

FILE

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

RECORDS DIV

NOV 22 AM 9:43

PUCO

In the Matter of the Commission  
Investigation of the Financial Condition of  
Ohio's Regulated Public Utilities

Case No.: 02-2627-AU-COI

REPLY COMMENTS OF  
THE DAYTON POWER AND LIGHT COMPANY

Pursuant to the Entry dated October 10, 2002, the Public Utilities Commission of Ohio ("Commission") requested that interested parties file comments and reply comments regarding the Commission's investigation of the financial condition of Ohio's regulated public utilities. On November 15, 2002, The Dayton Power and Light Company ("DP&L") filed comments in the present proceeding and now files its reply comments.

As stated in DP&L's initial comments, the Commission currently receives, from public utilities, significant information regarding the reliability and safety of utility service. Further, the Commission receives or has access to publicly available Securities and Exchange Commission ("SEC") filings from public utilities. The Commission should rely on the above-described information and should not expand its scope of inquiry as suggested by the Ohio Consumers' Counsel ("OCC"). OCC's suggested expanded inquiry into transactions between unregulated entities is not only beyond the Commission's jurisdiction, but also unsupported by any demonstrated need to inquire into these areas. The Commission should not expand its inquiry beyond the information already available from public utilities.

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 3 Date Processed 11/22/02

---

**I. Reply Comments Responsive to OCC**

In its comments, OCC uses sensationalized allegations to argue for an expanded Commission inquiry. To base a Commission action on unproven allegations would be unlawful and unreasonable. Allegations in other proceedings are not a basis for action in this proceeding. What OCC relies upon are allegations that have been denied and are being vigorously defended by DP&L and other Ohio utilities.

Further, throughout its comments, OCC interchanges references to competitive affiliates and unregulated affiliates. There is a distinct difference between such entities. A competitive affiliate of an electric distribution utility ("EDU") is an affiliate that provides competitive retail electric service. An unregulated affiliate is an affiliate that conducts business that is providing neither utility service nor competitive retail electric service. When considering the Comments and Reply Comments, the Commission should take care not to treat interchangeably these two distinctly different entities.

**A. The Commission's Authority Is Limited To Information Pertaining To Public Utilities.**

The Commission does not have unfettered and unrestricted authority and jurisdiction. Its jurisdiction must relate to the operations and activities of the public utility. OCC relies on various provisions of Revised Code Title 49 and particularly R.C. §4905.15 for the basis of its argument for broad-brush and "without limitation" authority of the Commission. However, this section states:

Each public utility shall furnish to the public utilities commission... information as shall show completely and in detail the entire operation of the public utility in furnishing the unit of its product or service to the public.

R.C. §4905.15 (emphasis added). On its face, §4905.15 limits the information to relating to the public utilities and their products or services. Accordingly, as this Commission is already aware, the Commission's scope of authority is not "without limitation."

**B. The Commission Should Not Expand Its Authority To Require The Reporting of Any Credit Downgrades of the Utility, Utility Parent Or Affiliate Of The Utility**

OCC suggests that utilities be required to report to the Commission any credit downgrades of the utility, utility parent or affiliate of the utility. Such a requirement is vague and overbroad. With the existence of numerous credit agencies, the meaning of "any credit downgrade" is unduly vague. OCC has failed to demonstrate a direct relationship of a downgrade of the utility or an affiliate and how such a downgrade would affect the utility's service reliability. Moreover, the adoption of a new reporting requirement is unnecessary because contemplated and actual downgradings by rating agencies are generally publicly disclosed and readily available to the Commission and its staff. Accordingly, the Commission should not adopt this additional reporting requirement suggested by OCC.

**C. The Commission's Authority Over Transactions Is Limited**

OCC relies on Ohio Administrative Code ("OAC") Rule 4901:1-20-16(G)(3) as a broad-brush authority for the Commission to oversee transactions between EDUs and affiliates as well as transactions between unregulated affiliates. OAC 4901:1-20-16(G)(3) restricts only transactions involving the electric utility. Such authority<sup>1</sup> cannot be expanded to apply to transactions between unregulated affiliates in which the EDU does not participate. Such an expansion is clearly beyond the statutory authority of the Commission.

---

<sup>1</sup> As noted by DP&L in PUCO Case No. 99-1141-EL-ORD, these restrictions were formerly contained in R.C. §4905.46. As part of Amended Sub. Senate Bill No. 3, the General Assembly amended R.C. §4905.46 to remove these transactional restrictions and reduce the Commission's authority. It is unlawful for the Commission to grant itself specific authority that the General Assembly explicitly removed from the statute. It is well established that the Commission, being a creature of statute, has only that authority as granted by statute.

---

The limited authority granted to the Commission in R.C. §4928.18(B) to review a utility and affiliates is narrowly focused upon a determination whether the utility or affiliate violated corporate separation requirements. That authority is unambiguously narrow.

**D. The Commission Should Not Expand Its Authority To Review The Cost Allocation Manuals of Utilities**

In a previous rulemaking before the Commission, EDUs and other interested parties provided comments on the content of CAMS and the Commission's authority to review such CAMS. As a result of that proceeding, the Commission promulgated rules governing CAMS. OCC can not use the present proceeding as a second bite at the apple to circumvent or expand such rules. The Commission has specific statutory authority over CAMS, and the Commission should not take action beyond that authority.

**E. The Commission Has Specific Rules In Place To Prevent Deterioration of Utility Service**

OCC suggests that this proceeding should be used to guard against deterioration of service quality. The Commission has promulgated electric safety and service standard ("ESSS") rules to accomplish this goal. Further, the Commission has recently expanded the ESSS rules, and Applications for Rehearing are pending. See PUCO Case No. 02-564-EL-ORD. The Commission must not allow OCC to circumvent that rulemaking proceeding via the present proceeding. The ESSS rules impose upon EDUs a multitude of reporting requirements as to service quality and standards. This proceeding should not be used to expand the requirements of the ESSS rules or expand the authority of the Commission beyond that set forth in existing statutes and rules.

### CONCLUSION

The Commission should use the tools and information presently available to it to conduct the instant investigation. The Commission should avoid imposing additional reporting or other requirements upon utilities. Further, the Commission should avoid efforts to create oversight of unregulated affiliates and transactions wholly between unregulated affiliates.

Respectfully submitted,



ATHAN A. VINOLUS (0040174)  
The Dayton Power and Light Company  
1065 Woodman Drive  
Dayton, Ohio 45432  
Telephone: (937) 259-7348  
Facsimile: (937) 259-7178  
Athan.Vinolus@DPLinc.com

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of Reply Comments of The Dayton Power and Light Company was served by regular U.S. Mail, postage prepaid, this 22<sup>nd</sup> day of November, 2002 upon the following:

**Robert N. Fronck**  
4205 Chester Ave.  
Cleveland, OH 44103

Filed on behalf of Utility Workers  
Union of America

**Terry L. Etter, Esq.**  
10 West Broad Street, Ste. 1800  
Columbus, OH 43215-3485

Counsel for Ohio Consumers'  
Counsel

**Helen L. Liebman**  
Jones, Day, Reavis & Pogue  
41 S. High Street, Ste. 1900  
Columbus, OH 43215

Counsel for The East Ohio Gas  
Company dba Dominion East Ohio

**James W. Burk, Esq.**  
76 South Main Street  
Akron, OH 44308

Counsel for FirstEnergy Corp.

**Gary A. Jack, Esq.**  
1310 Fairmont Avenue  
Fairmont, WV 26554

Counsel for Monongahela Power Co.  
dba Allegheny Energy

**Samuel C. Randazzo, Esq.**  
McNees, Wallace & Nurick  
Fifth Third Center  
21 East State Street Suite 910  
Columbus, Oh 43215

Counsel for The Industrial Energy  
Users-Ohio

**Daniel R. Conway, Esq.**  
Porter, Wright, Morris & Arthur  
41 South High Street  
Columbus, OH 43215

Counsel for Century Tel of Ohio

**Joseph R. Stewart, Esq.**  
50 West Broad Street, Ste. 3600  
Columbus, OH 43215

Counsel United Telephone Company  
of Ohio dba Sprint

**Stephen B. Seiple**  
200 Civic Center Drive  
P.O. Box 117  
Columbus, OH 43216-0117

Counsel for Columbia Gas of Ohio,  
Inc.

**William B. Schuck**  
2352 McCauley Court  
Columbus, OH 43220

Counsel for Competition Ohio

**Christopher J. Wilson, Esq.**  
201 East Fourth Street, Suite 102-620  
Cincinnati, OH 45202

Counsel for Cincinnati Bell  
Telephone Company

**Gretchen J. Hummel, Esq.**  
McNees, Wallace & Nurick  
Fifth Third Center  
21 East State Street, Suite 1700  
Columbus, OH 43215-4228

Counsel for Vectren Energy Delivery  
of Ohio

**Douglas W. Trabaris, Esq.**  
222 W. Adams Street, Ste. 1500  
Chicago, IL 60606

Counsel for AT&T  
Communications of Ohio, Inc.

**John J. Kirn, Jr., Esq.**  
1223 West Sixth Street  
Cleveland, OH 44113

Counsel for The Consumers for  
Fair Utility Rates

**Marvin I. Resnik, Esq.**  
1 Riverside Plaza  
Columbus, OH 43215

Counsel for Columbus Southern  
Power Co. and Ohio Power Co.

**Jon F. Kelly, Esq.**  
150 E. Gay St., Room 4-A  
Columbus, OH 43215

Counsel for SBC Ameritech

**John J. Finnigan, Jr., Esq.**  
2500 Atrium II  
P.O. Box 960  
Cincinnati, OH 45201-0960

Counsel for CG&E

**Thomas E. Lodge, Esq.**  
Thomspon Hine LLP  
10 West Broad Street, Ste. 700  
Columbus, OH 43215-3435

Counsel for Verizon North, The  
Ohio Telecome Association and  
Alltel Ohio and Western Reserve  
Telephone Company



Athan A. Vinolus (0040174)