

FILE

BAILEY CAVALIERI LLC  
ATTORNEYS AT LAW

One Columbus 10 West Broad Street, Suite 2100 Columbus, Ohio 43215-3422  
telephone 614.221.3155 facsimile 614.221.0479  
www.baileycavalieri.com

direct dial: 614.229.3210  
email: Dane.Stinson@BaileyCavalieri.com

February 14, 2006

2  
RECEIVED-DOCKETING DIV  
2006 FEB 14 PM 3:37  
PUCO

*Via Hand Delivery*

Ms. Renee Jenkins  
Docketing Division  
Public Utilities Commission of Ohio, 13<sup>th</sup> Floor  
180 East Broad Street  
Columbus, OH 43215-3793

Re: *In the Matter of the Application of The Dayton Power and Light Company for the  
Creation of a Rate Stabilization Surcharge Rider and Distribution Rate Increase,  
Case No. 05-276-EL-AIR*

Dear Ms. Jenkins:

Direct Energy Services LLC and WPS Energy Services, Inc. ("Marketers") write to support, in part, the Ohio Consumers' Counsel ("OCC") application for rehearing of the Opinion and Order issued December 28, 2005 ("Order") in the above referenced matter. Marketers are concerned that the Order extending Dayton Power & Light Company's ("DP&L") rate stabilization period ("RSP") was made in this compliance proceeding<sup>1</sup> without proper notice of the proposed extension, as required by Sections 4909.18(E) and 4903.083, Ohio Revised Code.<sup>2</sup> Marketers also are concerned that the partial stipulation ("Stipulation") that provides for the RSP extension was crafted and supported by only two interest groups (DP&L and large end users) and was premised upon the high price of electricity in years 2009 and 2010, a premise which even the Commission found too unpredictable to accept. Order at 8. Significantly, this finding of unpredictability, and the acknowledgment that market rates conceivably could fall below the extended RSP price (Order at 8), begs the question as to why it is necessary, now, to extend the RSP through 2010.

<sup>1</sup> This proceeding was initiated as a compliance proceeding to set the level of the rate stabilization surcharge ("RSS") previously approved in *In the Matter of the Application of the Continuation of the Rate Freeze and Extension of the Market Development Period for The Dayton Power and Light Company*, Case No. 02-2779-EL-ATA, et al. (Opinion and Order, September 2, 2003) ("Initial RSP Order").

<sup>2</sup> Section 4903.083, Ohio Rev. Code, provides in pertinent part:

\*\*\*

Said notice \*\*\* shall list a brief summary of the then known major issues in contention as set forth in the respective parties' and intervenor's [sic] objections to the staff report filed pursuant to section 4909.19 of the Revised Code.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business  
Technician MB Date Processed 2/14/06

## BAILEY CAVALIERI LLC

Ms. Renee Jenkins  
Public Utilities Commission of Ohio  
February 14, 2006  
Page 2

Because the Stipulation was crafted and supported by narrow interests, because the lack of proper notice effectively excluded Marketers from the negotiation process, and because of the admitted unpredictability of electricity prices in 2009 and 2010, Marketers support OCC's request that the Commission reject the Stipulation and enforce the *Initial RSP Order*. Law and reason dictate that any decision with regard to the future of the DP&L market beyond 2008 must be made with input from the parties that will be substantially affected (including Marketers), and at a future point in time when future electric prices and the development of competitive markets are known or subject to reliable forecast. Rushing to extend DP&L's RSP now will inappropriately and unnecessarily signal to marketers that competition in DP&L's service territory will be closed at least until 2011, a result that is not warranted by the record in this case, and which violates the pro-competitive policies of Section 4928.02, Ohio Rev. Code.

Accordingly, Marketers urge the Commission to grant OCC's application for rehearing and reverse the Order approving the Stipulation on the basis that it violated several important regulatory principles, including the following:

1. The stipulation violates Section 4928.02, Ohio Rev. Code, by failing to ensure diversity of electricity supplies and suppliers.
2. The stipulation violates the Commission's own standards for approving partial stipulations because the Stipulation did not result from serious negotiations among a diverse group of interests.
3. The stipulation violates the Commission's own standards for approving rate stabilization plans, because the stipulation does nothing to further development of competitive markets.

Respectfully submitted,

  
Dane Stinson

cc: Alan R. Schriber, Chairman  
Ronda Hartman Fergus, Commissioner  
Judith A. Jones, Commissioner  
Donald L. Mason, Commissioner  
Clarence C. Rogers, Jr., Commissioner  
Christine M.T. Pirik, Chief of Staff  
Steven R. Brennen, Director, Utilities Dept.  
Paul J. Duffy, Legal Director  
Gregory A. Price, Examiner  
Counsel of Record