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THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Commission's)
 Promulgation of Amendments to Rules for)
 Electric Service and Safety Standards) Case No. 99-1613-EL-ORD
 Pursuant to Chapter 4928, Revised Code.)

MEMORANDUM CONTRA OF OHIO PARTNERS FOR AFFORDABLE ENERGY, OHIO ENVIRONMENTAL COUNCIL, ENRON ENERGY SERVICES, SUSTAINABLE ENERGY FOR ECONOMIC DEVELOPMENT OF OHIO, AND WPS-ENERGY SERVICES TO THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY FOR REHEARING

I. INTRODUCTION

Pursuant to Ohio Rev. Code § 4903.10 and Ohio Administrative Code § 4901-1-35, Ohio Partners for Affordable Energy (OPAE), the Ohio Environmental Council (OEC), Enron Energy Service, Sustainable Energy for Economic Development of Ohio (SEED) and, WPS-Energy Services ("Consumer Organizations") respectfully submit this memorandum contra to the Application of the Dayton Power and Light Company for Rehearing on the Commission's Entry on Rehearing issued June 8, 2000, adopting rules for electric service and safety standards ("June Entry"). The above-referenced organizations have filed comments and other pleadings in the instant proceeding, and will be affected by the June Entry. The Consumer Organizations request that the application for rehearing be rejected for the reasons set forth below.

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II. Requiring Standard Offer Service to Comply with Emissions Reporting Requirements is Within the Commission's Statutory Authority

Section 4928.05 provides the necessary authority to for the Commission to regulate noncompetitive services. It reads, in pertinent part, as follows:

(A)(2) On or after the starting date of competitive retail electric service, a noncompetitive retail electric service supplied by an electric utility shall be subject to the supervision and regulation by the commission under Chapters 4901. to 4909., 4933., 4935., and 4963 of the Revised Code and this Chapter, to the extent that authority is not preempted by federal law....

The commission shall exercise its jurisdiction with respect to the delivery of electricity by an electric utility in this state on or after the starting date of competitive retail electric service so as the ensure that no aspect of the delivery of electricity by the utility to consumers in this state that consists of a noncompetitive retail electric service is unregulated. [Emphasis added.]

By requiring that the Commission regulate all aspects of noncompetitive services, the statute, on it's face, provides authority to require generation mix and environmental disclosure.

In addition, intrinsic in the concept of 'choice' is the ability of consumers to make an informed decision regarding the commodities and services they purchase. Since a kilowatt of electricity is the same, regardless of the source, the General Assembly enunciated a number of policies to guide the Commission's implementation of the legislation.

Section 4928.02, Ohio Revised Code, defines the policies of the State of Ohio beginning on the starting date of competitive retail electric service. Among the policies included in this provision are the following:

(B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs; [Emphasis added.]

(C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed generation facilities;

(H) Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power;....

These three provisions, taken separately and together, all point to the need to require generation mix and environmental disclosure for noncompetitive standard offer service. Regarding subsection (B), it would be impossible for consumers to make an informed choice between quality options, such as environmental characteristics, if they are not aware of the environmental characteristics and supply mix of the standard option. One cannot compare two items where only one of the options has the information necessary for a comparison.

Subsection (C) speaks most directly to this issue, establishing a state policy to give consumers effective choices over supplies and suppliers.¹ The three distinguishing features of a generation commodity

¹ It may well be that other market-based mechanisms can provide consumers with more effective choice regarding the environmental characteristics of the power they choose to purchase. The Consumer

offer from a supplier are the environmental characteristics, the resource mix of the package of generation, and price.² Again, if one of the options available to a consumer – the standard offer – does not provide the information necessary to permit an informed choice, then the policy of the State of Ohio is being frustrated rather than carried out.

Finally, Subsection (H) requires the Commission to act to remedy market deficiencies. That is clearly what the Commission has done by making the generation mix and environmental disclosure rules applicable to standard offer service. The standard offer service is to be a permanent feature of the market in Ohio. To permit such a service to compete with competitive service providers without having to comply with comparable consumer information requirements, such as price or environmental disclosure, could potentially provide a competitive advantage to the standard offer service; an outcome that is certainly not the intent of the General Assembly.

III. Rule 4901:1-10-31(C)(1)(b) Emissions Reporting Requirements are Within the Commission's Statutory Authority

Dayton Power and Light ("DP&L") alleges that the disclosure requirements required by the June Entry to effectuate the requirement to disclose Generation Resource Mix and Environmental Characteristics is

Organizations look forward to working with all market participants to find ways of making choice more meaningful.

² Price and environmental characteristics are not inherently related. Price is a function of the market, not the type of generation. Neither does cost have an inherent relationship to technology and emissions. An old coal unit has a much lower 'cost' per kilowatt hour than a new low-emissions fluidized bed boiler. However, a wind turbine will have varying costs dependent on site considerations. Distributed generation will have markedly different costs dependent on whether is a stand-alone generator or a cogenerator.

somehow beyond the statute because of two separate labels are used to describe the information which collectively provide Environmental Characteristics. One portion of the disclosure form is labeled 'Environmental Characteristics' and provides simplistic and somewhat misleading characterizations of the environmental impacts of various generation sources.³ The second portion is labeled 'Air Emissions/Radioactive Wastes'. DP&L seems to believe because different labels are applied to these two sections, they are somehow unrelated. It is clear that air emissions and radioactive waste are part of the environmental characteristics of generation resources, something that is required to be disclosed by the statute. All combustion technologies produce air emissions, whether they are coal, biomass or natural gas. Air emissions have been a focus of environmental regulatory efforts since the passage of the Clean Air Act in 1972. To argue that air emissions are not part of the environmental characteristics required by S.B. 3 is absurd.⁴ The same is true of radioactive wastes.

DP&L further alleges that the air emissions chart is biased against coal. The chart simply states the emissions of a particular generation source be compared to a regional average. Power generated using coal burned in a unit utilizing 'clean coal' technology will show emissions well

³ No one can argue that the listing of environmental characteristics required by the rules is exhaustive. However, such a listing would require a treatise likely to prove less than useful to consumers.

⁴ A cursory look at Information Disclosure and Labeling for Electricity Sales: Summary for State Legislatures, prepared by The Regulatory Assistance Project under contract with the National Council on Competition in the Electric Industry (April 1999), includes air emissions as a component of its sample label in a format virtually identical to that proposed by the Commission in this case.

below the regional average. A biomass plant burning wood chips or saw dust will show relatively high levels of particulate emissions as well as NOx emissions. A consumer, should they choose, can then make an informed choice based on the information provided.

DP&L's final argument is that emissions from sources not owned by the utility cannot be verified. First, while the corporate separation provisions of S.B. 3 do require the functional separation of companies to prevent anticompetitive subsidies from flowing between regulated and unregulated portions of the company, they certainly do not prevent the regulated entity from purchasing power from the unregulated generation affiliate. The emissions characteristics of power from those plants should therefore be simple to confirm. In addition, because verification of environmental characteristics is required by the Ohio and many other state restructuring statutes, the marketplace will develop a mechanism for emissions verification for purchased power. The Consumer Organizations welcome the opportunity to work with all market participants to ensure verification is effective and accurate.

IV. Comparison of Air Emissions to Regional Average Emissions Rates Under Rule 4901:1-10-31(D) is Within the Commissions Statutory Authority

The Commission is provided with wide discretion to implement S.B. 3 in a manner to achieve the policy objectives of the State of Ohio. In particular, as stated above, the Commission has more than adequate authority to craft meaningful environmental disclosure requirements to

permit consumers to make informed choices over the generation sources from which they buy power. Using a regional average provides a benchmark for consumer, making the information provided more useful.⁵

DP&L further argues that the required comparison to regional averages is unreasonable because the rules do not specify how the regional average will be established. The Consumer Organizations, on the other hand, applaud the Commission for recognizing the massive sea change going on in the utility industry and crafting the regulations with an eye toward flexibility. Currently the relevant region is the East Central Area Reliability Council (ECAR). Once the Midwest Independent System Operator becomes operational, the relevant regional average for participating systems will be that region, while other will continue to be covered by ECAR or the Alliance Regional Transmission Organization, if it becomes operational. The information regarding emissions of power plants within these regions is readily attainable from federal or state regulatory authorities.

Further, it is unclear as to how use of regional averages can result in a bias against coal combustion. Coal is the dominant fuel for generation both in this state and in the region. How bias can exist when a fuel's air emissions are compared to a regional average that it dominates is difficult to imagine.

⁵ The Regulatory Assistance Project report recommends the use of a regional average to provide a relevant reference point for consumers. *Op.Cit.*

V. Conclusion

With the passage of S.B. 3, the Ohio General Assembly inaugurated a new regulatory paradigm for the electric utility industry. All consumers will now have a choice over the generation supplies they purchase. The statute requires the Public Utilities Commission of Ohio to issue regulations to put flesh on the bones of this deregulation framework. *Among the details required are to make available in a reasonable format* consumer information permitting informed choices regarding the generation mix and environmental characteristics of the electricity they purchase. This the Commission has done, in a manner consistent with the approaches of national organizations and individual states that have gone through similar proceedings.

It is not surprising that a company like DP&L is concerned about this type of change. It is not surprising that such a company would want to guard against any action that might inform the public about the environmental characteristics of the generation the company owns. *However, the statute requires this information be made available to* consumers. This battle was fought in the legislature and in the regulatory process and the company did not prevail. The arguments presented in the memorandum in support of the motion for rehearing are not new. The arguments have been rejected before and should be again.

Respectfully Submitted

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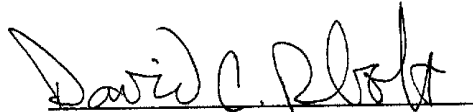
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CERTIFICATE OF SERVICE

The undersigned certifies that an original and 10 copies of the foregoing comments were filed with the Docketing Division of the Public Utilities Commission of Ohio and that the parties listed below were served via first class mail, postage prepaid, this 17th day of July, 2000.


David C. Rinebolt