

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Dayton Power and Light Company for)	Case No. 11-4504-EL-ATA
Approval of Revisions to its Existing)	
G8, D4 and D5 Tariffs)	

**THE DAYTON POWER AND LIGHT COMPANY’S MEMORANDUM
OPPOSING MOTION AND MEMORANDUM IN SUPPORT OF AN
ABBREVIATED COMMENT PERIOD**

The Dayton Power and Light Company (“DP&L” or “the Company”) urges the Public Utilities Commission of Ohio (“PUCO” or “Commission”) to deny the eleventh-hour Motion for Abbreviated Comment Period (“Motion for Comment Period”) filed by FirstEnergy Solution Corp. (“FES”) in this matter for two reasons. First, as FES admits in its Motion for Comment Period, FES has already had the opportunity to communicate its concerns regarding competitive issues in the context of DP&L’s merger proceeding in Case No. 11-3002-EL-MER.¹ In fact, FES commented extensively and then as FES also admits in its Motion for Comment Period, participated in negotiations that culminated in a Stipulation Approving the Merger filed on October 26, 2011 (“Stipulation and Recommendation”).² That Stipulation and Recommendation, subsequently approved by the Commission without modification on November 22, 2011, contained multiple concessions related to competitive issues raised by FES in its Comments filed in the merger proceeding.³

The Commission recognized these substantial concessions. In its Finding and Order approving of the Stipulation and Recommendation, the Commission specifically

¹ FES incorrectly cites to Case No. 11-3001-EL-MER in its motion, at page 1.

² Id. While FES did not sign the Stipulation, it indicated it took no position on the Merger.

³ See Stipulation and Recommendation, paragraphs 7 through 13.

notes that “the stipulations address many of the issues raised in comments in this proceeding, including increased stability for the local community **and the reduction in barriers to competition.**”⁴

FES makes the representation to the Commission in its Motion for Comment Period that:

In the course of the negotiation of that Stipulation, FES and DP&L exchanged communication that competitive concerns of FES regarding DP&L’s proposed Tariff Revisions would be raised in the subject proceedings. **As a result, DP&L anticipates and expects that FES will comment on its proposed Tariff Revisions.** (Emphasis added).

This is incorrect. It is because of FES’ participation as a commenter and in negotiations, along with the fact that the Stipulations addressed many issues raised in comments in that proceeding—including competitive issues—that DP&L did not anticipate, nor expect FES to comment in this case. Contrary to its assertion, FES’ last-minute motion is entirely unexpected.

DP&L also urges the Commission to deny FES’ motion because it is untimely, and FES has not complied with Rule 4901-1-12 in seeking expedited consideration.

Any motion may include a specific request for an expedited ruling. The grounds for such a request shall be set forth in the memorandum in support. If the motion requests an extension of time to file pleadings or other papers of five days or less, an immediate ruling may be issued without the filing of memoranda. **In all other situations, the party requesting an expedited ruling may first contact all other parties to determine whether any party objects to the issuance of such a ruling without the filing of memoranda. If the moving party certifies that no party objects to the issuance of such a ruling, an immediate ruling may be issued.** If any party objects to the issuance of such a ruling, or if the moving party fails to certify that no party has any objection, any party may file a memorandum contra within seven days after the service of the motion, or such other period as the commission, the legal director, the deputy legal director, or the attorney examiner requires. No reply

⁴ Finding and Order, November 22, 2011, at paragraph 24. (Emphasis added).

memoranda shall be filed in such cases unless specifically requested by the commission, the legal director, the deputy legal director, or the attorney examiner. (Emphasis added).

This matter is scheduled for the Commission's Agenda this afternoon. FES waited until less than 24 hours before the case was to be determined, then filed its entirely unexpected Motion for Comment Period and sought expedited consideration, without so much as a call to DP&L to indicate its intent to file the Motion, let alone obtaining DP&L's consent to expedited consideration. FES clearly has not certified that no party objects to expedited consideration as required by O.A.C. 4901-1-12(C). For this reason alone, FES' motion should be denied. Moreover, this type of behavior should be discouraged.

For the foregoing reasons, DP&L respectfully requests that the Commission deny FES' Motion for Comment Period and for expedited consideration.

Respectfully submitted,

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

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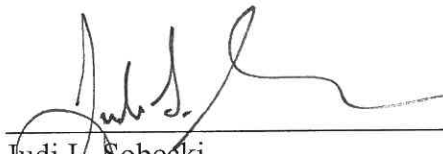
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served via electronic mail upon the following counsel of record, this 4th day January, 2012:

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Judi L. Sobecki

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Summary: Memorandum The Dayton Power and Light Company`s Memorandum Opposing Motion and Memorandum in Support of an Abbreviated Comment Period electronically filed by Mrs. Angela N. Hogan on behalf of The Dayton Power and Light Company