

FILE

FARUKI, IRELAND & COX P.L.L.

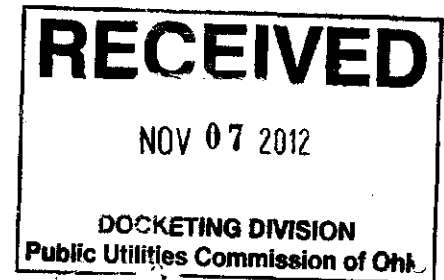
ATTORNEYS AT LAW

TRUSTED WISDOM. EXTRAORDINARY RESULTS.

Respond to Dayton Office

Kelly M. Cline
(937) 227-3716
kcline@ficlaw.com

November 7, 2012



Donielle Hunter
Public Utilities Commission of Ohio
Legal Department
180 East Broad Street, 12th Floor
Columbus, Ohio 43215

RE: In the Matter of the Application of The Dayton Power and Light
Company; PUCO Case No. 12-426-EL-SSO, et al.
Resubmission of Reply Memorandum (Oct. 24, 2012)

Dear Ms. Hunter:

On November 6, 2012, The Dayton Power and Light Company ("DP&L") filed its Memorandum in Opposition to Joint Movants' Motion Seeking an Order Directing It to Comply with the Standard Filing Requirements for an Electric Security Plan and Memorandum in Support and Memorandum Contra Its Request for Waivers ("Memorandum in Opposition"). Though the Memorandum in Opposition was filed timely (Ohio Admin. Code § 4901-1-12(B)), DP&L encountered issues with the electronic filing and inadvertently filed materials that were not intended to be filed. DP&L thus asks that the filing be removed from the Commission's website and that DP&L be permitted to re-post the same Memorandum in Opposition to the Commission's Docketing Information System today, November 7, 2012. There are no differences between the Memorandum in Opposition filed yesterday and the Memorandum in Opposition that will be posted today. DP&L apologizes for the issue and appreciates your assistance.

Very truly yours,

Kelly M. Cline

Kelly M. Cline

KMC/tes
Enclosures
667780.1

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 MS Date Processed 11/7/12

201 East Fifth Street
Suite 1420
Cincinnati, Ohio 45202
513-632-0300
Fax 513-632-0319



ficlaw.com

500 Courthouse Plaza, S.W.
10 North Ludlow Street
Dayton, Ohio 45402
937-227-3700
Fax 937-227-3717

FILE

RECEIVED

NOV 07 2012

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

DOCKETING DIVISION
Public Utilities Commission of Ohio

12

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan	:	Case No. 12-426-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs	:	Case No. 12-427-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority	:	Case No. 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 No. 12-429-EL-WVR
In the Matter of the Application of The Dayton Power and Light Company to Establish Tariff Riders	:	Case No. 12-672-EL-RDR

**THE DAYTON POWER AND LIGHT COMPANY'S MEMORANDUM IN
OPPOSITION TO JOINT MOVANTS' MOTION SEEKING AN ORDER DIRECTING
THE DAYTON POWER AND LIGHT COMPANY TO COMPLY WITH THE
STANDARD FILING REQUIREMENTS FOR AN ELECTRIC SECURITY PLAN AND
MEMORANDUM IN SUPPORT AND MEMORANDUM CONTRA THE DAYTON
POWER AND LIGHT COMPANY'S REQUESTS FOR WAIVERS**

I. INTRODUCTION AND SUMMARY

Almost all of the information that Joint Movants¹ seek is either in the filing in this case, is not required by the standard filing requirements, or could have been sought in discovery. Joint Movants seek an order from the Commission compelling The Dayton Power and Light Company ("DP&L") to include in its ESP Application: (1) "the projected costs" of the Yankee

¹ The Joint Movants filing this pleading are Industrial Energy Users-Ohio, Ohio Partners for Affordable Energy, The Kroger Company, the Ohio Energy Group, Honda of America Manufacturing, Inc., SolarVision, LLC, the OMA Energy Group, and the Office of the Ohio Consumers' Counsel (collectively, "Joint Movants").

This is to certify that the images appearing are an
accurate and complete reproduction of a legal file
document delivered in the regular course of business.
Technician MS Date Processed 11/7/12

Solar project; (2) a "quantification or estimation" of DP&L's proposed switching tracker; (3) "a description of the effect on large-scale governmental aggregation of any unavoidable generation charge proposed to be established in" DP&L's ESP Application; (4) "a section demonstrating that its current corporate separation plan is in compliance with section 4928.17 of the Revised Code, Chapter 4901:1-37 of the Administrative Code, and consistent with the policy of the state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code"; (5) "a complete quantification of the RR, specifically the cost of retail enhancements"; and (6) a quantification of DP&L's "pro forma financial projections and projected rate impacts" and pro forma financial projections "broken down on a generation/distribution/transmission basis." Joint Motion, pp. 1-3, 5-6.² Joint Movants also request that the Commission "suspend the procedural schedule in this case until DP&L complies." Id. at p. 3.

As demonstrated below, the Commission should deny the Joint Motion and set a procedural schedule that would move this case forward. First, DP&L's request for waiver of any requirement that it file pro forma financial information or rate impacts associated with the Yankee Solar Project should be granted for good cause shown under Ohio Admin. Code § 4901:1-35-02. In addition, DP&L will make a supplemental filing that will include capital costs for the Yankee facility. Second, DP&L intends to make a supplemental filing that will include illustrative financial projections of DP&L's proposed switching tracker. Third, DP&L has already disclosed in its ESP Application the information that Joint Movants seek with regard to items 3, 4 and 5 above. Last, Joint Movants fail to specify how DP&L allegedly "fails to properly quantify the pro forma financial projections and projected rate impacts[.]" Further, the

² Joint Movants' Motion Seeking an Order Directing The Dayton Power and Light Company to Comply with the Standard Filing Requirements for an Electric Security Plan and Memorandum in Support and Memorandum Contra The Dayton Power and Light Company's Requests for Waivers ("Joint Motion").

Commission's standard filing requirements do not require DP&L to include in its ESP Application a breakdown of pro forma financial projections on a generation, distribution, and transmission basis.

II. PROJECTED COSTS OF THE YANKEE SOLAR PROJECT

DP&L's Application sought a waiver of any requirement that it file information related to costs associated with the Yankee Solar Project because DP&L does not seek to recover costs associated with that project in this case. ESP Application, ¶ 18. Additionally, the detailed information required to develop the revenue requirements for the project is not yet complete. Disclosure of any cost estimates is therefore premature. Moreover, DP&L was unable, due to time constraints associated with the filing of its ESP Application, to provide pro forma financial projections regarding revenue requirements associated with the Yankee Solar Project. DP&L intends to provide its cost support for the Yankee Solar Project in a later proceeding before the Commission, which is the reason the Company sought a waiver of this requirement. Finally, DP&L will soon file a supplement to its Application that will include the capital costs for the Yankee facility.

For these reasons, the Commission should grant DP&L's request for a waiver of the requirement that it file cost support associated with the Yankee Solar Project for good cause shown. Ohio Admin. Code § 4901:1-35-02 ("The commission may, upon an application or a motion filed by a party, waive any requirement of [Ohio Admin. Code § 4901:1 et seq.], other than a requirement mandated by statute, for good cause shown.").

III. "QUANTIFICATION OR ESTIMATION" OF SWITCHING TRACKER

Joint Movants could have simply sought this information in discovery, but for their own reasons made it the subject of a motion. In any event, the amounts that will be included in the switching tracker will depend on the amount of future switching; DP&L will soon make a supplemental filing that will estimate the amounts to be included in DP&L's proposed switching tracker based upon an assumed level of future switching.

IV. EFFECT ON LARGE-SCALE GOVERNMENTAL AGGREGATION

Contrary to the Joint Movants' claim (p. 6), DP&L's ESP Application included information regarding the effect on large-scale governmental aggregation of any unavoidable generation charge. This information can be found in the Testimony of Dona R. Seger-Lawson at page 18, lines 4 to 13. The motion is thus moot as to that item.

V. CORPORATE SEPARATION PLAN

Joint Movants assert that:

"DP&L failed to provide 'a section demonstrating that its current corporate separation plan is in compliance with section 4928.17 of the Revised Code, Chapter 4901:1-37 of the Administrative Code, and consistent with the policy of the state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code.' Although DP&L witness Sobecki provides testimony regarding corporate separation, her testimony falls well short of compliance with the standard filing requirements."³

Joint Movants' argument is flawed for two reasons. First, Joint Movants fail to specify how DP&L purportedly "falls well short of compliance with the standard filing

³ Joint Motion, p. 6.

requirements."⁴ Second, DP&L properly disclosed in its ESP Application the information that Joint Movants seek regarding DP&L's corporate separation plan. This information can be found in DP&L's Third Amended Corporate Separation Plan, which is located in Book III, Appendix A, at pages 1 to 30 of the ESP Application, which describes in detail how DP&L is in compliance with corporate separation rules. The motion is thus moot as to this item as well.

VI. QUANTIFICATION OF RECONCILIATION RIDER

Joint Movants also assert that DP&L did not provide "quantification" of the Reconciliation Rider, "specifically the cost of retail enhancements."⁵ Joint Movants fail to cite any statute or code provision that would require DP&L to disclose such information in its ESP Application. In any event, the information that Joint Movants seek regarding the Reconciliation Rider can be found in the Testimony of Dona R. Seger-Lawson at page 13, lines 4 to 6. Again, the motion is moot as to this item.

VII. PRO FORMA FINANCIAL PROJECTIONS

Joint Movants also contend that DP&L "fails to properly quantify the pro forma financial projections and projected rate impacts that are required by the standard filing requirements. Additionally, the pro forma financial projections are on a total company basis rather than being broken down on a generation/distribution/transmission basis."⁶

⁴ Joint Motion, p. 6.

⁵ Joint Motion, p. 6.

⁶ Joint Motion, p. 6.

The Commission should reject Joint Movants' argument for lack of specificity as to how DP&L purportedly "fails to properly quantify the pro forma financial projections and projected rate impacts[.]" Id. In addition, Joint Movants fail to cite any statute or code provision that requires DP&L to break down pro forma financial projections in its ESP Application on a generation, distribution, and transmission basis. While such a requirement exists in the Commission's MRO rules,⁷ no such requirement applies to DP&L's ESP Application.

VIII. PROCEDURAL SCHEDULE

As shown above, most of the Joint Movants' requests are baseless. If the Commission were to conclude that DP&L's ESP Application was deficient in some respect, then the deficiency can be addressed in discovery or in a supplemental filing by the Applicant. However, there is no basis in Ohio Rev. Code § 4928.143 or the Commission's rules to support the Joint Movants' request that the Commission suspend a case in its entirety.

Indeed, as demonstrated above, most of the information that Joint Movants seek is already in DP&L's filing. Further, the Joint Movants do not identify any prejudice that they would suffer from a short delay in the filing of any additional information that the Commission would order DP&L to file. Further, DP&L would be substantially prejudiced if the Commission were to delay setting a schedule in this case. The Commission should thus set this case for a prompt hearing.

⁷ Ohio Admin. Code § 4901:1-35-03(B)(2)(b) (MRO applications shall include "[p]ro forma financial projections of the effect of the CBP plan's implementation, including implementation of division (D) of section 4928.142 of the Revised Code, upon generation, transmission, and distribution of the electric utility, for the duration of the CBP plan.").

IX. CONCLUSION

For the foregoing reasons, the Commission should deny the Joint Motion and allow this case to proceed.

Respectfully submitted,

s/ Judi L. Sobecki

Judi L. Sobecki (0067186)
THE DAYTON POWER AND
LIGHT COMPANY
1065 Woodman Drive
Dayton, OH 45432
Telephone: (937) 259-7171
Telecopier: (937) 259-7178
Email: judi.sobecki@dplinc.com

s/ Charles J. Faruki

Charles J. Faruki (0010417)
(Counsel of Record)
Jeffrey S. Sharkey (0067892)
FARUKI IRELAND & COX P.L.L.
500 Courthouse Plaza, S.W.
10 North Ludlow Street
Dayton, OH 45402
Telephone: (937) 227-3705
Telecopier: (937) 227-3717
Email: cfaruki@ficlaw.com

Attorneys for The Dayton Power and Light
Company

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing The Dayton Power and Light Company's Memorandum in Opposition to Joint Movants' Motion Seeking an Order Directing The Dayton Power and Light Company to Comply With the Standard Filing Requirements for an Electric Security Plan and Memorandum in Support and Memorandum Contra The Dayton Power and Light Company's Requests for Waivers has been served via electronic mail upon the following counsel of record, this 6th day of November, 2012.

Samuel C. Randazzo, Esq.
Frank P. Darr, Esq.
Matthew R. Pritchard, Esq.
Joseph E. Olikier, Esq.
MCNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
sam@mwncmh.com
fdarr@mwncmh.com
mpritichard@mwncmh.com
joliker@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

Philip B. Sineneng, Esq.
THOMPSON HINE LLP
41 South High Street, Suite 1700
Columbus, OH 43215
Philip.Sineneng@ThompsonHine.com

Amy B. Spiller, Esq.
Deputy General Counsel
Jeanne W. Kingery, Esq.
Associate General Counsel
DUKE ENERGY RETAIL SALES, LLC and
DUKE ENERGY COMMERCIAL ASSET
MANAGEMENT, INC.
139 East Fourth Street
1303-Main
Cincinnati, OH 45202
Amy.Spiller@duke-energy.com
Jeanne.Kingery@duke-energy.com

Attorneys for Duke Energy Retail Sales, LLC and
Duke Energy Commercial Asset Management, Inc.

Mark A. Hayden, Esq.
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.com

James F. Lang, Esq.
Laura C. McBride, Esq.
N. Trevor Alexander, Esq.
CALFEE, HALTER & GRISWOLD LLP
1400 KeyBank Center
800 Superior Avenue
Cleveland, OH 44114
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com

David A. Kutik, Esq.
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, OH 44114
dakutik@jonesday.com

Allison E. Haedt, Esq.
JONES DAY
325 John H. McConnell Blvd., Suite 600
Columbus, OH 43215-2673
aehaedt@jonesday.com

Attorneys for FirstEnergy Solutions Corp.

Robert A. McMahon, Esq.
EBERLY MCMAHON LLC
2321 Kemper Lane, Suite 100
Cincinnati, OH 45206
bmcmahon@emh-law.com

Rocco O. D'Ascenzo, Esq.
Associate General Counsel
Elizabeth Watts, Esq.
Associate General Counsel
DUKE ENERGY OHIO, INC.
139 East Fourth Street
1303-Main
Cincinnati, OH 45202
Elizabeth.Watts@duke-energy.com
Rocco.D'Ascenzo@duke-energy.com

Attorneys for Duke Energy Ohio, Inc.

David F. Boehm, Esq.
Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street Suite 1510
Cincinnati, OH 45202-4454
dboehm@BKLLawfirm.com
mkurtz@BKLLawfirm.com

Attorneys for Ohio Energy Group

Gregory J. Poulos, Esq.
EnerNOC, Inc.
471 East Broad Street
Columbus, OH 43215
Telephone: (614) 507-7377
Email: gpoulos@enernoc.com

Attorney for EnerNOC, Inc.

Colleen L. Mooney, Esq.
OHIO PARTNERS FOR AFFORDABLE
ENERGY
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
cmooney2@columbus.rr.com
Attorney for Ohio Partners for Affordable Energy

Jay E. Jadwin, Esq.
AMERICAN ELECTRIC POWER
SERVICE CORPORATION
155 W. Nationwide Blvd., Suite 500
Columbus, OH 43215
jejadwin@aep.com

Attorney for AEP Retail Energy Partners LLC

M. Anthony Long, Esq.
Senior Assistant Counsel
HONDA OF AMERICA MFG., INC.
24000 Honda Parkway
Marysville, OH 43040
tony_long@ham.honda.com

Attorney for Honda of America Mfg., Inc.

Richard L. Sites, Esq.
General Counsel and Senior Director of
Health Policy
OHIO HOSPITAL ASSOCIATION
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620
ricks@ohanet.org

Thomas J. O'Brien, Esq.
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
tobrien@bricker.com

Attorneys for Ohio Hospital Association

Thomas W. McNamee, Esq.
Assistant Attorney General
Devin D. Parram, Esq.
Assistant Attorneys General
180 East Broad Street
Columbus, OH 43215
Thomas.mcnamee@puc.state.oh.us
devin.parram@puc.state.oh.us

Attorneys for the Staff of the Public Utilities
Commission of Ohio

Mark S. Yurick, Esq.
(Counsel of Record)
Zachary D. Kravitz, Esq.
TAFT STETTINIUS & HOLLISTER LLP
65 East State Street, Suite 1000
Columbus, OH 43215
myurick@taftlaw.com
zkravitz@taftlaw.com

Attorneys for The Kroger Company

Mark A. Whitt, Esq. (Counsel of Record)
Andrew J. Campbell, Esq.
WHITT STURTEVANT LLP
PNC Plaza, Suite 2020
155 East Broad Street
Columbus, OH 43215
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com

Vincent Parisi, Esq.
Matthew White, Esq.
INTERSTATE GAS SUPPLY, INC.
6100 Emerald Parkway
Dublin, OH 43016
vparisi@igsenergy.com
mwhite@igsenergy.com

Attorneys for Interstate Gas Supply, Inc.

Steven M. Sherman, Esq. Counsel of Record
Joshua D. Hague, Esq.
Grant E. Chapman, Esq.
KRIEG DEVAULT LLP
One Indiana Square, Suite 2800
Indianapolis, IN 46204-2079
ssherman@kdlegal.com
jhague@kdlegal.com
gchapman@kdlegal.com

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

Joseph P. Serio, Esq. (Counsel of Record)
Melissa R. Yost, Esq.
Assistant Consumers' Counsel
Office of The Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
serio@occ.state.oh.us
yost@occ.state.oh.us

Attorneys for Office of the Ohio Consumers'
Counsel

Christopher L. Miller, Esq.
(Counsel of Record)
Gregory H. Dunn, Esq.
Asim Z. Haque, Esq.
ICE MILLER LLP
250 West Street
Columbus, OH 43215
Christopher.Miller@icemiller.com
Gregory.Dunn@icemiller.com
Asim.Haque@icemiller.com

Attorneys for the City of Dayton, Ohio

M. Howard Petricoff, Esq.
Stephen M. Howard, Esq.
VORYS, SATER, SEYMOUR AND
PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
mhpetricoff@vorys.com
smhoward@vorys.com

Attorneys for the Retail Energy Supply
Association

Trent A. Dougherty, Esq. Counsel of Record
Cathryn N. Loucas, Esq.
OHIO ENVIRONMENTAL COUNCIL
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449
trent@theoec.org
cathy@theoec.org

Attorneys for the Ohio Environmental
Council

Joseph M. Clark, Esq., Counsel of Record
6641 North High Street, Suite 200
Worthington, OH 43085
joseph.clark@directenergy.com

Asim Z. Haque, Esq.
Christopher L. Miller, Esq.
Gregory J. Dunn, Esq.
Alan G. Starkoff, Esq.
ICE MILLER LLP
2540 West Street
Columbus, OH 43215
Asim.Haque@icemiller.com
Christopher.Miller@icemiller.com
Gregory.Dunn@icemiller.com

Attorneys for Direct Energy Services, LLC
and Direct Energy Business, LLC

M. Howard Petricoff, Esq.
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
mhpetricoff@vorys.com
smhoward@vorys.com

Attorneys for Exelon Generation Company, LLC,
Exelon Energy Company, Inc., Constellation
Energy Commodities Group, Inc., and
Constellation NewEnergy, Inc.

Matthew J. Satterwhite, Esq.
Steven T. Nourse, Esq.
AMERICAN ELECTRIC POWER SERVICE
CORPORATION
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
mjsatterwhite@aep.com
stnourse@aep.com

Attorneys for Ohio Power Company

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

Attorney for Edgemont Neighborhood
Coalition

Stephanie M. Chmiel, Esq.
Michael L. Dillard, Jr., Esq.
THOMPSON HINE LLP
41 South High Street, Suite 1700
Columbus, OH 43215
Stephanie.Chmiel@ThompsonHine.com
Michael.Dillard@ThompsonHine.com

Attorneys for Border Energy Electric
Services, Inc.

Lisa G. McAlister, Esq.
Matthew W. Warnock, Esq.
J. Thomas Siwo, Esq.
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
lmcaster@bricker.com
mwarnock@bricker.com
tsiwo@bricker.com

Attorneys for The Ohio Manufacturers'
Association Energy Group

Kimberly W. Bojko, Esq.
Joel E. Sechler, Esq.
CARPENTER LIPPS & LELAND LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, OH 43215
Bojko@carpenterlipps.com
Sechler@carpenterlipps.com

Attorneys for SolarVision, LLC

Matthew R. Cox, Esq.
MATTHEW COX LAW, LTD.
4145 St. Theresa Blvd.
Avon, OH 44011
matt@matthewcoxlaw.com

Attorney for the Council of Smaller Enterprises

Scott C. Solberg, Esq.
(requested pro hac vice)
Eimer Stahl LLP
224 South Michigan Avenue, Suite 1100
Chicago, OH 60604
ssolberg@eimerstahl.com

Attorney for Exelon Generation
Company, LLC

s/ Jeffrey S. Sharkey
Jeffrey S. Sharkey

667463.1