentiary sufficiency of the document, including but not limited to authentication, best evidence, relevance or hearsay.

9. DP&L reserves its right to redact confidential or irrelevant information from documents produced in discovery. All documents that have been redacted will be stamped as such.

10. DP&L objects to each and every discovery request to the extent that it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning, and may, therefore, make responses misleading or incorrect.

11. DP&L objects to any discovery request to the extent it calls for information not in its possession, but in the possession of DP&L's unregulated affiliates.

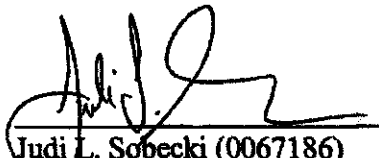
12. All responses of DP&L to the discovery requests of the Office of the Ohio Consumers' Counsel are made subject to and without waiving these objections common to all discovery requests.

#### **SUPPLEMENTAL RESPONSES TO INTERROGATORIES**

INT-16. Please identify the portion of the generation service rate stabilization charge that is attributable to provider of last resort services?

**RESPONSE:** General Objections Nos. 1, 2. This interrogatory is overly broad, unduly burdensome, and not reasonable calculated to lead to discoverable evidence. Without waiving objection, the estimated annual Rate Stabilization Charge for Caterpillar is \$31,043.

Respectfully submitted and as to objections,



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

**CERTIFICATE OF SERVICE**

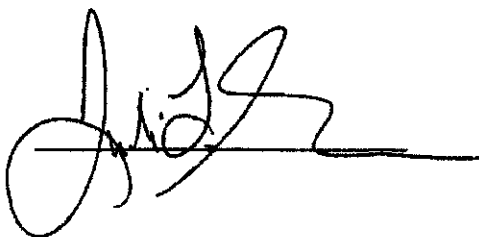
I certify that a copy of the foregoing has been served via electronic mail, this 13<sup>th</sup>

day of December, 2010 upon the following:

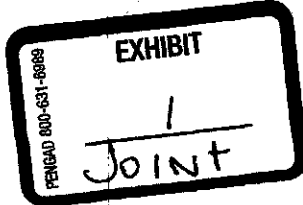
Maureen R. Grady, Counsel of Record  
Kyle L. Verrett  
Assistant Consumers' Counsel  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, OH 43215-3485  
[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us)  
[verrett@occ.state.oh.us](mailto:verrett@occ.state.oh.us)

Thomas W. McNamee  
Rebecca L. Hussey  
Assistant Attorneys General  
Public Utilities Section  
Ohio Attorney General Richard Cordray  
180 East Broad Street, 6<sup>th</sup> Floor  
Columbus, Ohio 43215  
[thomas.mcnamee@puc.state.oh.us](mailto:thomas.mcnamee@puc.state.oh.us)  
[rebecca.hussey@puc.state.oh.us](mailto:rebecca.hussey@puc.state.oh.us)

Samuel C. Randazzo, Counsel of Record  
Joseph Olikier  
McNees Wallace & Nurick LLC  
21 East State Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[joliker@mwncmh.com](mailto:joliker@mwncmh.com)



FILE



RECEIVED-BOOKING DIV  
2011 JAN 28 AM 10:50  
PUCO

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton )  
Power and Light Company for Approval of a ) Case No. 10-734-EL-AEC  
Unique Arrangement with Caterpillar Inc. )

STIPULATION AND RECOMMENDATION

Ohio Administrative Code ("O.A.C.") §4901-1-30 provides that any two or more parties to a proceeding may enter into a written or oral stipulation concerning the issues presented in such proceeding. Pursuant to O.A.C. §4901-1-10(C), the Staff of the Public Utilities Commission of Ohio ("Staff") is considered a party for the purpose of entering into a stipulation. Accordingly, the Dayton Power and Light Company (hereinafter referred to as "DP&L"), the Office of the Ohio Consumers' Counsel ("OCC"), and the Staff (hereinafter referred to individually as a "Signatory Party" and collectively as "Signatory Parties") hereby enter into this Stipulation and Recommendation ("Stipulation") and recommend that the Public Utilities Commission of Ohio ("PUCO" or "Commission") adopt it.<sup>1</sup> The purpose of this Stipulation is to set forth the understanding and agreement of the Signatory Parties and to recommend that the Commission approve and adopt this Stipulation, which resolves all of the issues in the above-named unique arrangement proceeding, brought by DP&L pursuant to Ohio Revised Code ("O.R.C.") §4905.31 and O.A.C. §4901:1-38.

The Signatory Parties understand that although this Stipulation is not binding upon the

<sup>1</sup> The Industrial Energy Users-Ohio ("IEU-Ohio"), was granted intervention in this proceeding by Entry dated September 30, 2010. While not a signatory to this Stipulation, IEU-Ohio has indicated it will not oppose the Stipulation or otherwise take any action in this proceeding.

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 SAB Date Processed 1/28/11

Commission, it is entitled to careful consideration by the Commission. This Stipulation and its supporting documentation represent a just and reasonable resolution of the issues raised in this proceeding and is the product of a cooperative effort encouraged by this Commission and undertaken by parties with diverse interests, to resolve the issues associated with this proceeding. Specifically, this Stipulation to which all of the Signatory Parties agree is supported by information set forth in DP&L's application filed in Case No. 10-734-EL-AEC on June 1, 2010, and OCC's Comments filed in this proceeding.

This Stipulation is the product of serious bargaining among capable, knowledgeable parties with diverse interests. The Stipulation benefits customers and the public interest by, among other things, working with Caterpillar to create what Caterpillar states will be approximately 500 new full-time jobs with an estimated payroll of \$14 million per year and average hourly wage of approximately \$13.40/hour, exclusive of benefits. Finally, the Signatory Parties believe that the settlement proposal taken in its entirety does not violate any regulatory principle or practice. The Signatory Parties request that the Commission give the Stipulation careful consideration and adopt it at the earliest practicable date.

Except for purposes of enforcing this Stipulation, this Stipulation, the information and data contained herein or attached, and the Commission's order adopting this Stipulation shall not be cited as precedent in any future proceeding for or against any Signatory Party, or the Commission itself, if the Commission approves the Stipulation. The Signatory Parties' agreement to this Stipulation, in its entirety, shall not be interpreted in a future proceeding before this Commission as their agreement to only an isolated provision of this Stipulation. More specifically, no specific element or item contained in or supporting this Stipulation shall be construed as the position that any Signatory Party might support or take in any other proceeding.

Further, no specific element or item contained in or supporting this Stipulation shall be construed as the results any Signatory Party might support or seek in the absence of this Stipulation in this proceeding or any other proceeding. This Stipulation is a comprehensive and reasonable compromise of the issues raised by parties with diverse interests and involving a balancing of competing positions, and it does not necessarily reflect the position that one or more of the Signatory Parties would have taken if these issues had been fully litigated.

This Stipulation is expressly conditioned upon adoption in its entirety by the Commission, without material modification. Should the Commission reject or materially modify all or any part of this Stipulation, any Signatory Party may, within thirty (30) days of the issuance of the Commission's order, file an application for rehearing or terminate and withdraw the Stipulation by filing a notice with the Commission in this proceeding, including service to all Signatory Parties. The Signatory Parties agree they will not oppose or argue against any other Signatory Party's application for rehearing that seeks to uphold the original, unmodified Stipulation. If, upon rehearing, the Commission does not adopt the Stipulation in its entirety without material modification, then any Signatory Party may terminate and withdraw from the Stipulation by filing a notice with the Commission, including service to all Signatory Parties, in this proceeding within thirty (30) days of the Commission's Entry (or Order) on Rehearing.

Prior to any Signatory Party filing a notice seeking withdrawal from this Stipulation pursuant to this provision, the Signatory Parties agree to convene immediately to work in good faith to try to achieve an outcome that substantially satisfies the intent of the Stipulation and, if a new agreement is reached that includes agreement with the Signatory Party wishing to terminate, then the new agreement shall be submitted to the Commission for its review and approval. Upon the filing and notice of termination and withdrawal by any Signatory Party, pursuant to the above

provisions, the Stipulation shall immediately become null and void. In such event, the Signatory Parties request that the Commission acknowledge the notice within thirty days of its filing, but whether or not the Commission acknowledges the notice does not alter the effectiveness of the notice of termination and withdrawal. In the event of a notice of termination and withdrawal, and if the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful in reaching a new agreement that includes all Signatory Parties to the present Stipulation, this proceeding shall go forward at the procedural point at which this Stipulation was filed, i.e., the Commission shall convene an evidentiary hearing and the Signatory Parties shall be afforded the full opportunity to present evidence through witnesses, cross-examine all witnesses, present rebuttal testimony, and brief all issues, which shall be decided based upon the record and briefs as if this Stipulation had never been executed.

All Signatory Parties fully support this Stipulation in its entirety and urge the Commission to accept and approve the terms herein. The Signatory Parties agree that the settlement in this Stipulation, as a package, benefits customers and is in the public interest.

WHEREAS, this Stipulation represents an accommodation of the diverse interests represented by the Signatory Parties and is entitled to careful consideration by the Commission;

WHEREAS, this Stipulation represents a serious compromise of complex issues and involves substantial benefits that would not otherwise have been achievable; and

WHEREAS, the Signatory Parties believe that this Stipulation represents a fair and reasonable solution to the issues raised in this matter;

NOW, THEREFORE, the Signatory Parties stipulate, agree and recommend that the Commission make the following findings and issue its Order in this proceeding approving this Stipulation in accordance with the following:

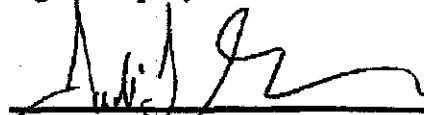
1. The proposed Unique Arrangement is attached as Exhibit A.
2. The collection of delta revenue from DP&L's customers that is associated with the compensation set forth in Article Four of the Contract will be capped at \$410,000 over the term of the Contract.<sup>2</sup>
  - a. For each year that the Contract between Caterpillar and DP&L is in effect, DP&L agrees to submit to OCC the annual report created by Caterpillar in accordance with Article Seven of the Contract within seven (7) days of receiving the report from Caterpillar.
3. DP&L will provide a credit to the economic development rider ("EDR") in the amount of \$30,000 per year for each of the five years of the Contract term. If DP&L chooses to delay the collection of the cost of the proposed Contract from its customers beyond the date the Commission approves the arrangement, DP&L will not seek to collect any carrying charges on costs that may be deferred resulting from its delay. Any portion of DP&L's EDR designed to collect the cost of this Contract will not include any assessment of carrying charges on deferred expenses related to the delay of recovery of expenses associated with this Contract.
4. DP&L will share its proposed customer bill message explaining the implementation of the EDR with the OCC and PUCO Staff prior to instituting recovery of costs through the EDR, and will discuss and consider all suggestions and ideas by the OCC and PUCO Staff.
5. The calculation of the economic development rider for each customer class shall follow the allocation required under O.A.C. §4901:1-38-08(A)(4) whereby the cost of the arrangement is allocated to all customers in proportion to the current revenue distribution between and among customer classes.
6. DP&L will work with Caterpillar to develop a document, which will be filed in this docket by December 31, 2011, indicating that Caterpillar will commit the results of its energy efficiency and/or demand response measures associated with LEED certification for integration with DP&L's energy efficiency and demand response program portfolio and that Caterpillar will not seek additional compensation from DP&L or its customers for that commitment.
7. Except as modified by this Stipulation, DP&L's Application in this matter should be approved, once the Commission determines the Unique Arrangement attached as Exhibit A is consistent with the terms agreed to in this Stipulation.

---

<sup>2</sup> This cap is computed using September 2010 rates and the projected billing determinants for the facility which results in expected annual delta revenues of \$82,000 per year for each of the five years of the Contract term.

The undersigned hereby stipulate and agree and each represents that he or she is authorized to enter into this Stipulation and Recommendation, this 28<sup>th</sup> day of January, 2011.

*On behalf of the Dayton Power and Light Company*



Judi L. Sobecki, Counsel of Record  
Randall V. Griffin  
The Dayton Power and Light Company  
1065 Woodman Drive  
Dayton, Ohio 45432  
[judi.sobecki@dplinc.com](mailto:judi.sobecki@dplinc.com)  
[randall.griffin@dplinc.com](mailto:randall.griffin@dplinc.com)

*On Behalf of the Office of the Ohio Consumers' Counsel*



Michael E. Idzkowski, Counsel of Record  
Maureen R. Grady  
Assistant Consumers' Counsel  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
[idzkowski@occ.oh.us](mailto:idzkowski@occ.oh.us)  
[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us)

*On Behalf of the Staff of the Public Utilities Commission of Ohio*



Thomas W. McNamee  
Assistant Attorney General  
Public Utilities Section  
Ohio Attorney General Richard Cordray  
180 East Broad Street, 6<sup>th</sup> Floor  
Columbus, Ohio 43215  
[thomas.mcnamee@puc.state.oh.us](mailto:thomas.mcnamee@puc.state.oh.us)  
[rebecca.hussey@puc.state.oh.us](mailto:rebecca.hussey@puc.state.oh.us)

## **Exhibit A**

## **UNIQUE ARRANGEMENT**

**between**

**CATERPILLAR INC.**

**and**

**THE DAYTON POWER AND LIGHT COMPANY**

This Unique Arrangement ("Agreement") is entered on April 12, 2010 between Caterpillar Inc. ("Caterpillar") and The Dayton Power and Light Company ("DP&L").

Whereas under Section 4905.31 of the Ohio Revised Code, a utility and a customer may enter into any financial device practicable or advantageous to the parties interested, including a device to recover costs incurred, such as revenues foregone, in conjunction with any economic development and job retention program of the utility; and

Whereas under Section 4901:1-38-05 of the Ohio Administrative Code ("OAC"), the Commission has the authority to approve a unique arrangement between a utility and a customer; and

Whereas Caterpillar proposes to build a 1.4 million square feet distribution facility (the "Facility") within DP&L's service territory in response to certain incentives to construct such facility;

Now therefore, in consideration of the mutual covenants, terms and conditions set forth herein, the parties hereto agree as follows:

### **ARTICLE ONE SCOPE AND TERM**

During the term of this Agreement, DP&L agrees to furnish to Caterpillar, and Caterpillar agrees to accept, service to meet the electric needs of the Facility. Service shall be provided according to the terms and conditions of DP&L's Electric Tariffs P.U.C.O. No. 17 ("Tariffs") except as otherwise described herein. In the event of a conflict between this Agreement and the Tariffs, this Agreement shall be controlling.

This Agreement shall commence on the first day of the ninth calendar month after permanent service is established at the Facility or after the Commission's approval of this agreement, whichever is later and continue for five (5) years.

## **ARTICLE TWO TERMINATION**

Either party may terminate this Agreement (a) in the event of default, (b) if the Public Utilities Commission of Ohio rejects this Agreement or requires material modifications, (c) if the Commission limits DP&L's recovery of Delta Revenues as defined by OAC 4901:1-38-01(C) associated with service to the Facility, or (d) for failure to comply, as described in OAC 4901:1-38-09.

## **ARTICLE THREE POWER REQUIREMENTS**

DP&L shall supply and Caterpillar shall accept the full electric requirements of the Facility according to DP&L's P.U.C.O. No.17 Electric Distribution Service Primary and Electric Generation Service Standard Offer Primary.

## **ARTICLE FOUR COMPENSATION**

During the term of this Agreement, Caterpillar shall pay to DP&L all charges contained in DP&L's P.U.C.O. No.17 Electric Distribution Service Primary and Electric Generation Service Standard Offer Primary, less 15 percent of those charges, provided that Caterpillar's metered monthly load is greater than 500 kW. Should Caterpillar's metered load fall below 500 kW, service will be billed at standard rates.

All billing, payment, and other terms of service, and the obligations of each party not addressed herein, shall be as provided for in the Tariff.

## **ARTICLE FIVE ENERGY EFFICIENCY/DEMAND RESPONSE**

Caterpillar plans to construct the Facility to qualify for a Leadership in Energy and Environmental Design ("LEED") certification. DP&L will provide energy efficiency incentives and rebates for this construction in the amount of up to \$100,000. Upon completion of the facility, Caterpillar agrees to work with DP&L to explore the possibility of making an application to commit the results of its energy efficiency and/or demand response measures and programs for integration with DP&L's energy efficiency and demand response program portfolio for purposes of the Company's compliance with Section 4928.66 of the Ohio Revised Code.

## **ARTICLE SIX EXTENSION OF ELECTRIC FACILITIES**

DP&L will provide up to \$50,000 to assist Caterpillar with its Contribution In Aid of Construction (CIAC) expenses incurred to extend electric services to the Facility. Subject to this incentive, all other line extension requirements found in P.U.C.O. No.17 Electric Distribution Service Extension of Electric Facilities, Tariff Sheet D12 shall apply.

**ARTICLE SEVEN  
REPORTING**

For each year that the Agreement between Caterpillar and DP&L is in effect, Caterpillar shall submit to DP&L and PUCO Staff an annual report which complies with the requirements set forth in Section 4901:1-38-06 of the OAC, by no later than April 30<sup>th</sup> of each year.

Wherefore the parties have caused this Unique Arrangement to be executed on the date entered above.

**AGREED TO AND ACCEPTED BY:**

**CATERPILLAR INC.**

By: Martin H. Colver

Name: MARTIN H. COLVER

Title: REAL ESTATE MANAGER

Date: 4/29/10

**THE DAYTON POWER AND LIGHT  
COMPANY**

By: Bryce Nickel JST

Name: Bryce Nickel

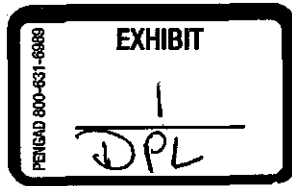
Title: Vice President, Service Operations

Date: May 20, 2010

MEX  
MFK

NC

FILE



RECEIVED-DOCKETING DIV  
2010 JUN -1 AM 9:43  
PUCO

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of  
The Dayton Power and Light Company for  
Approval of a Unique Arrangement with  
Caterpillar Inc.

)  
)  
)  
)  
)

10-734  
Case No. 10-734-EL-AEC

---

APPLICATION OF  
THE DAYTON POWER & LIGHT COMPANY  
FOR APPROVAL OF A UNIQUE ARRANGEMENT WITH CATERPILLAR INC.

---

1. Caterpillar Inc. ("Caterpillar") is the world's largest manufacturer of construction and mining equipment, diesel and natural gas engines and industrial gas turbines. Caterpillar's three principal lines of business are machinery, engines and services. The services businesses include logistics, financial products, remanufacturing and rail. Caterpillar Logistics Services provides world-class integrated supply chain solutions and services to Caterpillar and more than 60 other corporations worldwide. Caterpillar Logistics Services operates over 100 facilities in 23 countries employing over 10 thousand people.
2. Caterpillar recently announced its plans to locate a new 1.4 million square foot distribution facility (the "Facility") within the certified service territory of The Dayton Power and Light Company ("DP&L"), an electric distribution utility as defined in Section 4928.01 of the Ohio Revised Code. In addition to those incentives offered by DP&L as described herein, Caterpillar will receive other economic development incentives from various state and local entities. A list of these additional incentives is attached as Exhibit A. Caterpillar started the construction of its new Facility in the first quarter of 2010 and it is projected to be completed

during the second quarter of 2011. Once fully operational, Caterpillar expects to create approximately 500 new full-time jobs with an estimated payroll of \$14 million per year and average hourly wage of approximately \$13.40/hour, exclusive of benefits.

3. Section 4905.31 of the Ohio Revised Code and Section 4901:1-38-05 of the Ohio Administrative Code ("O.A.C") permit the Commission to enable a unique arrangement between an electric utility and a customer or group of customers upon application by the customer or utility. By this application, DP&L is requesting that the Commission approve an arrangement that will incent Caterpillar to construct and operate its new Facility, which will directly benefit the local Miami Valley economy, as well as the Ohio economy as a whole. The structure and content of the arrangement, as required by Rule 4901:1-38-05, O.A.C., is as follows:

**A. Term**

The term of the proposed arrangement is five (5) years, effective on the first billing day of the ninth month following establishment of permanent service or following the approval from the Public Utilities Commission of Ohio's (PUCO's) if such approval occurs after the ninth month of service. No modifications or extensions to this arrangement shall be made without DP&L's consent and the Commission's prior approval.

**B. Pricing**

Under the proposed arrangement, firm electricity shall be supplied to Caterpillar in accordance with all DP&L applicable tariffs including but not limited to all generation, distribution, transmission and other service tariff provisions. Caterpillar will be billed on a rate and at a price based upon DP&L's standard service offer, and will receive a fifteen (15) percent discount on total monthly DP&L electric charges for sixty (60) months. Caterpillar will not receive the above mentioned discount of fifteen (15) percent on total monthly DP&L charges in a given month unless a minimum metered load of 500 kW is reached.

**C. Other Terms and Conditions**

This arrangement is subject to terms that require, among other things, Caterpillar to provide required data submissions in an annual report whose format is to be determined by Staff, as

well as comply with other regulatory requirements, including those contained in O.A.C. 4901:1-38-05, 4901:1-38-06 and 4901:1-38-09. In addition, in exchange for certain incentives and rebates up to \$100,000 toward construction of a Leadership in Energy and Environmental Design certified facility, Caterpillar agrees to work with DP&L to explore the possibility of making an application to commit the results of its energy efficiency and/or demand response measures and programs for integration with DP&L's energy efficiency and demand response program portfolio. DP&L will also provide up to \$50,000 to assist Caterpillar in connection with any necessary extension of electric facilities to the new facility.

4. A copy of the proposed arrangement is attached as Exhibit B. Information on all associated incentives, estimated annual electric billings without incentives, and annual estimated delta revenues is attached as Exhibit C to this application.

5. Caterpillar and DP&L both ask that the Commission approve the recovery of "delta revenues," as permitted under O.A.C. 4901:1-38-08, through DP&L's Economic Development Rider ("EDR"), approved in its ESP proceedings, Case No. 08-1094-EL-SSO.

6. Additionally, Caterpillar has agreed to work with DP&L to explore the possibility of applying to commit the results of any future Caterpillar customer-sited energy efficiency and/or demand response measures and programs into DP&L's portfolio plan for purposes of complying with Ohio's energy efficiency and peak demand reduction requirements.

7. O.A.C. 4901:1-38-05, requires a demonstration that a proposed reasonable arrangement does not violate Sections 4905.33 and 4905.35 of the Ohio Revised Code. The parties represent that this arrangement is not anti-competitive or discriminatory, and is a lawful arrangement authorized by R.C. §4905.31.

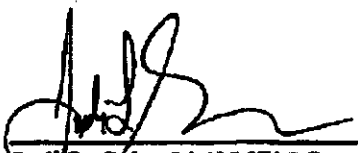
8. O.A.C 4901:1-38-05(C) requires the applicant to describe how the arrangement furthers the policy of the state of Ohio as embodied in R.C. §4928.02. The arrangement provides an

incentive to Caterpillar to locate a new, large facility within Ohio, thus facilitating the state's effectiveness in the global economy, consistent with the policy expressed in R.C. §4928.02. In addition, this arrangement encourages the implementation of energy efficiency and demand side management capabilities.

For the foregoing reasons, DP&L urges the Commission to enter an Order approving of this application and specifically finding that:

1. The arrangement helps fulfill the policies of the state of Ohio, as set forth in S.B. 221;
2. The arrangement described herein is just and reasonable;
3. The delta revenues are recoverable through DP&L's Economic Development Rider; and
4. Waives any provisions of O.A.C. Chapter 4901:1-38 necessary to support the findings and order requested herein.

Respectfully submitted,



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@dp&linc.com](mailto:judi.sobecki@dp&linc.com)

Attorney for the Dayton Power and Light Company

## **EXHIBIT A**

### **List of Incentives**

#### **Local Incentives:**

1. Enterprise Zone real Property Tax Abatement of 100% for 15 years on improvements from the City of Clayton, \$15,674,509 estimated value.
2. Job Center assistance with recruiting, pre-screening, and assessments from Montgomery County, \$636,500 estimated value.
3. Sales tax savings on building construction materials through lease with Dayton Montgomery County Port Authority, \$1,750,000 estimated value.
4. ED/GE grant from Montgomery County, \$700,000.

#### **State Incentives:**

1. Job Creation Tax Credit of 75% for 10 years, \$1,848,900 estimated value.
2. Workforce Development grant, \$200,000.
3. Rapid Outreach Grant, \$400,000.
4. 629 Roadwork Development Outreach grant, \$600,000.

---

## **Exhibit B**

## **UNIQUE ARRANGEMENT**

**between**

**CATERPILLAR INC.**

**and**

**THE DAYTON POWER AND LIGHT COMPANY**

**This Unique Arrangement ("Agreement") is entered on April 12, 2010 between Caterpillar Inc. ("Caterpillar") and The Dayton Power and Light Company ("DP&L").**

**Whereas under Section 4905.31 of the Ohio Revised Code, a utility and a customer may enter into any financial device practicable or advantageous to the parties interested, including a device to recover costs incurred, such as revenues foregone, in conjunction with any economic development and job retention program of the utility; and**

**Whereas under Section 4901:1-38-05 of the Ohio Administrative Code ("OAC"), the Commission has the authority to approve a unique arrangement between a utility and a customer; and**

**Whereas Caterpillar proposes to build a 1.4 million square feet distribution facility (the "Facility") within DP&L's service territory in response to certain incentives to construct such facility;**

**Now therefore, in consideration of the mutual covenants, terms and conditions set forth herein, the parties hereto agree as follows:**

### **ARTICLE ONE SCOPE AND TERM**

**During the term of this Agreement, DP&L agrees to furnish to Caterpillar, and Caterpillar agrees to accept, service to meet the electric needs of the Facility. Service shall be provided according to the terms and conditions of DP&L's Electric Tariffs P.U.C.O. No. 17 ("Tariffs") except as otherwise described herein. In the event of a conflict between this Agreement and the Tariffs, this Agreement shall be controlling.**

**This Agreement shall commence on the first day of the ninth calendar month after permanent service is established at the Facility or after the Commission's approval of this agreement, whichever is later and continue for five (5) years.**

ME7  
HFK

## **ARTICLE TWO TERMINATION**

Either party may terminate this Agreement (a) in the event of default, (b) if the Public Utilities Commission of Ohio rejects this Agreement or requires material modifications, (c) if the Commission limits DP&L's recovery of Delta Revenues as defined by OAC 4901:1-38-01(C) associated with service to the Facility, or (d) for failure to comply, as described in OAC 4901:1-38-09.

## **ARTICLE THREE POWER REQUIREMENTS**

DP&L shall supply and Caterpillar shall accept the full electric requirements of the Facility according to DP&L's P.U.C.O. No.17 Electric Distribution Service Primary and Electric Generation Service Standard Offer Primary.

## **ARTICLE FOUR COMPENSATION**

During the term of this Agreement, Caterpillar shall pay to DP&L all charges contained in DP&L's P.U.C.O. No.17 Electric Distribution Service Primary and Electric Generation Service Standard Offer Primary, less 15 percent of those charges, provided that Caterpillar's metered monthly load is greater than 500 kW. Should Caterpillar's metered load fall below 500 kW, service will be billed at standard rates.

All billing, payment, and other terms of service, and the obligations of each party not addressed herein, shall be as provided for in the Tariff.

## **ARTICLE FIVE ENERGY EFFICIENCY/DEMAND RESPONSE**

Caterpillar plans to construct the Facility to qualify for a Leadership in Energy and Environmental Design ("LEED") certification. DP&L will provide energy efficiency incentives and rebates for this construction in the amount of up to \$100,000. Upon completion of the facility, Caterpillar agrees to work with DP&L to explore the possibility of making an application to commit the results of its energy efficiency and/or demand response measures and programs for integration with DP&L's energy efficiency and demand response program portfolio for purposes of the Company's compliance with Section 4928.66 of the Ohio Revised Code.

## **ARTICLE SIX EXTENSION OF ELECTRIC FACILITIES**

DP&L will provide up to \$50,000 to assist Caterpillar with its Contribution In Aid of Construction (CIAC) expenses incurred to extend electric services to the Facility. Subject to this incentive, all other line extension requirements found in P.U.C.O. No.17 Electric Distribution Service Extension of Electric Facilities, Tariff Sheet D12 shall apply.

**ARTICLE SEVEN  
REPORTING**

For each year that the Agreement between Caterpillar and DP&L is in effect, Caterpillar shall submit to DP&L and PUCO Staff an annual report which complies with the requirements set forth in Section 4901:1-38-06 of the OAC, by no later than April 30<sup>th</sup> of each year.

Wherefore the parties have caused this Unique Arrangement to be executed on the date entered above.

**AGREED TO AND ACCEPTED BY:**

**CATERPILLAR INC.**

By: *Martin H. Colver*  
Name: MARTIN H. COLVER  
Title: REAL ESTATE MANAGER  
Date: 4/29/10

**THE DAYTON POWER AND LIGHT  
COMPANY**

By: *Bryce Nickel* *JST*  
Name: Bryce Nickel  
Title: Vice President, Service Operations  
Date: May 20, 2010

*ME7  
MFK*

**Exhibit C**

**Caterpillar Estimated Annual Incentives**

Based on DP&L current rates as of March 2010, Caterpillar's estimated annual electric bill and discount pursuant to the Reasonable Arrangement is expected to be:

- Estimated Annual Electric Bill      \$479,192
- Estimated Annual Discount:      \$71,879

Pursuant to the Reasonable Arrangement DP&L will also provide:

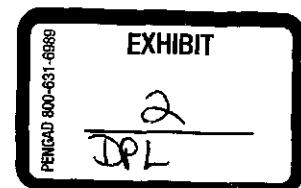
- \$50,000 toward the Contribution in Aid of Construction (CIAC) costs to assist Caterpillar in extending necessary electric facilities to serve its distribution facility
- Rebate incentives of \$100,000 to Caterpillar for the construction of the new facility

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

**DIRECT TESTIMONY OF  
DONA R. SEGER-LAWSON  
ON BEHALF OF  
THE DAYTON POWER & LIGHT COMPANY**

**TABLE OF CONTENTS**

I.	INTRODUCTION.....	3
II.	PURPOSE OF TESTIMONY.....	4
III.	STIPULATION SUMMARY.....	5
IV.	COMMISSION CRITERIA FOR EVALUATING STIPULATIONS.....	6



1    **I.    INTRODUCTION**

2    **Q.    Please state your name and business address.**

3    **A.    My name is Dona R. Seger-Lawson. My business address is 1065 Woodman Drive,**  
4           **Dayton, Ohio 45432.**

5    **Q.    By whom and in what capacity are you employed?**

6    **A.    I am employed by The Dayton Power and Light Company ("DP&L" or "Dayton" or the**  
7           **"Company") as Director, Regulatory Operations.**

8    **Q.    How long have you been Director of Regulatory Operations?**

9    **A.    I assumed my present position on August 25, 2002. Prior to that time, I held various**  
10           **positions in the Rates/Pricing Services/Regulatory Operations division, my most recent**  
11           **prior position being that of Manager, Regulatory Operations, beginning in February 2001.**

12   **Q.    What are your responsibilities in your current position and to whom do you report?**

13   **A.    I have overall responsibility for all base rate development, for both retail and wholesale**  
14           **electric rates. I am responsible for evaluating regulatory and legislative initiatives, and**  
15           **regulatory commission orders that impact the Company's retail and wholesale rates and**  
16           **overall regulatory operations. I report to the Senior Vice President and General Counsel.**

17   **Q.    Will you describe briefly your educational and business background?**

18   **A.    I received a Bachelor of Science degree in Business Administration with majors in**  
19           **Finance and Management from Wright State University in Dayton, Ohio in 1992. I**  
20           **achieved a Master in Business Administration with a Finance Administration**  
21           **concentration also from Wright State University in August of 1997. I have been**  
22           **employed by DP&L in the Regulatory Operations division since 1992.**

23 Q. Have you previously provided testimony before the Public Utilities Commission of  
24 Ohio ("PUCO" or "Commission")?

25 A. Yes. I have sponsored testimony in Case No. 99-220-GA-GCR; Case No. 00-220-GA-  
26 GCR; DP&L's Electric Transition Plan, Case No. 99-1687-EL-ETP; DP&L's Extension of  
27 the Market Development Period Case No. 02-2779-EL-ATA; in Opposition to the  
28 Complaints in Cases Nos. 03-2405-EL-CSS, and 04-85-EL-CSS; in the Company's Rate  
29 Stabilization Period Case No. 05-276-EL-AIR; and in the Company's Electric Security  
30 Plan Case No. 08-1094-EL-SSO.

31 **II. PURPOSE OF TESTIMONY**

32 Q. What is the purpose of this testimony?

33 A. The purpose of my testimony is to discuss and support the reasonableness of the  
34 Stipulation and Recommendation ("Stipulation") entered into by DP&L and several  
35 parties to resolve the issues in this case. The Signatory Parties who represent a diverse set  
36 of interests include DP&L, Ohio Consumers Counsel ("OCC"), and PUCO Staff ("Staff").  
37 Industrial Energy Users – Ohio ("IEU-Ohio"), while not a Signatory Party, has stated it  
38 will not oppose the Stipulation. The Signatory Parties recommend that the Commission  
39 approve the Stipulation filed in this matter on January 28, 2011 and issue its Opinion and  
40 Order in accordance with the recommendations made in the Stipulation because it is the  
41 product of serious negotiations among knowledgeable parties, it benefits customers and  
42 the public interest, and it does not violate any important regulatory principle or practice.  
43 As demonstrated below, the Commission should approve the Stipulation because it  
44 effectively helps to create jobs in this state and facilitates the state's effectiveness in the  
45 global economy, thereby providing a significant benefit to ratepayers.

**III. STIPULATION SUMMARY**

**Q. Can you please summarize the main provisions of this Unique Arrangement?**

**A. Yes. DP&L filed an application for approval of a Unique Arrangement between DP&L and Caterpillar Inc. ("Caterpillar") on June 1, 2010, under which Caterpillar will receive a 15% discount on its total monthly electric bills for the duration of the contract or five years. Caterpillar will also receive an incentive of up to \$50,000 towards the Contribution in Aid of Construction ("CIAC") associated with any necessary extension of electric facilities to the new facility and a \$100,000 rebate for the construction of a Leadership in Energy and Environmental Design ("LEED") certified facility. This Unique Arrangement will commence on the first day of the ninth calendar month after permanent service is established at the facility or after the Commission's approval of this arrangement, whichever is later, and continue for five years.**

**Q. Can you please summarize the main provisions of the Stipulation?**

**A. Yes. This Stipulation represents a resolution of all issues among the intervening parties. Pursuant to the Stipulation, which is signed by Staff and OCC and is not opposed by IEU-Ohio, the delta revenues associated with the 15% discount provided for by this Unique Arrangement will be capped at \$410,000 over the term of the Unique Arrangement. For each year the Unique Arrangement is in effect, Caterpillar will submit to DP&L an annual report, which DP&L will then provide to OCC within seven days of receiving such report from Caterpillar. DP&L's existing Economic Development Rider ("EDR"), which was approved in the Company's Electric Security Plan ("ESP") Case No. 08-1094-EL-SSO and is currently set at zero, will be DP&L's mechanism for recovering costs associated with the Caterpillar**

Unique Arrangement. The EDR will also be credited \$30,000 per year for each of the five years the Unique Arrangement is in place. In addition, DP&L agrees to not seek collection of any carrying charges on costs that may be deferred should DP&L decide to delay the collection of costs associated with this Unique Arrangement.

Further, DP&L agrees to share its proposed customer bill message explaining the implementation of the EDR with the OCC and Staff prior to instituting recovery of costs through the EDR, and will discuss and consider all suggestions and ideas by the OCC and Staff relating to the bill message. Consistent with Section 4901:1-38-08 of the Ohio Administrative Code ("O.A.C."), the EDR will be allocated to all customers in proportion to the current revenue distribution between and among customer classes.

DP&L will work with Caterpillar to develop a document, indicating that Caterpillar will commit the results of its energy efficiency and/or demand reduction measures associated with the LEED certification for integration with DP&L's energy efficiency and demand reduction program portfolio and that Caterpillar will not seek additional compensation from DP&L or its customers for that commitment.

#### **IV. COMMISSIONS CRITERIA FOR EVALUATING STIPULATIONS**

**Q. What criteria does this Commission use to evaluate and approve a Stipulation and Recommendation?**

**A. The Commission has applied in the past, and should use in considering this Stipulation, the following three regulatory criteria to evaluate and approve a stipulation: First, is the Stipulation a product of serious bargaining among capable, knowledgeable parties? Second, taken as a package, does the Stipulation benefit ratepayers and the public**

91 interest? Third, does the Stipulation violate any important regulatory principle or  
92 practice?

93 **Q. Does this Stipulation meet those criteria used by the Commission to evaluate and**  
94 **approve a Stipulation and Recommendation?**

95 **A. Yes, this Stipulation does meet the criteria applied by the Commission in past**  
96 **proceedings.**

97 **Q. Turning to the first criterion, was the Stipulation the product of serious bargaining**  
98 **among capable, knowledgeable parties?**

99 **A. Yes. All Parties to the Stipulation were represented by experienced, knowledgeable**  
100 **counsel, which are experienced negotiators and are knowledgeable about the subject**  
101 **matter at issue. All Parties, including the Signatory Parties, have participated in numerous**  
102 **proceedings before the Commission and are knowledgeable in regulatory matters.**  
103 **Further, all Parties (including the non-signatory party) were invited to participate in**  
104 **settlement discussions regarding the Stipulation. All parties, which participated in**  
105 **numerous meetings, telephone conversations and email exchanges leading to the**  
106 **Stipulation, were provided drafts of the Stipulation and given the opportunity to further**  
107 **engage in settlement discussions with DP&L throughout the process. The issues in the**  
108 **case were discussed in great detail over the course of several months. All negotiations**  
109 **were conducted at arm's length and countless hours were devoted to the negotiating**  
110 **process which produced the Stipulation. Therefore, the Stipulation represents a product of**  
111 **serious bargaining among capable, knowledgeable parties.**

112 **Q. Turning now to the second criterion, does this Stipulation benefit the customers and**  
113 **public interest?**

114 A. Yes. DP&L customers, the Miami Valley and the Ohio economy as a whole will benefit  
115 from this arrangement. In connection with this Unique Arrangement, Caterpillar expects  
116 to create 500 new full-time jobs at the new facility, with an estimated payroll of  
117 approximately \$14 million a year. In addition, this Unique Arrangement will result in  
118 related local and Ohio tax dollars being generated. The average labor rate is expected to  
119 be \$13.40/hour, exclusive of benefits, which will provide a tremendous benefit to the  
120 local, regional and state economy during these difficult times and help reduce the  
121 unemployment rate. The positive economic impact to the region flowing from the  
122 Stipulation represents a significant benefit to customers and the public interest.

123 Q. With respect to the third criterion, does the Stipulation violate any important  
124 regulatory principle or practice?


125 A. No. The Stipulation does not violate any important regulatory practice or principle. The  
126 application is consistent with Commission rules. This Stipulation is designed to ensure  
127 that Caterpillar secures long-term, reliable electric service from DP&L, which in turn will  
128 assist in creating jobs, thus improving the local, regional and state economy as a whole.  
129 The Stipulation will facilitate the State's effectiveness in the global economy by  
130 promoting this job growth in the State and promoting energy efficiency, all of this in  
131 furtherance of the policy of the State of Ohio as embodied in Section 4928.02 of the Ohio  
132 Revised Code. Therefore, the Stipulation does not violate any important regulatory  
133 principle or practice.

134 Q. Does this conclude your testimony?

135 A. Yes, it does.

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Testimony of Dona R. Seger-Lawson has been served either electronically or via first class mail, postage prepaid, this 14<sup>th</sup> day of February 2011 upon counsel to the parties of record.



Judi L. Sobecki  
The Dayton Power and Light Company  
1065 Woodman Dr.  
Dayton, OH 45432  
[judi.sobecki@dplinc.com](mailto:judi.sobecki@dplinc.com)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**2/14/2011 10:51:46 AM**

**in**

**Case No(s). 10-0734-EL-AEC**

**Summary: Testimony of Dona R. Seger-Lawson in support of the Stipulation and Recommendation, electronically filed by Mrs. Irda Hoxha Henders on behalf of The Dayton Power and Light Company**