

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of : Case No. 16-0395-EL-SSO
The Dayton Power and Light Company for
Approval of Its Electric Security Plan :

In the Matter of the Application of : Case No. 16-0396-EL-ATA
The Dayton Power and Light Company for
Approval of Revised Tariffs :

In the Matter of the Application of : Case No. 16-0397-EL-AAM
The Dayton Power and Light Company for
Approval of Certain Accounting Authority :
Pursuant to Ohio Rev. Code § 4905.13

**THE DAYTON POWER AND LIGHT COMPANY'S MEMORANDUM IN RESPONSE
TO MOTION FOR AN EXTENSION OF THE ATTORNEY EXAMINER'S
PROCEDURAL SCHEDULE BY SIERRA CLUB, THE PJM POWER PROVIDERS
GROUP, THE ELECTRIC POWER SUPPLY ASSOCIATION, THE RETAIL ENERGY
SUPPLY ASSOCIATION, AND INTERSTATE GAS SUPPLY, INC.**

As explained in Section I below, The Dayton Power and Light Company ("DP&L") does not oppose an adjustment to the case management schedule, which currently sets September 30, 2016 as the deadline for intervenors to file testimony. However, the motion for an extension takes the wrong case management approach, and would harm DP&L. The motion for an extension essentially asks the Commission to stay this case, based upon speculation about the timing of the FirstEnergy case. An open-ended stay would prejudice DP&L as its financial integrity is in jeopardy and the "let's wait until the FirstEnergy case is completed" approach would make DP&L's case hostage to the timing of the FirstEnergy case.

I. DP&L'S CASE MANAGEMENT PROPOSAL

To allow the parties time to conduct settlement negotiations, DP&L does not object to vacating the September 30 deadline for intervenor testimony and asks for a scheduling conference.

II. THE MOTION FOR AN EXTENSION SHOULD BE DENIED

The Commission should reject the indefinite continuance proposed by Joint Movants Sierra Club, PJM Power Providers Group, the Electric Power Supply Association, the Retail Energy Supply Association, and Interstate Gas Supply, Inc., which would push back the filing of intervenor testimony and the evidentiary hearing until after the Commission issues an entry on rehearing in FirstEnergy's pending ESP case.¹ That extension would adversely affect the financial integrity of DP&L.

The United States Supreme Court has long-recognized that an applicant "for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else." Landis v. N. Am. Co., 299 U.S. 248, 255, 57 S. Ct. 163 (1936). "Only in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both." Id. (emphasis added). "Thus the burden is on the party seeking the stay to show that there is pressing need for delay, and that neither the other party nor the public will suffer harm from entry of the order." Ohio Env'tl. Council v. U.S. Dist. Court, S. Dist. of Ohio, 565 F.2d 393, 396 (6th Cir. 1977). "A court should be particularly hesitant when, as here, the stay will disrupt a statutory or administrative timetable." Id. (emphasis added).

¹ In the Matter of the Application of Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co. for Authority to Provide for a Standard Service Offer Pursuant to R.C. 149.143 in the Form of an Electric Security Plan, Case No. 14-1297-EL-SSO.

The proposed open-ended continuance threatens DP&L's financial integrity. It is important for the Commission to recall its factual findings in Case No. 12-426-EL-SSO ("DP&L ESP II") that DP&L needed a stability charge so that it could provide stable distribution, transmission and generation service:

"the Commission believes that [a stability charge] would have the effect of stabilizing or providing certainty regarding retail electric service. We agree with DP&L that if its financial integrity becomes further compromised, it may not be able to provide stable or certain retail electric service Although generation, transmission, and distribution rates have been unbundled, DP&L is not a structurally separate utility; thus, the financial losses in the generation, transmission, or distribution business of DP&L are financial losses for the entire utility. Therefore, if one of the businesses suffers financial losses, it may impact the entire utility, adversely affecting its ability to provide stable, reliable, or safe retail electric service. The Commission finds that [a stability charge] will provide stable revenue to DP&L for the purpose of maintaining its financial integrity."

Sept. 4, 2013 Opinion and Order, pp. 21-22, DP&L ESP II.

Recent actions by credit rating agencies demonstrate the continuing need for such relief following the Supreme Court's reversal of the Commission's decision in that case. On June 27, 2016, S&P Global Ratings ("S&P") stated that the Supreme Court's decision reversing the Commission's decision in Case No. 12-426-EL-SSO "increases the likelihood of a weaker financial risk profile, reflecting weaker financial measures for DPL and DP&L that could result in a near term ratings downgrade." *Id.* at 2. S&P further stated that it would "resolve the CreditWatch listing depending on the responses of the PUCO and the company to the Ohio Supreme Court's reversal." *Id.* at 3. Similarly, on July 12, 2016, FitchRatings ("Fitch") revised the Rating Outlook for DP&L and DPL Inc. from stable to negative. Fitch explained that "[t]he resolution of the Negative Outlook will depend upon the amount, sustainability and timeliness of

alternative regulatory relief from PUCO, as well as the companies' ability to refinance or repay the 2016 maturities in a timely manner with reasonable terms." Id. at 1. The agency "continues to believe that the PUCO will ultimately authorize an alternative rider for DP&L to mitigate the Ohio Supreme Court ruling. However, the path and timing to that end are primary credit concerns." Id.

Pursuant to Ohio Rev. Code § 4903.10, after the Commission issues an entry on rehearing, the parties in the FirstEnergy case will have 30 days to file additional applications for rehearing. Accord: Ohio Admin. Code § 4901-1-35(A). Memoranda in opposition may then be filed within 10 days. Ohio Admin. Code § 4901-1-35(B). Once the Commission reaches a decision on those applications, the process can repeat itself over and over again. Indeed, in DP&L ESP II, the Commission issued five entries on rehearing. July 23, 2015 Fifth Entry on Rehearing. After that process has exhausted itself, a party may file an appeal to the Supreme Court within 60 days. Ohio Rev. Code § 4903.11. Waiting on the Supreme Court to decide the case may take years. In re Dayton Power & Light Co., Case No. 2014-1505 (time between initial notice of appeal and decision was 661 days). Thus, even if the Commission were to provide some insight into how the parties should approach the evidentiary hearing in ruling on the pending applications for rehearing in FirstEnergy's case, it may be only fleeting.

Respectfully submitted,

/s/ Charles J. Faruki

Charles J. Faruki (0010417)

(Counsel of Record)

D. Jeffrey Ireland (0010443)

Jeffrey S. Sharkey (0067892)

FARUKI IRELAND & COX P.L.L.

110 North Main Street, Suite 1600

Dayton, OH 45402

Telephone: (937) 227-3705

Telecopier: (937) 227-3717

Email: cfaruki@ficlaw.com

djireland@ficlaw.com

jsharkey@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 Response to Motion for an Extension of the Attorney Examiner's Procedural Schedule by Sierra Club, The PJM Power Providers Group, The Electric Power Supply Association, the Retail Energy Supply Association, and Interstate Gas Supply, Inc. and Request for Expedited Ruling, has been served via electronic mail upon the following counsel of record, this 21st day of September, 2016:

Thomas McNamee
Natalia Messenger
Public Utilities Commission of Ohio
180 East Broad Street, 12th Floor
Columbus, OH 43215
Email: Thomas.McNamee@ohioattorneygeneral.gov
Natalia.Messenger@ohioattorneygeneral.gov

Attorneys for PUCO Staff

Kimberly W. Bojko
Danielle M. Ghiloni
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, OH 43215
Email: Bojko@carpenterlipps.com
Ghiloni@carpenterlipps.com

Attorneys for The Ohio Manufacturers' Association
Energy Group

Kevin R. Schmidt
88 East Broad Street, Suite 1770
Columbus, OH 43215
Email: Schmidt@sppgrp.com

Attorney for The Energy Professionals of Ohio

Frank P. Darr (Counsel of Record)
Matthew R. Pritchard
McNees Wallace & Nurick
21 East State Street, 17th Floor
Columbus, OH 43215
Email: fdarr@mwncmh.com
mpritchard@mwncmh.com

Attorneys for Industrial Energy Users –
Ohio

David F. Boehm
Michael L. Kurtz
Kurt J. Boehm
Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
Email: dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com

Attorneys for The Ohio Energy Group

Joseph Olikier
IGS Energy
6100 Emerald Parkway
Dublin, OH 43016
Email: joliker@igsenergy.com

Attorney for IGS Energy

Jeffrey W. Mayes
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Valley Forge Corporate Center
Eagleville, PA 19403
Email: Jeffrey.mayes@monitoringanalytics.com

Evelyn R. Robinson
PJM Interconnection, LLC
2750 Monroe Blvd
Audubon, PA 19403
Email: evelyn.robinson@pjm.com

Attorney for Monitoring Analytics, LLC as
The Independent Market Monitor for PJM

Trent Dougherty
Ohio Environmental Council
1145 Chesapeake Ave., Suite 1
Columbus, OH 43212-3449
Email: tdougherty@the OEC.org

Attorney for the Ohio Environmental
Council and Environmental Defense Fund

William J. Michael
Kevin F. Moore
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Email: William.Michael@occ.ohio.gov
Kevin.Moore@occ.ohio.gov

Attorneys for Ohio Consumers' Counsel

Michael D. Dortch
Richard R. Parsons
Kravitz, Brown & Dortch, LLC
65 East State Street, Suite 200
Columbus, OH 43215
Email: mdortch@kravitzllc.com
rparsons@kravitzllc.com

Attorneys for Noble Americas
Energy Solutions LLC

Joel E. Sechler
Carpenter Lipps & Leland
280 N. High St., Suite 1300
Columbus, OH 43215
Email: Sechler@carpenterlipps.com

Gregory J. Poulos
EnerNOC, Inc.
P.O. Box 29492
Columbus, OH 43229
Email: gpoulos@enernoc.com

Attorneys for EnerNOC, Inc.

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

Attorney for The Kroger Company

Colleen Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
Email: cmooney@ohiopartners.org

Attorney for Ohio Partners for Affordable
Energy

Madeline Fleisher
Environmental Law & Policy Center
21 West Broad Street, Suite 500
Columbus, OH 43215
Email: mfleisher@elpc.org

Attorneys for The Environmental Law &
Policy Center

Steven D. Lesser
James F. Lang
N. Trevor Alexander
Calfee, Halter & Griswold LLP
41 South High Street
1200 Huntington Center
Columbus, OH 43215
Email: slesser@calfee.com
jlang@calfee.com
talAlexander@calfee.com

Attorneys for The City of Dayton and
Honda of America Mfg., Inc.

Michael J. Settineri
Stephen M. Howard
Gretchen L. Petrucci
Ilya Batikov
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, OH 43215
Email: mjsettineri@vorys.com
smhoward@vorys.com
glpetrucci@vorys.com
ibatikov@vorys.com

Attorneys for Dynegy Inc. and
PJM Power Providers Group and
The Retail Energy Supply Association

Michelle Grant
Dynegy Inc.
601 Travis Street, Suite 1400
Houston, TX 77002
Email: michelle.d.grant@dynegy.com

Attorneys for Dynegy Inc.

Glen Thomas
1060 First Avenue, Suite 400
King of Prussia, PA 19406
Email: gthomas@gtpowergroup.com

Sharon Theodore
Electric Power Supply Association
1401 New York Ave. NW 11th Floor
Washington, DC
Email: stheodore@epsa.org

Richard C. Sahli
Richard C. Sahli Law Office, LLC
981 Pinewood Lane
Columbus, OH 43230-3662
Email: rsahli@columbus.rr.com

Tony G. Mendoza, Staff Attorney (pro hac
vice)
Sierra Club Environmental Law Program
2101 Webster Street, 13th Floor
Oakland, CA 94612
Email: tony.mendoza@sierraclub.org

Attorneys for Sierra Club

Lisa M. Hawrot
Spilman Thomas & Battle, PLLC
Century Centre Building
1233 Main Street, Suite 4000
Wheeling, WV 26003
Email: lhawrot@spilmanlaw.com

Derrick Price Williamson
Spilman Thomas & Battle, PLLC
1100 Bent Creek Blvd., Suite 101
Mechanicsburg, PA 17050
Email: dwilliamson@spilmanlaw.com

Carrie M. Harris
Spilman Thomas & Battle, PLLC
310 First Street, Suite 1100
P.O. Box 90
Roanoke, VA 24002-0090
Email: charris@spilmanlaw.com

Steve W. Chriss
Senior Manager, Energy Regulatory Analysis
Greg Tillman
Senior Manager, Energy Regulatory Analysis
Wal-Mart Stores, Inc.
2001 SE 10th Street
Bentonville, AR 72716-0550
Email: Stephen.Chriss@walmart.com
Greg.Tillman@walmart.com

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

Laura Chappelle
201 North Washington Square, Suite 910
Lansing, MI 48933
Email: laurac@chappelleconsulting.net

Attorneys for PJM Power Providers Group

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

Attorney for Edgemont Neighborhood Coalition

Amy B. Spiller
Jeanne W. Kingery
Elizabeth H. Watts
Duke-Energy Ohio, Inc.
139 East Fourth Street
1303-Main
Cincinnati, OH 45202
Email: amy.spiller@duke-energy.com
elizabeth.watts@duke-energy.com
jeanne.kingery@duke-energy.com

Attorneys for Duke-Energy Ohio, Inc.

John R. Doll
Matthew T. Crawford
Doll, Jansen & Ford
111 West First Street, Suite 1100
Dayton, OH 45402-1156
Email: jdoll@djflawfirm.com
mcrawford@djflawfirm.com

Attorneys for Utility Workers of
America Local 175

Richard L. Sites
Ohio Hospital Association
155 East Broad Street, 3rd Floor
Columbus, OH 43215-3620
Email: rick.sites@ohiohospitals.org

Matthew W. Warnock
Dylan F. Borchers
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
Email: mwarnock@bricker.com
dborchers@bricker.com

Attorneys for The Ohio Hospital Association

Raymond D. Seiler
Terrence N. O'Donnell
Dickinson Wright PLLC
150 East Gay Street, Suite 2400
Columbus, OH 43215
Email: todollell@dickinsonwright.com
rseiler@dickinsonwright.com

Attorneys for Mid-Atlantic Renewable
Energy Coalition

/s/ Jeffrey S. Sharkey

Jeffrey S. Sharkey

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Summary: Memorandum The Dayton Power and Light Company's Memorandum in Response to Motion for an Extension of the Attorney Examiner's Procedural Schedule by Sierra Club, The PJM Power Providers Group, The Electric Power Supply Association, The Retail Energy Supply Association, and Interstate Gas Supply, Inc. electronically filed by Mr. Charles J. Faruki on behalf of The Dayton Power and Light Company