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INITIAL BRIEF OF INDUSTRIAL ENERGY USERS-OHIO

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On Behalf of Industrial Energy Users-Ohio

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of)	Case No. 03-2405-EL-CSS
Dominion Retail, Inc.,)	
v.)	
The Dayton Power and Light Company,)	
)	
In the Matter of the Complaint of Miami)	
Valley Communications Council,)	Case No. 04-85-EL-CSS
v.)	
The Dayton Power and Light Company,)	
)	
In the Matter of the Application Not for an)	
Increase in Rates of The Dayton Power)	
and Light Company for Approval to)	Case No. 03-2341-EL-ATA
Modify Its Existing Alternate Generation)	
Supplier (AGS) Tariff Sheet No. G8.)	
)	
In the Matter of the Application of The)	
Dayton Power and Light Company for a)	
Waiver from the Requirements of the)	Case No. 03-2245-EL-UNC
Ohio Administrative Code.)	
)	
In the Matter of the Application of The)	
Dayton Power and Light Company for a)	
Waiver from the Requirements of the)	Case No. 03-2324-EL-UNC
Electric Service and Safety Standards,)	
Rule 4901-10-33, Ohio Administrative)	
Code.)	

INITIAL BRIEF OF INDUSTRIAL ENERGY USERS-OHIO

I. INTRODUCTION

The evidentiary record in this proceeding was completed on October 21, 2004.

In accordance with the schedule established by Attorney Examiner Stoneking, Industrial Energy Users-Ohio ("IEU-Ohio") submits its Post Hearing Brief for consideration by the

Public Utilities Commission of Ohio ("Commission"). For the reasons explained below, IEU-Ohio urges the Commission to adopt the Stipulation filed on October 14, 2004 as a reasonable resolution of the issues.

The Dayton Power and Light Company ("DP&L") filed an Application for approval to modify its existing Alternate Generation Supplier's ("AGS") Tariff Sheet No. G8, almost one year ago, on November 26, 2003. In March 2004, two complaint cases against DP&L filed by Dominion Retail, Inc. ("Dominion Retail") and Miami Valley Communications Council ("MVCC") were consolidated with the tariff application proceeding.¹ After lengthy, serious, arm's-length bargaining, on October 14, 2004, all of the Parties to all three proceedings, with the exception of the Ohio Consumers' Counsel ("OCC"),² signed and filed a Stipulation and Recommendation ("Stipulation") to resolve the issues. IEU-Ohio signed the Stipulation only in regards to the portions that pertained to its concerns regarding the tariff application. Nonetheless, IEU-Ohio understands that the Stipulation is a package that attempts to resolve all of the issues in these consolidated cases. As such, IEU-Ohio urges the Commission to adopt the Stipulation as reasonable.

II. THE STIPULATION

Section 4901-1-30 of the Ohio Administrative Code provides that any two or more parties to a proceeding may enter into a stipulation resolving the issues in the proceeding and then present that stipulation to the Commission for approval. It is clear

¹ *In the Matter of the Complaint of Dominion Retail, Inc. v. The Dayton Power & Light Company*, Case No. 03-2405-EL-CSS; and *In the Matter of Miami Valley Communications Council v. The Dayton Power & Light Company*, Case No. 04-85-EL-CSS.

² Because at this point, it is entirely unclear to IEU-Ohio what OCC's position in this proceeding is, IEU-Ohio reserves its arguments on such for its Reply Brief, at which point, IEU-Ohio hopes to have a better understanding of OCC's position.

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from this rule that stipulations presented to the Commission need not have the blessing or support of all parties. In considering the reasonableness of a stipulation, the Commission has applied the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

Cincinnati Gas & Elec. Co., FirstEnergy Corp. and Columbus & Southern Ohio Elec. Co., Case No. 84-1187-EL-UNC (November 26, 1985), and *Cleveland Elec. Illuminating Co.*, Case No. 82-485-EL-AIR (March 30, 1983). Furthermore, the Ohio Supreme Court has endorsed the Commission's use of these criteria to evaluate the reasonableness of settlements and their effect on the interests of customers and public utilities. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St. 3d 123 (1992).

The Stipulation represents a comprehensive solution to the issues raised in these consolidated proceedings and, more importantly, creates an opportunity to implement plans that are designed to provide customers with better opportunities to access alternative suppliers in DP&L's service territory. The Stipulation addresses or includes, among other things, resolution of the billing fees DP&L can charge competitive retail electric service ("CRES") providers and a prudence review of the investments DP&L has made to modify its billing system to comply with Amended Substitute Senate Bill 3 ("SB 3"). Additionally, the Stipulation provides DP&L with an opportunity to recover: (1) prudently incurred investments in its billing system via a rider that is set in accordance with the same methodology that DP&L used to calculate regulatory transition charges in

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its electric transition plan ("ETP") proceeding; and, (2) energy and ancillary costs associated with CRES provider default (net of amounts covered by the security posted or other reasonable means of collection), through a CRES Provider Default Recovery Rider. Finally the Stipulation addresses communications between DP&L and aggregating communities. Thus, the Stipulation recommends a resolution to issues that recognizes the interrelationship between the issues that might not be otherwise achievable through litigation. .

IEU-Ohio respectfully requests the Commission approve the Stipulation and Recommendation filed in this proceeding on October 14, 2004.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Initial Brief of Industrial Energy Users-Ohio* was served upon the following parties of record this 12th day of November 2004, via electronic transmission, hand-delivery, or ordinary U.S. mail, postage prepaid.



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