BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Investigation into the Development of the Significantly Excessive Earnings Test Pursuant to S.B. 221 for Electric Utilities	))))	Case No. 09-786-EL-UNC

REPLY COMMENTS OF THE DAYTON POWER AND LIGHT COMPANY

I. INTRODUCTION

By entry dated September 23, 2009, the Commission directed that a workshop be conducted on the development of the significantly excessive earnings test (SEET) and that the Commission Staff file a report and recommendations for the SEET. The workshop was held October 5, 2009, and the Staff filed its recommendations on November 18, 2009. Interested persons submitted their comments on December 10, 2009. DP&L hereby respectfully submits its reply comments pursuant to entry dated November 19, 2009, which invited reply comments from interested persons.

II. REPLY TO JOINT COMMENTS OF THE OCC, OMA, OHA AND OEG

On page 9 of the Joint Comments of the Office of Ohio's Consumers' Counsel ("OCC), the Ohio Manufacturers Association ("OMA"), the Ohio Hospital Association ("OHA"), and the Ohio Environmental Group ("OEG") (collectively, "Consumer Groups"), the Consumer Groups suggest that utilities should be limited to a 200 basis points over the mean as the SEET threshold. DP&L disagrees with the Consumer Groups' suggestion as Revised Code §4928.143(F) provides for prospective adjustments only if the Commission finds, in the aggregate, that adjustments made in an ESP resulted in significantly excessive earnings by the utility. To assert that the threshold for the SEET should be two hundred basis points over the mean ignores the word

"significantly" in its application of the test. DP&L believes that two standard deviations is a more appropriate threshold for the SEET, and it would result in only those companies that truly have "significantly excessive" earnings falling outside the range of reasonableness. Moreover, the Consumer Groups do not provide a backstop for unreasonably low peer returns on equity associated with tough economic times. DP&L believes that the appropriate backstop should be the utility's regulated return on equity established in its most recent rate setting proceeding before the PUCO, plus thirty percent. DP&L does not believe it is reasonable for a utility to be deemed to have significantly excessive earnings if it is not earning well over its regulated return on equity. In addition, such a backstop is fair since the SEET is a one way adjustment; that is, a utility may not seek recovery if it is earning less than its regulated return on equity.

Consistent with DP&L's initial comments in this case, when calculating the ROE for the purposes of the SEET net income (less preferred stock dividends) should be adjusted to exclude net income from off-system sales, other non-recurring adjustments should be made, as well as adjustments to consider the capital requirement of future committed investments in the state.

On page 12 of their comments, the Consumer Groups state "A clearly defined and transparent methodology in selecting a comparable group of companies and adjusting risk associated with capital structure should be used by all EDUs subject to the SEET." However, this position ignores the legislative intent embodied in the plain language of the statute which provides: "The burden of proof for demonstrating that significantly excessive earnings did not occur shall be on the electric distribution utility."[1] Since they bear the burden of proof, electric distribution utilities must be able to determine how the comparable companies are chosen. Therefore, neither the Consumer Groups nor Staff should prescribe the methodology that the utility must use. Each of the Ohio utilities have different financial and business risks, using the

[1] O.R.C. §4928.143(F)

same methodology in selecting the comparable companies for all utilities fails to recognize these critical differences. Utilities must be able to suggest their own clearly defined and transparent methodologies in selecting the comparable companies individually and at the time the SEET is applied, as each companies' risks and differences may change over time. Therefore, the Consumer Groups' suggestion that the OCC's witness' proposed methodology be applicable to all utilities should be rejected.

On page 18 of their comments, the Consumer Groups state that the "SEET process cannot 'claw back'" excess profits that resulted from something other than ESP adjustments. DP&L agrees.

II. REPLY TO AMERICAN ELECTRIC POWER'S COMMENTS

DP&L agrees with the comments of Columbus Southern Power Company and Ohio Power Company ("AEP") on page 9 that a 1.28 standard deviation level is not an appropriate level for establishing the significantly excessive earnings threshold. DP&L also agrees that two standard deviations above the mean is an appropriate measure for "significantly" excessive earnings.

Moreover, DP&L agrees with AEP's comments on page 2 that including off-system sales in the SEET calculation is unlawful and it would constitute as an interference with FERC jurisdiction, and therefore should be excluded from the SEET. The SEET should be designed such that the ESP adjustments do not lead to the retail customers' overpayment for service but should not consider earnings the utility made from wholesale sales, as that falls outside the scope of the PUCO's jurisdiction.

III. REPLY TO FIRST ENERGY'S COMMENTS

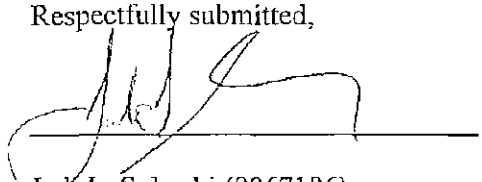
The Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company ("First Energy") suggests on page 5 of its comments that the sample

selection methodology it proposed for selecting companies of comparable business risk in First Energy's ESP case become the methodology applicable to all utilities for the purposes of SEET. Again, DP&L opposes a single methodology for picking comparable companies for the purposes of SEET. Since the legislature was very clear that the burden of proof is on the utility to demonstrate that significantly excessive earnings did not occur, the methodology for selecting comparable companies should be left up to the utility on a case-by-case basis.

IV. CONCLUSION

DP&L respectfully suggests that a one size fits all approach should not be imposed on the utilities in applying the significantly excessive earnings test. Since the legislature was clear that the burden of proof is on the utility, the utility should be permitted to develop and support its own case demonstrating its earnings were not significantly excessive. DP&L requests its proposals be adopted to ensure a fair, lawful application of the statutory provisions relating the SEET test.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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