BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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| In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Market Rate Offer | ) ) ) | Case Nos. 12-426-EL-SSO |
| In the matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs | ) ) ) | Case Nos. 12-427-EL-ATA |
| In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority | ) ) ) | Case Nos. 12-428-EL-AAM |
| In the matter of the Application of The Dayton Power and Light Company for the Waiver of Certain Commission Rules | ) ) ) | Case Nos. 12-429-EL-WVR |
| In the matter of the Application of The Dayton Power and Light Company to Establish Tariff Riders. | ) ) ) | Case Nos. 12-672-EL-RDR |

**JOINT MEMORANDUM IN OPPOSITION TO MOTION OF APPLICANT THE DAYTON POWER AND LIGHT COMPANY TO SET PROCEDURAL SCHEDULE FOR ITS ELECTRIC SECURITY PLAN FILING**

## I. INTRODUCTION

The Dayton Power and Light Company's ("DP&L") Motion To Set Procedural Schedule For Its Electric Security Plan Filing (the "Motion") should be rejected as premature and unrealistic. It is premature to establish a procedural schedule at this point, before DP&L has even made its Electric Security Plan ("ESP") filing, when the other parties to this litigation have not had the opportunity to review DP&L's anticipated ESP filing and, thus, are unable to determine how long it may take to conduct discovery and prepare responsive testimony. Even if it were appropriate to establish a procedural schedule prior to DP&L's ESP filing, DP&L's suggested schedule is completely

unrealistic. There is no justification for rushing this matter to hearing in five weeks simply because DP&L devoted significant time to its proposed Market Rate Offer ("MRO").

As DP&L's Motion is both premature and unrealistic, the Joint Movants[1] hereby respectfully request that the Public Utilities Commission of Ohio ("Commission") deny the Motion and establish a reasonable procedural schedule after DP&L's anticipated ESP has been filed. In the alternative, the Commission should adopt a schedule consistent with the 275-day schedule provided in R.C. § 4928.143(C)(1). PUCO Staff has been contacted, and does not oppose Joint Movants' request.

## II. PROCEDURAL HISTORY

On June 24, 2009, the Commission issued an Opinion and Order ("ESP I Order") in Case No. 08-1094-EL-SSO, *et al*. (*ESP I Case*) adopting a stipulation and recommendation and approving an ESP for DP&L ("ESP I Settlement"). Among other things, the ESP I Settlement contained the following provision:

> DP&L will file a new ESP and/or MRO case by March 31,2012 to set SSO rates to apply for period beginning January 1, 2013. At least 120 days prior to March 31, 2012, DP&L will consult with interested Signatory Parties to discuss the filing.[2]

The ESP I Settlement set forth a procedural schedule that is the typical schedule for ESP proceedings.

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[1] The Intervenors joining in this Motion (the "Joint Movants") include: FirstEnergy Solutions Corp.; Industrial Energy Users-Ohio; Ohio Energy Group; Duke Energy Retail Sales, LLC; Duke Commercial Asset Management, Inc.; Edgemont Neighborhood Coalition of Dayton; Ohio Partners for Affordable Energy; Honda of America Mfg., Inc.; EnerNOC, Inc.; Wal-Mart Stores East, LP; Sam's East, Inc.; OMA Energy Group; City of Dayton, SolarVision LLC; Kroger Company; Ohio Hospital Association; and the Ohio Consumer's Counsel.

[2] Section 9 of the ESP I Settlement. *ESP I Case.*

In accordance with the deadline established in the *ESP I Case*, DP&L filed an application seeking approval of a market rate offer ("MRO") form of standard service offer ("SSO") under Section 4928.142, Revised Code as well as other relief. This application did not seek to establish an ESP, but instead sought to establish an SSO through an MRO. Over the next six months, the Joint Movants intervened in this proceeding, conducted discovery, prepared for hearing, and engaged in settlement talks with DP&L regarding its proposed MRO. Despite these months of work, on September 7, 2012, DP&L withdrew its MRO Application without explanation. On the same date as it withdrew its MRO, DP&L filed a Motion giving notice that it intended to file an ESP Application on or before October 8, 2012 and proposing a procedural schedule. No other party joined with DP&L in requesting this procedural schedule.

## III. ARGUMENT

### A. There Is No Reason To Establish A Procedural Schedule At This Point.

DP&L's Motion does not provide any reason to set a procedural schedule now, other than to note that: "[t]he earlier that a procedural schedule is set the better."[3] It certainly would be early to set a procedural schedule ahead of DP&L's submission of an ESP application. However, Joint Movants do not agree that it would be better to do so. Indeed, setting a procedural schedule ahead of DP&L's submission of an ESP application would be unwise and unreasonable under the circumstances.

Since DP&L has not even filed its ESP application, it is impossible to know what DP&L intends to propose as an ESP or what other relief (such as accounting authority)

[3] Motion, unnumbered page 3.

DP&L may seek in conjunction with its ESP application, whether this ESP proposal is justified, the extent to which DP&L's ESP application will comply with the applicable laws and regulations, the extent to which DP&L's ESP application may seek waivers from otherwise applicable requirements, the extent to which DP&L's testimony will address the ESP proposal and any questions it may raise, how much discovery will be necessary, what witnesses will be required, what issues will be contested or resolved through settlement efforts or how long any hearing may take to address contested issues. Without any chance to review DP&L's anticipated ESP application, it is, frankly, unfair and unreasonable to require Joint Movants to consider and address a proposed procedural schedule that is, on its face, aggressive relative to the typical procedural schedule in ESP proceedings (the type of procedural schedule anticipated in the ESP I Settlement).

More importantly, there is no good reason why a procedural schedule for this anticipated ESP application needs to be set before an ESP application is even filed. Joint Movants submit that the specification of a reasonable procedural schedule is something that should and can be efficiently and effectively addressed once the parties and the Commission have a chance to review DP&L's ESP application.

As there is no reason to set a procedural schedule before DP&L's ESP application is even filed, the Joint Movants respectfully request that DP&L's Motion be denied and that a procedural schedule be set after the ESP application has been filed.

**B. DP&L's Proposed Schedule Is Unfair, Unrealistic, And Unworkable.**

In the alternative, the Joint Movants believe that DP&L's proposed schedule is unfair, unrealistic, and unworkable. As discussed above, DP&L proposed an MRO in this proceeding and then abandoned it more than six months later, effectively frustrating

the procedural framework approved in the ESP I Settlement. Now that DP&L has decided to reverse course and pursue an ESP which will not be filed until October (more than 5 months after the deadline established by the ESP I Settlement), DP&L seeks, unilaterally, to impose an extremely aggressive procedural schedule on other interested parties while retaining maximum flexibility for itself. There are numerous flaws in DP&L's proposal, such as:

1) DP&L gives itself 31 days[4] to file an ESP application, but gives the intervenors only 21 days to review this filing, conduct relevant discovery, identify witnesses, and file opposition testimony, despite the fact that DP&L is in possession of all relevant information and controls what is included in the anticipated ESP application;

2) DP&L provides no mechanism for public notice or opportunity for additional intervention in this proceeding by new parties who may be affected by DP&L's new proposed ESP, potentially prejudicing those not already parties to this action;

3) DP&L suggests a hearing only five weeks after the ESP application has been filed;

4) DP&L anticipates only five days of testimony immediately before the Thanksgiving holiday, despite having no idea how many witnesses will be testifying; and

5) DP&L suggests that the Commission issue its decision by December 17, 2012, only two weeks after briefing is concluded and 70 days after the ESP application was filed.

As shown by these representative examples, DP&L's proposed procedural schedule is as unfair, unrealistic, and unworkable as it is premature. Rather than modifying this unrealistic schedule without the benefit of reviewing the proposed ESP, if the Commission is inclined to set a procedural schedule now, then the Joint Movants

[4] Calculated from the date DP&L withdrew its proposed MRO and gave notice of its anticipated ESP application. Of course, it is likely that DP&L knew before this date that it would be abandoning its MRO plan and pursuing an ESP, and so DP&L likely gave itself more than 31 days to prepare and file its ESP application.

respectfully request that the Commission adopt a schedule consistent with the 275-day schedule provided in R.C. § 4928.143(C)(1). There is no reason to believe that DP&L's ESP application will be any different than the general ESP application anticipated by the statute, and so the procedural schedule should anticipate a decision within the normal statutory timeframe.

## IV. CONCLUSION

The Joint Movants respectfully request that the Attorney Examiner deny DP&L's Motion and instead set this matter for status conference after DP&L's ESP application is filed. Waiting to establish a procedural schedule until the ESP application is filed will not prejudice any parties and will allow the Joint Movants an opportunity to provide intelligent comments on a proposed schedule once they have reviewed DP&L's ESP application. If the Commission does set a schedule now despite the obvious problems with doing so that are briefly described herein, the Joint Movants respectfully request that DP&L's proposal be significantly adjusted and that the Commission adopt a procedural schedule consistent with the 275-day schedule provided in R.C. § 4928.143(C)(1).

Dated: September 17, 2012

Respectfully submitted,

/s/ *Mark A. Hayden*

Mark A. Hayden (0081077)
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
(330) 761-7735
(330) 384-3875 (fax)
haydenm@firstenergycorp.com

James F. Lang (0059668)
Laura C. McBride (0080059)
N. Trevor Alexander (0080713)
CALFEE, HALTER & GRISWOLD LLP
1400 KeyBank Center
800 Superior Ave.
Cleveland, OH 44114
(216) 622-8200
(216) 241-0816 (fax)
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com

*Attorneys for FirstEnergy Solutions Corp*

**IEU-Ohio**

Samuel C. Randazzo
Joseph E. Oliker
Frank P. Darr
Matthew R. Pritchard
McNees Wallace & Nurick
21 East State Street, 17th Floor
Columbus, Ohio 43215
sam@mwncmh.com
joliker@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com

**Ohio Energy Group**

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street. Suite 1510
Cincinnati, Ohio 45202
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com

**Honda of America Mfg., Inc.**

M. Anthony Long
Honda of America Mfg., Inc.
24000 Honda Parkway

**Duke Energy Retail and Duke Energy Commercial Asset Management**

Jeanne W. Kingery
Amy B. Spiller

Marysville, OH 43040
tony_long@ham.honda.com

139 East Fourth Street
1303-Main
Cincinnati, Ohio 45202
jeanne.kingery@duke-energy.com
amy.spiller@duke-energy.com

**Ohio Partners for Affordable Energy**

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
cmooney2@columbus.rr.com

**EnerNOC, Inc.**

Gregory J. Poulos
EnerNOC, Inc.
471 E. Broad Street, Suite 1520
Columbus, Ohio 43215
gpoulos@enernoc.com

**Wal-Mart Stores East, LP and Sam's East, Inc.**

Steven M. Sherman
Joshua D. Hague
Grant E. Chapman
Krieg DeVault, LLP
One Indiana Square, Suite 2800
Indianapolis, Indiana 46204
ssherman@kdlegal.com
jhague@kdlegal.com
gchapman@kdlegal.com

**Edgemont Neighborhood Coalition of Dayton**

Ellis Jacobs
Advocates for Basic Legal Equality, Inc.
333 W. First Street, Suite 500B
Dayton, OH 45402
ejacobs@ablelaw.org

**OMA Energy Group**

Lisa G. McAlister
Matthew W. Warnock
J. Thomas Siwo
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
lmcalister@bricker.com
mwarnock@bricker.com
tsiwo@bricker.com

**City of Dayton**

Christopher L. Miller
Gregory H. Dunn
Asim Z. Haque
Ice Miller, LLP
250 West Street
Columbus, Ohio 43215
christopher.miller@icemiller.com
asim.haque@ icemiller.com
gregory.dunn@ icemiller.com

**SolarVision LLC**

Kimberly W. Bojko
CARPENTER LIPPS & LELAND LLP
280 Plaza, Suite 1300
280 N. High Street
Columbus, OH 43215

**Kroger Company**

Mark S. Yurick
Zachary D. Kravitz
Taft Stettinius & Hollister, LLP
65 E. State St., Suite 1000
Columbus, Ohio 43215
myurick@taftlaw.com

(614) 365-4124
bojko@carpenterlipps.com

zkravitz@taftlaw.com

**Ohio Hospital Association**

Thomas J. O'Brien
Bricker & Eckler
100 South Third Street
Columbus, Ohio 43215-4291
tobrien@bricker.com

**Office of the Ohio Consumer's Counsel**

Joseph P. Serio
Melissa R. Yost
Office of the Ohio Consumer's Counsel
10 West Broad St., Suite 1800
Columbus, OH 43215
serio@occ.state.oh.us
yost@occ.state.oh.us

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Joint Memorandum In Opposition To Motion of Applicant The Dayton Power And Light Company To Set Procedural Schedule For Its Electric Security Plan Filing* was served this 17th day of September, 2012, via e-mail upon the parties below.

*/s/ N. Trevor Alexander*
One of the Attorneys for FirstEnergy Solutions Corp.

Judi L. Sobecki
The Dayton Power & Light Company
1065 Woodman Drive
Dayton, OH 45432
judi.sobecki@dplinc.com

Charles J. Faruki
Jeffrey S. Sharkey
Faruki, Ireland & Cox, P.L.L.
500 Courthouse Plaza, S.W.
10 N. Ludlow Street
Dayton, OH 45402
cfaruki@ficlaw.com
jsharkey@ficlaw.com

Samuel C. Randazzo
Joseph E. Oliker
Frank P. Darr
Matthew R. Pritchard
McNees Wallace & Nurick
21 East State Street, 17th Floor
Columbus, Ohio 43215
sam@mwncmh.com
joliker@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com

Lisa G. McAlister
Matthew W. Warnock
J. Thomas Siwo
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
lmcalister@bricker.com
mwarnock@bricker.com
tsiwo@bricker.com

M. Anthony Long
Honda of America Mfg., Inc.
24000 Honda Parkway
Marysville, OH 43040
tony_long@ham.honda.com

Jeanne W. Kingery
Amy B. Spiller
139 East Fourth Street
1303-Main
Cincinnati, Ohio 45202
jeanne.kingery@duke-energy.com
amy.spiller@duke-energy.com

Robert A. McMahon
Eberly McMahon LLC
2321 Kemper Lane, Suite 100
Cincinnati, OH 45206

Rocco D'Ascenzo
Elizabeth Watts
139 East Fourth Street
1303-Main

bmcmahon@emh-law.com

Cincinnati, Ohio 45202
elizabeth.watts@duke-energy.com
rocco.d'ascenzo@duke-energy.com

Jay E. Jadwin
American Electric Power Service Corp.
155 W. Nationwide Blvd., Suite 500
Columbus, OH 43215
jejadwin@aep.com

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street. Suite 1510
Cincinnati, Ohio 45202
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com

Richard L. Sites
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, Ohio 43215-3620
ricks@ohanet.org

Thomas J. O'Brien
Bricker & Eckler
100 South Third Street
Columbus, Ohio 43215-4291
tobrien@bricker.com

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
cmooney2@columbus.rr.com

Mark A. Whitt
Andrew J. Campbell
Melissa L. Thompson
Whitt Sturtevant LLP
PNC Plaza, Suite 2020
155 East Broad Street
Columbus, Ohio 43215
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com
thompson@whitt-sturtevant.com

Vincent Parisi
Matthew White
Interstate Gas Supply, Inc.
6100 Emerald Parkway
Dublin, Ohio 43016
vparisi@igsenergy.com
mswhite@igsenergy.com

Mark S. Yurick
Zachary D. Kravitz
Taft Stettinius & Hollister, LLP
65 E. State St., Suite 1000
Columbus, Ohio 43215
myurick@taftlaw.com
zkravitz@taftlaw.com

Gregory J. Poulos
EnerNOC, Inc.
471 E. Broad Street, Suite 1520
Columbus, Ohio 43215
gpoulos@enernoc.com

Joseph P. Serio
Melissa R. Yost
Office of the Ohio Consumer's Counsel
10 West Broad St., Suite 1800
Columbus, OH 43215
serio@occ.state.oh.us
yost@occ.state.oh.us

Christopher L. Miller
Gregory H. Dunn
Asim Z. Haque
Ice Miller, LLP
250 West Street
Columbus, Ohio 43215

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, Ohio 43215
mhpetricoff@vorys.com

christopher.miller@icemiller.com
asim.haque@ icemiller.com
gregory.dunn@ icemiller.com

Trent A. Dougherty
Cathryn Loucas
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
trent@theoeg.org
cathy@theoec.org

smhoward@vorys.com

Stephanie M. Chmie
Carolyn S. Flahive
Michael L. Dillard, Jr.
Thompson Hine LLP
41 S. High Street, Suite 1700
Columbus, Ohio 43215
stephanie.chmiel@ThompsonHine.com
carolyn.flahive@thompsonhine.com
michael.dillard@ThompsonHine.com

Matthew J. Satterwhite
Steven T. Nourse
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
mjsatterwhite@aep.com
stnourse@aep.com

Steven M. Sherman
Joshua D. Hague
Grant E. Chapman
Krieg DeVault, LLP
One Indiana Square, Suite 2800
Indianapolis, Indiana 46204
ssherman@kdlegal.com
jhague@kdlegal.com
gchapman@kdlegal.com

Joseph M. Clark
6641 North High St., Suite 200
Worthington, Ohio 43085
jmclark@vectren.com

Ellis Jacobs
Advocates for Basic Legal Equality, Inc.
333 W. First Street, Suite 500B
Dayton, OH 45402
ejacobs@ablelaw.org

Kimberly W. Bojko
Carpenter Lipps & Leland, LLP
280 Plaza, Suite 1300
280 N. High Street
Columbus, OH 43215
(614) 365-4124
bojko@carpenterlipps.com

Matthew R. Cox
Matthew Cox Law, Ltd.
4145 St. Theresa Blvd.
Avon, OH 44011
matt@matthewcoxlaw.com

Summary: Memorandum Joint Memorandum In Opposition to Motion of Applicant the Dayton Power & Light Company To Set Procedural Schedule For Its Electric Security Plan Filing electronically filed by Mr. Nathaniel Trevor Alexander on behalf of FirstEnergy Solutions Corp.