BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REGULATION OF THE ELECTRIC FUEL COMPONENT CONTAINED WITHIN THE RATE SCHEDULES OF THE DAYTON POWER AND LIGHT COMPANY AND RELATED MATTERS	))))	CASE NO. 85-07-EL-EFC

THE DAYTON POWER AND LIGHT COMPANY'S MEMORANDUM
IN OPPOSITION TO THE OFFICE OF
CONSUMERS' COUNSEL'S MOTION TO COMPEL

The Office of Consumers' Counsel has filed a Motion to compel answers to certain questions in its First Set of Interrogatories and Request for the Production of Documents. Many of these questions deal with or relate to Staff's investigation "into the potential for, and benefits of, a state-wide centrally dispatched electric power pooling system." OCC's Motion must be denied because, as the Commission has pointed out in its Entry denying OCC's Request for a Generic Hearing, Segment I of the power pooling study is merely a feasibility study and it would be premature to examine these issues at a hearing at this time. If the hearing is premature at this time, then it would obviously be premature to engage in discovery. The Company should not be burdened with data requests for a hearing which may never actually be conducted.

I. THE POWER POOLING STUDY IS A FEASIBILITY STUDY AND THE COMMISSION HAS NOT SCHEDULED A HEARING AT THIS TIME

On April 4, 1985, OCC filed a Motion for a Generic Hearing to consider the findings of Segment I of the power pooling

study. In its Entry denying that motion, the Commission stated "Segment I of the power pooling study is a feasibility study which the Commission intends to use in its determination of whether or not there are sufficient benefits associated with the state-wide centrally dispatched power pool to begin Segment II of the study. If there are insufficient benefits identified, the Commission may terminate the study." (Emphasis added). It is apparent that Segment I of the study is intended solely to provide information to the Commission and Staff. Thus, discovery by intervenors, such as OCC, is not only unnecessary, it is also irrelevant and time consuming. The Commission makes the objective of the power pooling study even clearer by stating further that "the Commission does not intend to draw any final conclusions regarding the Segment I report in the upcoming individual EFC proceedings." The Commission continues this Entry by emphasizing that it was not, in this order denying OCC's Motion for Generic Hearing, making a determination as to whether a hearing on the Segment I report will be required.

Obviously at such time as the Commission determines that a hearing on the Segment I report is necessary, discovery for that hearing may be conducted. However, until that time, it is pointless for the parties to spend energy in the preparation of, and response to, interrogatories. Furthermore, allowing the discovery and the hearing on the power pooling issue to be conducted through the EFC proceeding will effectively allow the

EFC hearing to replace the generic hearing previously denied and thus circumvent the Order of the Commission.

II. THE EFC HEARING EXISTS TO ALLOW EXAMINATION OF THE COMPANYS' FUEL PROCUREMENT PRACTICES

Having set forth the Company's general position on the matter of discovery relevant to the power pooling issues, specific issues raised by OCC will now be addressed.

First, OCC begins by correctly asserting that the fuel utilization practices and policies of each electric company are subject to review by the Commission in the EFC cases. Furthermore, for the audit period (in this case September 1, 1984 through August 31, 1985) much of the data OCC desired is relevant. However, questions and data requests which seek information outside the audit period are clearly irrelevant. The EFC proceeding exists to determine the prudency of an electric company's procurement actions. These actions are subject to review at the time the Company seeks to pass the costs onto the consumer. At that time, the Company must justify its actions.

The Power Pooling study is being undertaken to determine the benefits, if any, to be gained by pooling among electric companies. Examination of this issue in the EFC case will not help to evaluate the prudency of the Company's fuel procurement practices, but rather will confuse the true issues and prolong the hearing.

OCC has argued that even if discovery on the Power Pooling issue is disallowed at this time, data outside the audit period is relevant because it can indicate "trends". Interestingly, however, nearly all of OCC's data requests for time periods outside the audit period are confined to the same exact time period as the Power Pooling study - the year 1984. (See OCC Interrogatories 9, 10(A-E), 10(G), 13, and 14 and Requests to Produce 2, 11 and 15.)

III. THE COMPANY HAS NOT WAIVED ITS OBJECTIONS AS TO BURDEN, PRIVILEGE OR ANY OTHER APPROPRIATE GROUNDS

OCC also argues that because the Company has not asserted that the requests in issue are burdensome, or privileged, that the Company has waived these objections. OCC's arguments are clearly incorrect. Having read these questions and determined their irrelevance, the Company did not examine them further, and consequently, has not made a decision as to whether the questions can or should be objected to on other grounds. The Company obviously desires to avoid expending energy where it is unnecessary. Thus, the initial determination of irrelevance ended any further examination by the Company. Should the Commission find one of these requests relevant, the Company will then invest the considerable resources necessary to answer or object on other grounds to the request.

IV. THE FACT THAT STONE AND WEBSTER WILL BE CONDUCTING BOTH THE MANAGEMENT/PERFORMANCE AUDIT AND THE POWER POOLING STUDY DOES NOT MAKE THE POWER POOLING STUDY RELEVANT TO THE EFC CASE

OCC argues that because Stone and Webster will report on the issues of system dispatch, purchased power, and sales for resale, this necessarily draws into the realm of relevant discoverable matter that which pertains to the power pooling study. Yet, it is obvious, as the Company asserted above, that the Commission does not intend for the power pooling issue to be heard at the upcoming EFC hearing.

Furthermore, the power pooling and Management/Performance audits, though both done by Stone and Webster, were conducted separately. The Management/Performance audit was conducted primarily at the Company by interviewing responsible personnel. It necessarily covers the same time period (9/1/84 - 8/31/85) as is covered by EFC proceeding and will be subject to OCC examination at the EFC hearing. Stone and Webster's Power Pooling study, on the other hand, covers a different time period and, moreover, the data was collected differently.

That it was not the intent of the Commission to have the power pooling study examined at the EFC hearing was made all the more obvious in the Commission's Entry of May 29 (quoted in OCC's memo at page six) where the Commission ordered Stone & Webster to (1) examine the basic EFC dispatching and power purchasing issues, and (2) "in addition" provide a report on power pooling. (Emphasis added). Thus, DP&L is far from

"torturing" the Commission's language to find that the Commission does not intend to make power pooling an issue in the current EPC case; in fact, the Company's interpretation should be the most obvious to the reader. Thus, while the first part of the Commission's requested Stone and Webster report will be relevant to the proceeding, the second part is not, and consequently discovery on the issue is premature to say the least.

In addition, OCC makes the inverted argument that it will be more efficient to conduct discovery now for a hearing which may or may not be held at some indefinite point in the future, than to conduct it if and when such a hearing is scheduled. The only advantage to conducting discovery now asserted by OCC is that, because the Company is providing Stone and Webster with power pooling data at the moment, it will be supposedly easier for the Company to also provide data to the intervenors on this issue. Obviously, this data will always be accessible, and at such time as discovery is allowed on the issue of power pooling, the Company will have no additional problem providing to intervenors the data given to Stone and Webster. However, in light of the fact that providing the Stone and Webster data will lead to discovery requests on matters possibly related to, but not addressed by Stone and Webster, conducting discovery now will actually result in additional work, and consequently, be far less efficient than it might be, if and when discovery is permitted on the power pooling issue. Thus, OCC has made

its argument backwards: it does not make sense to require the Company to presently respond to issues which may or may not ever be addressed in a hearing. Doing so only places an additional workload on the Company.

V. THE COMPANY'S OBJECTIONS TO SPECIFIC DISCOVERY REQUESTS

As the preceding argument shows, the Company is more than justified in refusing to answer discovery questions which concerned themselves with the power pooling study. However, there are additional points to be raised concerning the individual interrogatories and requests for the production of documents.

Interrogatory number one seeks the one single individual most knowledgeable of DP&L's system dispatching. The identity of this person is simply not relevant nor likely to lead to information which is relevant. Obviously, a Company as large as DP&L has many individuals who are familiar with system dispatching. It is a broad topic and though one person may have considerable expertise in one area, his expertise may be exceeded by someone else in some other area of system dispatch. Thus, the person who is most knowledgeable about system dispatch may not be identifiable at all. At each fuel hearing, DP&L calls as a witness a person qualified to testify on a given subject. A look at the witnesses who have addressed subject areas in the past will reveal that the Company does not automatically call the same witness for each case. Many

factors, including the specific issues to be examined in a fuel hearing, determine who will be selected as the Company witness. However, even if this single most knowledgeable person could be determined, it is not relevant to this case so long as the Company provides competent witnesses and information.

Interrogatories 15 and 16 and Requests to Produce 6-11 are broad questions which again reach into the area of the power pooling study. The Company's position on this need not be repeated again. However, it should be pointed out that OCC tries to justify the responses sought in questions 15 and 16 by claiming that the information will likely lead to information relevant to the Management/Performance Audit. Clearly this is inappropriate since the subject matter of the Management/Performance Audit is as wide open to discovery in this case as in any other. The fact that there has never been a power pooling study in the past has not hampered the effectiveness of past EFC proceedings. OCC's claim that information on the power pooling portion of Stone and Webster's report is now necessary to provide relevant information for the basic EFC issues is thus not worthy of serious consideration.

Finally, interrogatories 9-10(E), 10(G), and 13 and Request to Produce two, seek data which is outside the audit period. Such data is not relevant because it cannot give any indication of the prudency of the Company's fuel policies for the time period which is the subject of this case.

It should again be pointed out, with regard to question 9, that the Company has not yet reached the issue of whether responses to question 9 will be burdensome, privileged, or objectionable on any other grounds. The Company having found this to be an irrelevant question has yet to examine the matter further.

In addition, OCC has charged that the Company's response to Interrogatory 9 is evasive. This is clearly untrue. The question requests the minimum loading levels for each of the Company's generating units during 1984. Ignoring the objectionable portion of the question, which seeks information outside the audit period, the Company responded that "minimum loads varied depending on conditions, but the units could generally operate down to 40% of minimum rating." This answer is fully responsive. If OCC has not received the information it seeks, the question should be rephrased.

IV. FIVE DAYS IS NOT SUFFICIENT TIME FOR THE COMPANY TO PREPARE ITS ANSWERS

The Company has shown that it has been more than justified in refusing to respond to OCC's discovery request. However, should the Commission find that the Company must respond to any questions, the Company respectfully requests that it be given 14 days to prepare its answers, and that it be permitted to object on other grounds where appropriate.

V. CONCLUSION

The normal matters of an EFC proceeding provide more than enough activity for the Commission and the parties. Irrevelant and at this time, unnecessary discovery will only hinder and delay the fair examination of the true issues in the present EFC case. However, should the Commission find that any question objected to must be answered by the Company, the Company requests 14 days to prepare those answers rather than the five requested by OCC; and the right to object to such questions on other grounds.

For the reasons stated in the foregoing, OCC's Motion to Compel, like its Motion for Generic Hearing, is premature and the Company asks that it be denied at this time.

Respectfully submitted,

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Certificate of Service

I hereby certify that I have served a copy of the foregoing upon all parties to this action or their attorneys by ordinary U. S. mail this 29th day of July, 1985.

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