

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the)	
Dayton Power and Light Company for)	Case No. 16-395-EL-SSO
Approval of its Electric Security Plan.)	
In the Matter of the Application of the)	Case No. 16-396-EL-ATA
Dayton Power and Light Company for)	
Approval of Revised Tariffs.)	
In the Matter of the Application of the)	Case No. 16-397-EL-AAM
Dayton Power and Light Company for)	
Approval of Certain Accounting Authority)	
Pursuant to Ohio Rev. Code § 4905.13.)	

**MEMORANDUM CONTRA DP&L’S MOTION FOR AN EXTENSION OF TIME
TO FILE ITS MEMORANDA CONTRA APPLICATIONS FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

With DP&L charging consumers by the day, the Office of the Ohio Consumers’ Counsel (“OCC”) recommends denial of the ten-day delay proposed by DP&L for its response time regarding applications for rehearing. OCC, however, would not object to an extension of three calendar days. That would be more than reasonable to make up for the one-day intervening holiday that DP&L claims as justification for ten additional days to respond to parties’ applications for rehearing.¹

¹ DP&L Motion for Extension, Memorandum in Support at 1 (Jan. 22, 2020).

Granting a three-calendar-day extension, instead of a ten-day extension, could avoid undue delay of a PUCO decision on important issues affecting DP&L customers who already have been charged significant above-market generation subsidies over the past decade. DP&L's filing seeks to continue subsidies in a service area that includes Dayton, where the poverty level is 35%, and Montgomery County, where food insecurity is 18%.

DP&L customers have paid hundreds of millions of dollars in stability charge subsidies to prop up DP&L's uneconomic power plants and to support DP&L's credit (through a so-called "distribution modernization charge"). But even when the Ohio Supreme Court and the PUCO finally ended DP&L's so-called "distribution modernization" charges to consumers, there is no relief (or refunds) for customers. Instead, DP&L has proposed -- and the PUCO has allowed -- a legal maneuver, where the unlawful subsidies overturned by the Ohio Supreme Court are replaced with charges to consumers for unlawful subsidies from a prior electric security plan.

On January 17, 2020, OCC and others timely filed applications for rehearing of the PUCO's decision allowing DP&L to withdraw its electric security plan. The 30-day period for issuing a ruling on applications for rehearing ends (under R.C. 4903.10) on Monday, February 17, 2020. Granting a ten-day extension of time for memoranda contra could potentially deprive the PUCO of sufficient time to consider important consumer matters -- matters where customers are not getting the reduced rates they are entitled to under law. (And, of course, customers already lost out on refunds.) That would be

unreasonable and is reason for the PUCO to deny DP&L's request for ten days.² And, extending the PUCO's review, while disputed rates are not being collected under a requirement for refunds, could further harm DP&L's customers.³

In the interest of the consumers that DP&L is further prejudicing with its motion and request, its request for ten more days to file its Memorandum Contra to OCC's application for rehearing should be denied. OCC would not object to a three-calendar-day extension.

² See, e.g., *In the Matter of the Petition of William D. McKenny v. GTE North Inc. et al*, Case No. 96-1402-TP-PEX, Entry on Rehearing at 20-21 (Oct. 26, 2000). There, the PUCO denied the utility's request for a ten-day extension to file its memorandum contra an application for rehearing because of the potential for the request to deprive it of sufficient review time. Because of this potential review problem, the PUCO found that only under "unusual circumstances" should an extension of time be granted for parties to file a memorandum contra an application for rehearing.

³ Just since the advent of the 2008 energy law that favors electric utilities in ratemaking, Ohioans have lost \$1.2 billion in denied refunds for electric charges after Supreme Court reversals of PUCO orders. See *In re Columbus S. Power Co.*, 128 Ohio St.3d 512, ¶ 17-20 (\$63 million); *In re: Columbus S. Power Co.*, 138 Ohio St.3d 448, ¶ 56 (\$368 million); *In re Application of Dayton Power & Light Co.*, 147 Ohio St.3d 166 (\$330 million); *In re Application of Ohio Edison Co.*, 2019-Ohio-2401, ¶ 23 (\$456 million collected through June 2019).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra was electronically served via electric transmission on the persons stated below this 24th day of January 2020.

/s/ William J. Michael
William J. Michael
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: Memorandum Memorandum Contra DP&L's Motion For An Extension Of Time To File Its Memoranda Contra Applications For Rehearing by The Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Michael, William J.