BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Market Rate Offer	)))	Case Nos. 12-426-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs	)))	Case Nos. 12-427-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority	)))	Case Nos. 12-428-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for the Waiver of Certain Commission Rules	)))	Case Nos. 12-429-EL-WVR
In the Matter of the Application of The Dayton Power and Light Company to Establish Tariff Riders.	)))	Case Nos. 12-672-EL-RDR

JOINT MEMORANDUM CONTRA
DAYTON POWER AND LIGHT COMPANY'S
PROPOSED PROCEDURAL SCHEDULE

I. INTRODUCTION

In its Application filed on Friday, October 5, 2012, the Dayton Power and Light Company ("DP&L") proposed a procedural schedule for the Commission's consideration of its new proposed electric security plan ("ESP"). The proposed schedule – including, *inter alia*, no time for discovery, Intervenor testimony due in three weeks, and a hearing three weeks after that – is prejudicial and would thwart the development of a full and complete analysis of the proposed ESP. There is no need to rush the process for such a proceeding, particularly when DP&L proposes to implement the ESP to set customers' rates for the next five years. DP&L's schedule should be rejected. The Attorney

Examiner should instead institute a schedule that reflects the parties' due process rights and the need for a thorough development of the record for the Commission's determination of the proposed ESP.

II. PROCEDURAL HISTORY

On June 24, 2009, the Commission adopted a Stipulation and Recommendation in Case No. 08-1094-EL-SSO, *et al*. ("ESP I"), approving an ESP to set DP&L's standard service offer ("SSO") rates through December 31, 2012. In the Stipulation, DP&L agreed to file for a new SSO by March 31, 2012.[1] In accordance with that schedule, DP&L filed for approval of a market-rate offer ("MRO") and, thereafter, coordinated protracted discussions spanning almost five months with interested parties regarding a settlement. Without explanation, DP&L subsequently withdrew the MRO on September 7, 2012, and gave notice of its intent to file for approval of an ESP on or before October 8, 2012.

DP&L filed its Application for approval of an ESP ("ESP II") at the close of business on Friday, October 5, 2012. DP&L has proposed an extremely accelerated schedule requiring that all Intervenor testimony be filed by October 29, 2012 and that all discovery be completed by November 5, 2012. DP&L further proposes a six-day hearing commencing November 13, 2012,[2] that all post-hearing briefing be completed within less than two weeks after the abbreviated hearing concludes, and that a Commission decision

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[1] ESP I, Stipulation & Recommendation, § 9.

[2] DP&L's hearing window appears to allow adequate time only for examination of DP&L's 11 witnesses.

be issued by December 17, 2012. Staff and Intervenors[3] hereby oppose DP&L's proposed schedule for the reasons set forth herein.

II. ARGUMENT

A. DP&L's Proposed Schedule Is Prejudicial And Unworkable.

DP&L has filed an Application for the Commission's approval of a five-year ESP. The Application includes, among other things, testimony from 11 witnesses, workpapers associated with a number of new riders, and a significant request for nonbypassable revenue recovery purportedly necessary for its overall financial integrity.[4] The procedural schedule proposed by DP&L fails to reflect the breadth and the significance of DP&L's proposed ESP. It would prevent Staff and Intervenors from thoroughly analyzing and assessing the details of the proposal and its impact on customers and the competitive market. Indeed, DP&L's proposed schedule would infringe on Intervenors' due process rights and, thus, the Commission's full and thorough review of the proposed ESP. For example, DP&L's proposed schedule:

- Allows Intervenors only **21 days to review the Application, conduct relevant discovery, identify witnesses, and file opposition testimony**. Such a schedule effectively precludes Intervenors (and Staff) from conducting discovery because Intervenors would not be able to reasonably prepare discovery, issue it, and then receive DP&L's responses before Intervenor testimony is due.

- Provides **no mechanism for public notice or opportunity for additional intervention** by new parties who may be affected by DP&L's new proposed ESP,

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[3] The Intervenors that have signed on in support of this Memorandum Contra are: FirstEnergy Solutions Corp.; Office of the Ohio Consumers' Counsel; Industrial Energy Users-Ohio; Wal-Mart Stores East LP; Sam's East, Inc.; The Kroger Co.; the OMA Energy Group; SolarVision, LLC; the Ohio Hospital Association; Honda America Manufacturing, Inc.; the City of Dayton; Ohio Partners for Affordable Energy; the Edgemont Neighborhood Coalition; the Ohio Energy Group; Exelon Generation Company, LLC; Constellation NewEnergy, Inc.; and the Retail Energy Supply Association.

[4] *See, generally,* Application.

who also must seek intervention and then join the rush to analyze the Application and prepare testimony.

- Sets a **five-day hearing** only three weeks after Intervenor testimony is due, without any consideration of the number of opposing witnesses and the need for depositions.

- Suggests **post-hearing briefing be *completed* seven business days after the five-day hearing**, without regard for the intervening holiday or the need for the parties to have a reasonable period of time to review initial briefs before preparing a reply.

Thus, DP&L's proposed procedural schedule – the same schedule as that rejected by the Attorney Examiner in September 2012 – remains unfair, unrealistic, and unworkable, particularly in light of the scope of its proposed ESP.

Further, DP&L identifies no reasonable basis on which to institute such an expedited schedule when the delays are of its own making. DP&L's customers are entitled to a thorough review and analysis of the proposed ESP, which they would not receive under DP&L's proposed schedule. At the same time, no one would be prejudiced under a lengthier, more reasonable schedule. Ohio law provides that if another SSO is not approved prior to December 31, 2012, when DP&L's current ESP I was otherwise anticipated to terminate, DP&L's current SSO would simply continue.[5] Thus, there is no need to rush the process at the risk of instituting an unfavorable ESP. DP&L's proposed schedule should be rejected.

B. The Schedule Must Allow For The Parties' Due Process Rights To Examine DP&L's Proposal And Present Testimony For The Commission's Full Consideration.

The Attorney Examiner should institute a reasonable schedule that provides the parties with sufficient time to assess DP&L's proposed ESP, to conduct discovery, and to

[5] R.C. § 4928.141(A). Any provisions of the SSO scheduled to terminate December 31, 2012, would not continue.

prepare testimony. Staff and Intervenors respectfully submit that the following schedule maintains the parties' rights to due process, while also taking into account DP&L's interests in establishing a new SSO:

Technical Conference:	October 30, 2012
Intervenor Testimony:	February 15, 2013
Staff Testimony:	February 22, 2013
Hearing:	February 26, 2013

Further, there should be no deadline for discovery and the parties should operate under expedited timeframes for motions and discovery – allowing for 7 days for memoranda contra a motion, 3 days for replies in support of a motion, and 10 days for responses to written discovery requests. A briefing schedule remains premature at this point and can be established once the hearing is complete.

C. The Commission Should Rule On The Joint Motion Seeking Enforcement Of Approved Settlement Agreements And Orders Issued By The Public Utilities Commission Of Ohio ("Joint Motion") Prior To Establishing A Procedural Schedule.

The purpose of establishing a workable procedural schedule is to ensure that the parties have an opportunity to develop a full and complete analysis of the proposed ESP. The Commission's determination regarding the Joint Motion[6] (and the life cycle of the Rate Stabilization Charge ("RSC")) will impact the parties' analysis of the proposed ESP and the issues that will be contested in the hearing. Thus, failure to rule on the Joint Motion as a predicate to establishing a procedural schedule would frustrate the ultimate purpose of establishing a workable and fair procedural schedule. Moreover, as a practical

[6] Staff has not taken a position regarding the continuation of DP&L's Rate Stabilization Charge beyond December 31, 2012.

matter, the Commission must rule on the Joint Motion to determine what rates will be in effect on January 1, 2013. The Commission should issue a ruling with respect to the Joint Motion prior to establishing a procedural schedule so that parties can participate in discovery and develop their positions with a clear understanding regarding the fate of the RSC.

III. CONCLUSION

For the reasons set forth herein, Staff and Intervenors respectfully request that the Attorney Examiner reject the schedule proposed by DP&L in its Application. Staff and Intervenors further request that the Attorney Examiner institute the schedule set forth above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Joint Memorandum Contra The Dayton Power And Light Company's Proposed Procedural Schedule* was served this 16th day of October, 2012, via e-mail upon the parties below.

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