

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton) Power and Light Company for Approval of) The Market Rate Offer.)	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 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

**MEMORANDUM CONTRA OF THE CITY OF DAYTON, OHIO
TO THE APPLICATION FOR REHEARING OF THE
DAYTON POWER AND LIGHT COMPANY**

Pursuant to the Entry of the Public Utilities Commission of Ohio (“Commission”) dated October 8, 2013, the City of Dayton, Ohio (“City” or “Dayton”), on behalf of itself and its residential and commercial citizens, hereby submits this Memorandum Contra in response to the Application for Rehearing of the Dayton Power and Light Company (the “Company” or “DP&L”). Specifically, Dayton submits this Memorandum in response to Section III of DP&L’s Application for Rehearing in which DP&L claims that this Commission does not have the authority to order DP&L’s shareholders to contribute to an economic development fund.

However, for the following reasons, this Commission does possess the requisite authority to issue such an order and should deny DP&L's request for rehearing on this issue.

I. THE COMMISSION LAWFULLY ORDERED DP&L TO CONTRIBUTE TO AN ECONOMIC DEVELOPMENT FUND TO BE FUNDED BY SHAREHOLDERS.

Section 4928.143(B)(2)(i) of the Ohio Revised Code states, in relevant part, the following:

The [electric security] plan *may* provide for or include, without limitation . . . [p]rovisions under which the electric distribution utility may implement economic development, job retention, and energy efficiency programs, which provisions *may* allocate program costs across all classes of customers of the utility and those of electric distribution utilities in the same holding company system. (emphasis added).

The Commission, in its Order, recognized the authority granted by this statute and modified the ESP to include the establishment of an Economic Development Fund ("EDF"). The EDF is to be funded by shareholders at a minimum of \$2 million per year for 2014, 2015, and 2016, and the EDF funds are to be allocated for the purpose of "creating private sector economic development resources to attract new investment and improve job growth in Ohio." Order, p. 42. DP&L claims this was unlawful for three reasons, each of which will be addressed in turn.

A. DP&L'S Claim that Contributions to an EDF Should be Voluntary Lacks Merit

DP&L and the City have collectively acknowledged that DP&L has historically been a significant partner to the City's economic development opportunities. DP&L also has acknowledged that it has previously used shareholder dollars to support many economic and charitable efforts in the Dayton community. However, in its Application for Rehearing, DP&L tacitly asserts that its future financial integrity may be called into question if it is required to fund the EDF. This assertion is of grave concern to Dayton.

As Dayton noted in its Post-Hearing Brief in this matter, DP&L has been making annual financial contributions in the amount of \$350,000 to Dayton since 2009 with another payment being due prior to the end of this year. These payments are earmarked as “economic development” payments and are a result of the Stipulations and Orders issued in two prior DP&L cases before this Commission in which DP&L agreed to make these annual payments to the City. *See* Case Nos. 08-1094-EL-SSO, *Op. & Order*, p. 5 (June 24, 2009), 11-3002-EL-MER, *Finding and Order*, pg. 6-7 (Nov. 22, 2011). In fact, DP&L agreed to provide the payments to the City as an unrecoverable financial contribution in Case No. 08-1094-EL-SSO.

Now, DP&L wants Dayton to believe that DP&L will continue to support City economic development initiatives without the establishment of the EDF despite the fact that DP&L’s economic development payments to Dayton will cease at the end of 2013. As Dayton has previously noted, extenuating economic conditions and circumstances continue to exist in Dayton, and without the support of its long-time partner, DP&L, Dayton may not be able to continue its economic development efforts to improve job growth and help facilitate the State’s effectiveness in the global economy.

Further, the EDF as ordered by this Commission does not guarantee that any payments will be made to Dayton. While Dayton certainly appreciates this Commission’s consideration and believes that the establishment of the EDF is well reasoned, the Order makes no mention specific of the City in its provisions establishing the EDF. Rather, the Order states that “DP&L shall collaborate with Staff to determine the proper manner of allocation of the EDF funds to best accomplish their stated purpose.” Order, p. 43. As a result, Dayton may receive even less funding for its economic development efforts than it has in the past even with the establishment of the EDF.

Finally, DP&L's speculative claim that its financial integrity may be called into question at some point in the future is not relevant to the establishment of the EDF. In its Order, the Commission stated that "given the financial integrity charge approved by the Commission in this case, it is appropriate for DP&L to support economic development in its service territory and to continue the positive contributions ensuring the vitality of the Dayton region." From this it is evident that the Commission correctly considered DP&L's financial integrity moving forward, and only after it was satisfied that DP&L's financial integrity would not be called into question did the Commission establish the EDF. On the other hand, making the EDF purely voluntary to DP&L would be the same as not ordering the EDF at all. Dayton and other entities within the service territory would simply be left without a significant source of funding for economic development initiatives in an already declining economic region.

B. The Commission has clear jurisdiction and authority to Order DP&L to Contribute Shareholder Dollars an EDF Under R.C. 4928.143(B)(2)(i)

As DP&L points out, the Commission established the EDF pursuant to the legal authority prescribed under R.C. 4928.143(B)(2)(i). Despite this authority, DP&L asserts that there is no statutory basis for the Commission to order DP&L to contribute shareholder dollars to an EDF. This is assertion is simply wrong.

Pursuant to the express language of R.C. 4928.143(B)(2)(i), an electric security plan may include provisions under which the electric distribution utility may implement economic development programs. Further, the plain language of the statute clearly states that these "provisions *may* allocate program costs across all classes of customers of the utility and those of electric distribution utilities." The statute does not say that these program costs cannot be funded with shareholder dollars. Rather, the statute simply allows, at the Commission's option, for the

costs to be spread across the customer base. In other words, R.C. 4928.143(B)(2)(i) is an enabling statute, not a restrictive or limiting statute.

To further illustrate precedence for this authority, this Commission has previously ordered economic development contributions to be made with shareholder dollars. As stated above, DP&L previously agreed to provided payments to the City as an unrecoverable financial contribution in Case No. 08-1094-EL-SSO. Further, the Commission ordered that AEP-Ohio reinstate the Ohio Growth Fund in light of extenuating economic circumstances with funding not to be recoverable from customers in Case No. 11-346-EL-SSO.

Accordingly, this Commission clearly possesses the authority to order DP&L to contribute to an EDF using shareholder dollars, and this Commission should deny DP&L's request for rehearing on this issue.

C. The Record Supports the Establishment of the EDF

Lastly, DP&L asserts that no evidence exists in the record to support the Commission's Order that DP&L pay \$2 million annually to an EDF. In support of this assertion, DP&L directly questions the testimony and evidence submitted by Dayton and Dayton only. However, as stated above, the EDF has not been established solely for Dayton's benefit.

As a point of clarification, the Commission's Order establishes \$2 million as a minimum annual contribution, which is to be distributed in a manner to be determined by DP&L and Commission Staff. The record contains evidence and testimony submitted by the Company and all intervening parties. Dayton has cited many statistics in its testimony and accompanying briefs, including the annual payments that DP&L makes to the City through 2013. While none of these figures total \$2 million, again, the EDF is not established for just Dayton's sole benefit, but to benefit the entire regional footprint. It is certainly easy to understand how the Commission

would consider appropriate a number larger than what Dayton has received in the past. Under the EDF, Dayton may receive a significant amount of funding, a small amount, or no amount under its current framework. Other parties such as Ohio Partners for Affordable Energy and the Edgemont Neighborhood Coalition presented supportive evidence will also stand to potentially benefit from the establishment of an EDF. Therefore, it is a mischaracterization to say that there is no evidence in the record to support the Commission's Order when DP&L solely refers to Dayton's evidence and testimony.

II. CONCLUSION

Based on the foregoing, the City respectfully requests that the Commission deny DP&L's request for rehearing on this issue, and proceed with the establishment of the EDF as originally ordered by this Commission.

Respectfully Submitted,

/s/ Christopher L. Miller
Christopher L. Miller (0063259)
Direct Dial: (614) 462-5033
E-mail: Christopher.Miller@icemiller.com
Counsel of Record
Gregory H. Dunn (0007353)
Direct Dial: (614) 462-2339
E-mail: Gregory.Dunn@icemiller.com
Chris W. Michael (0086879)
Direct Dial: (614) 462-1148
E-mail: Chris.Michael@icemiller.com
Ice Miller LLP
250 West Street
Columbus, Ohio 43215
Attorneys for the City of Dayton, Ohio

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the parties of record listed below this 31st day of October, 2013 via electronic mail.

/s/ Christopher L. Miller

Christopher L. Miller

Industrial Energy Users-Ohio

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

Honda of America Mfg., Inc.

M. Anthony Long
Senior Assistant Counsel
Honda of America Mfg., Inc.
24000 Honda Parkway
Marysville, OH 43040
E-mail: Tony_long@ham.honda.com

FirstEnergy Solutions Corp.

Mark A. Hayden
FirstEnergy Solutions Corp.
76 South Main Street
Akron, OH 44308
E-mail: haydenm@firstenergycorp.com

OMA Energy Group

Matthew W. Warnock
J. Thomas Siwo
Bricker & Eckler, LLP
100 South Third Street
Columbus, OH 43215-4291
E-mail: mwarnock@bricker.com
tsiwo@bricker.com

Duke Energy Retail Sales, LLC

Amy B. Spiller, Deputy General Counsel
Jeanne W. Kingery, Assoc. General Counsel
139 East Fourth Street
1303-Main
Cincinnati, OH 45202
E-mail: amy.spiller@duke-energy.com
Jeanne.kingery@duke-energy.com

FirstEnergy Solutions Corp.

James F. Lang
Laura C. McBride
N. Trevor Alexander
Calfee, Halter & Griswold LLP
1400 Keybank Center
800 Superior Avenue
Cleveland, OH 44114
E-mail: jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com

Duke Energy Ohio, Inc.

Robert A. McMahan
Eberly McMahan LLC
2321 Kemper Lane, Suite 100
Cincinnati, OH 45206
E-mail: bmcMahon@emh-law.com

AEP Retail Energy Partners, LLC

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

Ohio Hospital Association

General Counsel
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, OH 43215

The Kroger Company

Mark Yurick
Zachary D. Kravitz
Taft Stettinius & Hollister LLP
65 East State Street, Suite 1000
Columbus, OH 43215
E-mail: myurick@taftlaw.com
zkravitz@taftlaw.com

EnerNOC, Inc.

Gregory J. Poulos
EnerNOC, Inc.
471 East Broad Street
Columbus, OH 43215
E-mail: gpoulos@enernoc.com

Duke Energy Ohio, Inc.

Elizabeth Watts
Rocco D'Ascenzo
139 East Fourth Street
1303-Main
Cincinnati, OH 45202
E-mail: Elizabeth.watts@duke-energy.com
Rocco.D'Ascenzo@duke-energy.com

The Ohio Energy Group

David F. Boehm
Michael L. Kurtz
Boehm Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
E-mail: dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com

Ohio Hospital Association

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215
E-mail: tobrien@bricker.com

Ohio Partners for Affordable Energy

Colleen Mooney
David C. Rinebolt
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
E-mail: cmooney2@columbus.rr.com
drinebolt@aol.com

The Dayton Power and Light Company

Judi L. Sobecki
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, OH 45432
E-mail: judi.sobecki@dplinc.com

The Dayton Power and Light Company

Charles J. Faruki
Jeffrey S. Sharkey
Faruki, Ireland and Cox P.L.L.
500 Courthouse Plaza, S.W.
10 North Ludlow Street
Dayton, OH 45402
E-mail: cfaruki@ficlaw.com
jsharkey@ficlaw.com

Interstate Gas Supply, Inc.

Mark A. Whitt
Andrew J. Campbell
Whitt Sturtevant LLP
PNC Plaza, Suite 2020
155 East Broad Street
Columbus, OH 43215
E-mail: whitt@whitt-sturtevant.com
Campbell@whitt-sturtevant.com

Retail Energy Supply Association

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
E-mail: mhpetricoff@vorys.com
smhoward@vorys.com

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

Steven M. Sherman
Krieg DeVault LLP
One Indiana Square, Suite 2700
Indianapolis, IN 46204-2079
E-mail: ssherman@kdlegal.com

Office of the Ohio Consumer's Counsel

Joseph P. Serio
Melissa R. Yost
Office of the Ohio Consumer's Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
E-mail: serio@occ.state.oh.us
yost@occ.state.oh.us

Interstate Gas Supply, Inc.

Vincent Parisi
Matthew White
Interstate Gas Supply, Inc.
6100 Emerald Parkway
Dublin, OH 43016
E-mail: vparisi@igsenergy.com
mwhite@igsenergy.com

Ohio Environmental Council (OEC)

Cathryn N. Loucas
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449
E-mail: cathy@theoec.org

William Wright

Attorney General's Office
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215
E-mail: William.wright@puc.state.oh.us

Edgemont Neighborhood Coalition

Ellis Jacobs

Advocates for Basic Legal Equality, Inc.

333 W. First Street, Suite 500B

Dayton, OH 45402

E-mail: ejacobs@ablelaw.org

Exelon Generation Company, LLC

Exelon Energy Company, Inc.

Constellation Energy Commodities Group,

Inc.

Constellation NewEnergy, Inc.

M. Howard Petricoff

Vorys, Sater, Seymour and Pease LLP

52 East Gay Street

PO Box 1008

Columbus, OH 43216-1008

E-mail: mhpetricoff@vorys.com

Exelon Corporation

David I. Fein

Exelon Corporation

550 West Washington Blvd., Suite 300

Chicago, IL 60661

E-mail: david.fein@constellation.com

David Stahl

Eimer Stahl Klevorn & Solberg LLP

224 South Michigan Avenue, Suite 1100

Chicago, IL 60604

E-mail: dstahl@eimerstahl.com

Border Energy Electric Services, Inc.

Stephanie M. Chmiel

Thompson Hine LLP

41 S. High Street, Suite 1700

Columbus, OH 43215

E-mail:

Stephanie.Chmiel@ThompsonHine.com

Exelon Generation Company, LLC

Stephen Bennett

Exelon Generation Company, LLC

300 Exelon Way

Kennett Square, PA 19348

E-mail: stephen.bennett@exeloncorp.com

Exelon Business Services Company

Sandy I-ru Grace

Exelon Business Services Company

101 Constitution Ave., N.W.

Washington DC 20001

E-mail: sandy.grace@exeloncorp.com

Constellation Energy Resources, LLC

Cynthia Brady

550 West Washington Blvd., Suite 300

Chicago, IL 60661

E-mail: cynthia.brady@constellation.com

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Summary: Memorandum electronically filed by Mr. Christopher W. Michael on behalf of The City of Dayton, Ohio