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**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

**IN THE MATTER OF INTERRUPTIBLE )  
ELECTRIC SERVICE GUIDELINES, )  
PURSUANT TO THE AGREEMENT BY ) CASE NO. 95-866-EL-UNC  
PARTICIPANTS ON THE COMMISSION )  
ROUNDTABLE ON COMPETITION IN )  
THE ELECTRIC INDUSTRY )**

**PROTEST OF STAND ENERGY CORPORATION TO  
PROPOSED REVISED INTERRUPTIBLE  
ELECTRIC SERVICE TARIFF OF THE  
DAYTON POWER & LIGHT COMPANY**

Pursuant to the Commission's Rules of Practice and Procedure, Stand Energy Corporation ("SEC"), an active participant in these proceedings, herein protests the "Revised Interruptible Electric Service Tariff" ("Revised Tariff" or "Tariff") filed on February 14, 1997 by The Dayton Power & Light Company ("DP&L"). Several aspects of DP&L's proposed tariff are unreasonable, discriminatory and in conflict with recent Commission orders regarding other "Interruptible Buy-Through" tariffs submitted by Ohio electric utilities.

**I. Background**

SEC is a natural gas and electricity marketing and management company headquartered in Cincinnati, Ohio. SEC provides wholesale and retail electricity services throughout the eastern United States, including the State of Ohio and the DP&L service area. A power marketer licensed by FERC, SEC is positioned as, and equipped to be, a potential supplier of replacement power to consumers on the DP&L system. Thus, SEC has a real and substantial interest in the terms of DP&L's "Revised Tariff."

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## II. Protest

### A. Eligibility for Electric Non-Firm Service

On Fourteenth Revised Sheet No. 23 Page 1 of 5 of the Revised Tariff, DP&L expressly limits non-firm service eligibility to "any Customer with a monthly non-firm load greater than or equal to five thousand (5,000) kilowatts." In essence, a consumer must have minimum load of 5 MW at all times to receive service. SEC submits that this level is **too high** and discriminates against virtually all potential consumers on the DP&L system. This is not what the Commission's Guidelines permit or even encourage.

Other utilities have far more reasonable eligibility criteria. For example, The Cincinnati Gas and Electric Company ("CG&E") offers the service to any size customer. Columbus Southern Power ("CSP") and Ohio Power ("OP") offer the service to any consumer with a peak load of 1 MW or more. This criteria is far more appropriate for two reasons:

- 1) 1 MW (1,000 KW) is the standard unit of measure for wholesale power purchases and, thus, can be easily accommodated by utility system dispatchers; and
- 2) A consumer will be interrupting power during peak periods under this scheme. Thus, there is little to no need for a minimum criteria at all times.

As this requirement is not necessary for CG&E, CSP, or OP, one must question why such a requirement is necessary for DP&L.

Recently, the Commission accepted CSP and OP reduction of its eligibility criteria from 5 MW to 1 MW, and ordered third-party "Buy-Through" Service for all eligible customers. See In the matter of Interruptible Electric Service Guidelines and the Applications of the Columbus Southern Power Company and Ohio Power Company for Approval of Interruptible

Electric Service Tariffs, Case Nos. 95-866-EL-UNC, 96-305-EL-ATA, and 96-306-EL-ATA, Finding and Order dated November 14, 1996, at 2-3. Clearly, the Commission must provide for both reasonableness and consistency and reduce DP&L's eligibility level in this case. Further, a customer's minimum eligibility should be based on a peak period demand, not a minimum demand at all times. This, too, is consistent with the CSP and OP tariffs.

B. Lack of Specific Rates

DP&L's Revised Tariff fails to set a rate for non-firm service, instead reserving the right to "negotiate" rates during which the Company will give "consideration" to cited factors. See Fourteenth Revised Sheet No. 23, Page 2 of 5. Unless the Commission orders DP&L to state its service rates in advance, virtually no consumer is reasonably ensured of receiving an opportunity to elect this service.

DP&L has created a procedure that give itself complete, unilateral authority to set any rate for non-firm service. The basis for its decision can be for any reason, or for no reason. It can use this authority to discriminate on any basis, including the size of a customer or the customer's expected "Buy-Through" service. SEC fully expects DP&L to use this mechanism to full advantage to minimize or eliminate any non-firm, "Buy-Through" service on its system - and destroy the seeds of competition and customer choice before they grow.

Section 4905.22 of the Revised Code provides in part:

All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission...

Ohio Revised Code Annotated §4905.22 (Page 1991). Likewise, O.R.C. Section 4905.32 calls for a utility to charge and collect the rate for service specified in its schedule filed with the public

utilities commission (emphasis added). Finally, O.R.C. Section 4905.53 and 4905.35 prevent utilities from providing "special deals" or discriminating against any similarly situated consumer.

These statutory laws require DP&L to provide a specific rate for its non-firm services in the Tariffs. Any other outcome conflicts with the above-cited laws. The Tariff currently provides, at best, a possible idea of how the rate may be set, but doesn't bind DP&L to any given rate for service. The potential for discrimination is real and unavoidable. The lack of a rate gives consumers and potential suppliers no reasonable opportunity to obtain an objective standard to ascertain whether this service should be elected. This is contrary to the Commission's Guidelines in this Case, as well as the most fundamental principles of regulatory law.

The solution is clear and simple - DP&L must file rates for this Tariff service. As with all rates, these rates must be cost-based and conform to all legal and regulatory requirements. The filing must be accompanied by requisite calculations and support, and interested parties must be afforded an opportunity to challenge the reasonableness of the filed rate.

#### C. Metering

Likewise, DP&L proposes to assess against the consumer all additional metering costs associated with this service. See Fourteenth Revised Sheet No. 23, Page 2 of 5. It appears from this provision that DP&L is not offering any third-party metering options. As has been clearly established in the generic proceedings, third-party or customer metering options for this service are available and technologically feasible, subject always to a reasonable utility standard. To the extent DP&L does not offer a third-party or customer meter option, SEC protests the terms of the Revised Tariff.

Recently, the Commission approved CG&E's "Buy-Through" Tariff. In its Order in that case, the Commission directed CG&E to offer third-party and customer metering options to "Buy-Through" consumers. To ensure basic, consistent treatment on these issues, the Commission must permit similar arrangements on the DP&L system.

D. Terms

DP&L has proposed a term for non-firm service of "not less than five (5) years." See Fourteenth Revised Sheet No. 23, Page 5 of 6. SEC protests this provision. The "Buy-Through" Program has been designed by the Commission and the parties to be a transition mechanism to a more competitive electric generation and service market. A minimum five year term such as this does not provide a "bridge" to competition; instead it "burns the bridge" to competition by precluding consumers from using the option until more competition options arise. Five years is unreasonably long for a minimum contract term for this Program.

One (1) or two (2) years is a more reasonable minimum contract term for this Program. The Commission must order DP&L to revise this term accordingly.

E. Other Cost Assessments

Regarding DP&L's proposed "Third Party Replacement Power Service Rate" (Original Sheet No. 23-C), DP&L proposes to assess all costs associated with:

1. approving supplier credit qualifications; and
2. contracting with suppliers for "third-party" service.

SEC opposes these two incremental cost recovery mechanisms. Such actions will be undertaken by existing company personnel when costs are already in base rates. Furthermore, these costs are minor and do not impose an excessive burden on the Company. The Commission

has regularly rejected utility proposals such as this to recover costs unless the utility can 1) demonstrate such costs as truly incremental, 2) are not already being recovered in base rates, and 3) can be quantified and stated in advance. As this has not been done here, these provisions must be revised to eliminate any cost recovery for these matters - thus removing additional obstacles to the reasonable employment of these programs.

### CONCLUSION

As written, the DP&L Revised Non-Firm and "Buy-Through" Tariffs will serve only to provide some minor service enhancements to its existing one or two non-firm consumers. The Revised Tariff provides no meaningful opportunity for interested consumers to evaluate the potential of "Buy-Through" service. This renders the parties Roundtable process a sham and mockery. Clearly DP&L's Tariff must be revised to comply with the letter and spirit of the Roundtable - as well as Ohio law.

The necessary changes are:

1. Reduce eligibility to 1 MW of peak load;
2. Specify rates in the tariff for each service;
3. Provide third-party and/or customer metering;
4. Reduce the minimum term to one (1) or two (2) years; and
5. Eliminate unlimited cost recovery for credit reviews and contract processing.

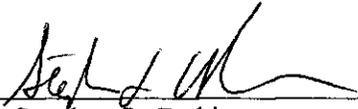
These changes will make an unreasonable tariff somewhat more reasonable.

It is vital to the progress of the Electric Roundtable process to ensure workable programs. SEC thanks the Commission for its review and amendment of these Tariffs, and its ongoing movement to a more competitive electric market.

WHEREFORE, SEC prays that the Commission order DP&L to revise its "Revised  
Tariff" in the manner specified herein.

Respectfully submitted,

STAND ENERGY CORPORATION

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Protest of Stand Energy Corporation to  
Proposed Revised Interruptible Electric Service of the Dayton Power & Light Company was  
served upon all parties of record this 28th day of February, 1997.

  
Stephen L. Robison  
General Counsel

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