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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The : Case No. 05-0276-EL-AIR
Dayton Power and Light Company for the :
Creation of A Rate Stabilization Surcharge : Attorney Examiner Gregory A. Price
Rider and Distribution Rate Increase :

**THE DAYTON POWER AND LIGHT COMPANY'S
SUPPLEMENTAL MEMORANDUM IN RESPONSE TO
POST-BRIEFING LETTER COMMENTS FROM THIRD PARTY**

On February 14, 2006, Direct Energy Services LLC and WPS Energy Services, Inc. ("Marketers") filed a letter with this Commission asserting that the Commission should grant the Application for Rehearing filed by The Office of the Ohio Consumers' Counsel ("OCC"). The Commission should disregard the arguments made by the Marketers in their February 14, 2006 letter for each of the following four separate and independent reasons.

1. **The Marketers' Letter is Untimely:** The Stipulation and Recommendation ("Stipulation") in this matter was filed with the Commission on November 3, 2005, and was approved by the Commission on December 28, 2005. The Marketers have failed to explain why they waited three-and-one-half months, until the record is closed and all briefing had been completed, to send a letter. The Marketers' letter should be disregarded as untimely.

2. **The Marketers Failed to Intervene:** Pursuant to Ohio Rev. Code § 4903.22.1, parties "who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding." That is the mechanism provided by the General Assembly for third parties to participate in Commission proceedings. The Marketers failed to file a Motion

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to Intervene, and their comments on the Stipulation should thus be disregarded for this additional reason.

3. **No Factual Support:** The Marketers assert that extending DP&L's rate stabilization period ("RSP") to 2010 will prevent competition from developing in DP&L's service territory. The Marketers failed to provide any admissible factual support for their assertion that the Stipulation will prevent competition from developing in DP&L's service territory. The Commission should thus disregard the Marketers' letter for lack of evidentiary support.

4. **The Commission Has Already Considered and Rejected the Marketers' Arguments:** The Marketers' arguments reveal an ignorance or misunderstanding of the Stipulation. The premise of the Marketers' argument -- that the Commission should not extend DP&L's RSP through 2010 -- has already been considered and rejected by the Commission:

"The Commission finds that there is significant value in providing predictable, stable rates for 2009 and 2010 rather than relying on projected market rates. Because of the unpredictable nature of the market for 2009 and 2010, the Commission finds that, although it is difficult to quantify the value of stable, predictable rates precisely, the known rates do have value for customers. Further, the Commission notes that DP&L's witness Strunk testified that the value was consistent with that provided by an option purchased in the futures market (DP&L Ex. 13C at 2, 6). Moreover, this value [of the Stipulation] is enhanced because the Commission retains the authority to terminate the rate stabilization period, at any time, in the event that market rates are substantially below the prices provided for by the stipulation (Signatory Parties Ex. 1 at 6; OCC Ex. 2 at 14-15. *See also, Dayton Power and Light Company, Case No. 02-2279-EL-ATA at 26-27*)."

Opinion & Order, p. 8.


The Commission also rejected the Marketers' contention that the Stipulation will discourage competition:

"The Commission believes that the entire EIR should be avoidable to customers who shop for the duration of the stipulation. Making the entire EIR avoidable would promote competitive markets by increasing the shopping credit to customers who switch to competitive provider. Therefore, the Commission will modify the stipulation to provide that all increases in the EIR be avoidable from 2007 through 2010. The Commission finds that, as modified, the stipulation meets the goal of promoting the development of competitive markets."

Opinion & Order, p. 9.

The Commission has thus already considered and rejected the Marketers' arguments.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing The Dayton Power And Light Company's Supplemental Memorandum in Response to Post-Briefing Letter Comments from Third Party has been served via electronic mail upon the following counsel of record, this 16th day of February, 2006:

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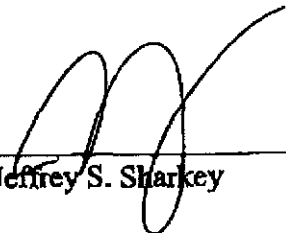
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