

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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
	:	

**MOTION OF THE DAYTON POWER AND LIGHT COMPANY
TO IMPLEMENT PREVIOUSLY AUTHORIZED RATES**

In view of the June 20, 2016 reversal by the Supreme Court of Ohio of this Commission's September 4, 2013 Opinion and Order, The Dayton Power and Light Company ("DP&L") moves to implement rates ("2013 Rates") that are consistent with the rates that were in effect before the Commission's September 4, 2013 Opinion and Order.

Respectfully submitted,

/s/ Charles J. Faruki

Charles J. Faruki (0010417)

(Counsel of Record)

Jeffrey S. Sharkey (0067892)

FARUKI IRELAND & COX P.L.L.

110 North Main Street, Suite 1600

Dayton, OH 45402

Telephone: (937) 227-3747

Telecopier: (937) 227-3717

Email: cfaruki@ficlaw.com

jsharkey@ficlaw.com

Attorneys for The Dayton Power
and Light Company

**MEMORANDUM IN SUPPORT OF MOTION OF THE DAYTON POWER
AND LIGHT COMPANY TO IMPLEMENT PREVIOUSLY AUTHORIZED RATES**

This case is before the Commission upon a remand from the Supreme Court of Ohio. The decision by the Supreme Court of Ohio in the In re Application of Dayton Power & Light Co. case reversed in total the Commission's decision approving DP&L's ESP in Case No. 12-426-EL-SSO, et al. In re Application of Dayton Power & Light Co., Case No. 2014-1505, Slip Op. No. 2016-Ohio-3490 (Sup. Ct. Ohio June 20, 2016), ¶ 1. That Supreme Court decision thus reversed the Commission's decision approving all aspects of DP&L's 12-426-EL-SSO ESP.

When the Supreme Court reverses a Commission decision:

"the statutes [of Title 49] make clear [1] that public utilities are required to charge the rates and fees stated in the schedules filed with the commission pursuant to the commission's orders; [2] that the schedule remains in effect until replaced by a further order of the commission; [3] that this court's reversal and remand of an order of the commission does not change or replace the schedule as a matter of law, but is a mandate to the commission to issue a new order which replaces the reversed order; and [4] that a rate schedule filed with the commission remains in effect until the commission executes this court's mandate by an appropriate order."

Cleveland Elec. Illuminating Co. v. Pub. Util. Comm., 46 Ohio St.2d 105, 116-17, 346 N.E.2d 778 (1976) (emphasis added). The Supreme Court also explained that its "task is not to set rates; it is only to assure that the rates are not unlawful and unreasonable, and that the rate-making process itself is lawfully carried out." Cleveland Elec., 46 Ohio St.2d at 108.

Pursuant to Ohio Rev. Code § 4928.143(C)(2), concurrent with this filing, DP&L has filed a motion to withdraw its application in this matter. Section 4928.143(C)(2)(b) provides:

"(b) If the utility terminates an application pursuant to division (C)(2)(a) of this section or if the commission disapproves an application under division (C)(1) of this section, the commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent offer is authorized pursuant to this section or section 4928.142 of the Revised Code, respectively." (Emphasis added.)

The Commission must therefore implement rates that are consistent with DP&L's 2013 Rates.

The Commission would be required to implement rates that are consistent with DP&L's 2013 Rates even if DP&L did not withdraw its Application in this matter. Specifically, Section 4928.141(A) states: "Only a standard service offer authorized in accordance with section 4928.142 or 4928.143 of the Revised Code, shall serve as the utility's standard service offer for the purpose of compliance with this section." Similarly, Section 4905.32 states: "No public utility shall charge, demand, exact, receive, or collect a different rate, rental, toll, or charge for any service rendered, or to be rendered, than that applicable to such service as specified in its schedule filed with the public utilities commission which is in effect at the time." As the Supreme Court of Ohio reversed in total the Commission's September 4, 2013 Opinion and Order in this case, those sections establish that the Commission must implement the immediately-prior SSO that the Commission authorized for DP&L, which was from DP&L's first ESP case. Rates that are consistent with DP&L's 2013 Rates therefore must be put back into effect until Commission approval of a new SSO.

Respectfully submitted,

/s/ Charles J. Faruki

Charles J. Faruki (0010417)

(Counsel of Record)

Jeffrey S. Sharkey (0067892)

FARUKI IRELAND & COX P.L.L.

110 North Main Street, Suite 1600

Dayton, OH 45402

Telephone: (937) 227-3747

Telecopier: (937) 227-3717

Email: cfaruki@ficlaw.com

jsharkey@ficlaw.com

Attorneys for The Dayton Power
and Light Company

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion of The Dayton Power and Light Company to Implement Previously Authorized Rates has been served via electronic mail upon the following counsel of record, this 27th day of July, 2016:

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.

Stephen Chriss, Esq.
Wal-Mart Corporation
702 Southwest 8th Street
Bentonville, AR 72716-021
Stephen.Chriss@wal-mart.com

Attorneys for Wal-Mart Stores East, LP
and Sam's East, 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.
CALFEE, HALTER & GRISWOLD LLP
1400 KeyBank Center
800 Superior Avenue
Cleveland, OH 44114
jlang@calfee.com
lmcbride@calfee.com

N. Trevor Alexander, Esq.
CALFEE, HALTER & GRISWOLD LLP
1100 Fifth Third Center
21 E. State Street
Columbus, OH 43215-4243
talexander@calfee.com

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

Attorney for FirstEnergy Solutions Corp.

Samuel C. Randazzo, Esq.
Frank P. Darr, Esq.
Matthew R. Pritchard, Esq.
MCNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4225
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

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.

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
gpoulos@enernoc.com

Attorney for EnerNOC, Inc.

Robert A. McMahon, Esq.
EBERLY MCMAHON LLC
2321 Kemper Lane, Suite 100
Cincinnati, OH 45206
bcmahon@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.

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

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

Matthew W. Warnock, Esq.
Dylan F. Borchers, Esq.
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
mwarnock@bricker.com
dborchers@bricker.com

Attorneys for Ohio Hospital Association

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

Ryan P. O'Rourke
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, OH 43215
Email: o'rourke@carpenterlipps.com

Attorneys for The Kroger Company

Mark A. Whitt, Esq.
Andrew J. Campbell, Esq.
WHITT STURTEVANT LLP
The KeyBank Building
88 East Broad Street, Suite 1590
Columbus, OH 43215
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com

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

Attorneys for Interstate Gas Supply, Inc.

Trent A. Dougherty, Esq.
OHIO ENVIRONMENTAL COUNCIL
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449
trent@theoec.org

Attorneys for the Ohio Environmental Council

Thomas W. McNamee, Esq.
Assistant Attorney General
180 East Broad Street
Columbus, OH 43215
Thomas.mcnamee@ohioattorneygeneral.gov

Attorneys for the Staff of the Public Utilities
Commission of Ohio

Maureen R. Willis, Esq.
Assistant Consumers' Counsel
Office of The Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Maureen.willis@occ.ohio.gov

Attorneys for Office of the Ohio Consumers'
Counsel

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
mhpeticoff@vorys.com
smhoward@vorys.com

Attorneys for the Retail Energy Supply
Association, Exelon Generation Company,
LLC, Exelon Energy Company, Inc.,
Constellation Energy Commodities Group,
Inc., and Constellation NewEnergy, Inc.

Ellis Jacobs, Esq.
Advocates for Basic Legal Equality, Inc.
130 West Second Street, Suite 700 East
Dayton, OH 45402
ejacobs@ablelaw.org

Attorney for Edgemont Neighborhood
Coalition

Jennifer L. Spinosi, Esq.
21 East State Street, Suite 1900
Columbus, OH 43215
jennifer.spinosi@directenergy.com

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

Attorneys for City of Dayton, Ohio,
Direct Energy Services, LLC
and Direct Energy Business, LLC

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

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

Stephen Bennett, Manager
State Government Affairs
300 Exelon Way
Kenneth Square, PA 19348
stephen.bennett@exeloncorp.com

Bill C. Wells, Esq.
AFMCLO/CL
Industrial Facilities Division
Bldg 266, Area A
Wright Patterson AFB, OH 45433
bill.wells@wpafb.af.mil

Christopher C. Thompson, Esq.
Staff Attorney (admitted *pro hac vice*)
USAF Utility Law Field Support Center
139 Barnes Drive, Suite 1
Tyndall AFB, FL 32403-5319

Attorneys for Federal Executive Agencies

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

Attorneys for SolarVision, LLC

Scott C. Solberg, Esq.
Eimer Stahl LLP
224 South Michigan Avenue, Suite 1100
Chicago, OH 60604
ssolberg@eimerstahl.com

Attorney for Exelon Generation Company,
LLC

Cynthia Fonner Brady, Esq.
Assistant General Counsel
EXELON BUSINESS SERVICES COMPANY
4300 Winfield Road
Warrenville, IL 60555
Cynthia.Brady@constellation.com

Attorney for Constellation
an Exelon Company

Lt Col John C. Degnan
Thomas A. Jernigan
Ebony M. Payton
Federal Executive Agencies (FAE)
139 Barnes Drive, Suite 1
Tyndall AFB FL 32403
John.Degnan@us.af.mil
Thomas.Jernigan.3@us.af.mil
Ebony.Payton.ctr@us.af.mil

Attorney for Federal Executive Agencies

Robert A. Brundrett, Esq.
The Ohio Manufacturers' Association
33 North High Street
Columbus, OH 43215
Email: rbrundrett@ohiomfg.com

Attorneys for The Ohio Manufacturers'
Association Energy Group

Mary W. Christensen, Esq.
Christensen Law Office LLC
8760 Orion Place, Suite 300
Columbus, OH 43240-2109
mchristensen@columbuslaw.org

Attorneys for People Working Cooperatively,
Inc.

/s/ Jeffrey S. Sharkey
Jeffrey S. Sharkey

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/27/2016 2:55:47 PM

in

Case No(s). 12-0426-EL-SSO, 12-0427-EL-ATA, 12-0428-EL-AAM, 12-0429-EL-WVR, 12-0672-EL-RDR

Summary: Motion Motion of The Dayton Power and Light Company to Implement Previously Authorized Rates electronically filed by Mr. Charles J. Faruki on behalf of The Dayton Power and Light Company