BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan.	**Case No. 12-0426-EL-SSO**
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.	**Case No. 12-0427-EL-ATA**
In the Matter of the Application of The Dayton Power and Light Company Approval of Certain Accounting Authority.	**Case No. 12-0428-EL-AAM**
In the Matter of the Application of The Dayton Power and Light Company for Waiver of Certain Commission Rules.	**Case No. 12-0429-EL-WVR**
In the Matter of the Application of The Dayton Power and Light Company to Establish Tariff Riders.	**Case No. 12-0672-EL-RDR**

REPLY BRIEF OF THE FEDERAL EXECUTIVE AGENCIES

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June 5, 2013

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DP&L's Claimed Financial Need for an SSR and an ST is Without Merit

In its Initial Post-Hearing Brief at pages 7 through 9, Dayton Power & Light ("DP&L" or "Company") asserts that its proposed Service Stability Rider ("SSR") and Switching Tracker ("ST") are necessary to protect its financial integrity and its ability to provide safe and reliable service. However, DP&L's proposal in this regard is not based on its regulated utility operations in Ohio. Rather, DP&L's proposal is needed for

financial support of its unregulated merchant generation operations. The earnings erosion projected by DP&L is driven by lower profits at its merchant generation subsidiaries, not at its retail regulated utility. Further, any earnings deficiencies at its regulated utility can be rectified through regulatory filings over the five-year proposed Electric Security Plan ("ESP") period. Therefore, the SSR is not needed to support the financial integrity of the utility.

DP&L's erroneous assertions regarding its financial integrity and need for the SSR were outlined in the Federal Executive Agencies' ("FEA") Initial Brief at pages 5 through 8. DP&L has offered no new evidence in its brief in support of its proposed SSR. For all the reasons outlined in FEA's Initial Brief, DP&L's SSR is not needed to maintain the financial integrity of regulated utility operations, is anti-competitive, and will result in unjustified cost subsidization of merchant generation through higher regulated rates. Therefore, the SSR should be rejected.

At pages 28 through 33 of its Initial Post-Hearing Brief, DP&L outlines arguments made by intervenor witnesses opposed to the SSR and the ST. DP&L asserts that intervenor witnesses conceded several points related to DP&L's request for an SSR and an ST. Those points, however, do not support the Company's proposed SSR and ST. FEA agrees that it is important regulatory policy to maintain DP&L's financial integrity for regulated utility operations. Financial integrity is necessary to allow a regulated utility to provide safe and reliable service. However, FEA does not agree that regulated rates should be enhanced to subsidize merchant generation operations or to make DP&L's unprofitable merchant generation operations profitable. DP&L's proposal in this respect is not reasonable.

The significant difference between DP&L's proposal for an SSR, and the intervenor witnesses' criticisms of the Company's proposal, lies in what is causing

declines in projected earnings – regulated or competitive operations. As FEA witness Gorman testified, and as outlined in the FEA's Initial Brief, the earnings erosion in the ESP projection period is not caused by regulated operations. Rather, it is driven by lower profits of DP&L's merchant generation operations. An SSR would impose impermissible higher regulatory rates to support utility affiliated generation operations, at significant disadvantage to non-utility related generation suppliers, and would cause an impermissible cross-subsidization between DP&L's regulated operations and non-regulated operations. DP&L simply has failed to respond to this important argument, and therefore its SSR proposal is severely flawed and should be rejected.

If Approved, the SSR Should be Significantly Modified

DP&L offers three arguments why operation and maintenance ("O&M") cost savings should not be considered in developing the SSR rate. First, DP&L argues that potential O&M reductions should not be considered as a substitute for the SSR. Rather, they should be considered as a potential supplement to the SSR. Second, the potential O&M savings have not been approved by DP&L's Board for 2014-2017. Third, even if all of the future O&M savings were to be approved and implemented, there will be substantial risks associated with them. Specifically, the savings would lower DP&L's O&M expenses below historic averages and the risk associated with these savings has not been addressed.

DP&L's arguments are without foundation. As the FEA stated in its Initial Brief, these O&M savings have been included in DP&L's impairment studies and have been used by DP&L for financial disclosure purposes. Therefore, the O&M savings estimates must be reasonable projections. In its arguments, DP&L attempts to discredit these savings by asserting the savings have not been approved by DP&L's Board. If Board

approval was not needed to use these savings for financial disclosure purposes, then Board approval should not be needed to use these savings for a five-year SSR rate plan.

DP&L on page 14 of its Initial Post-Hearing Brief also argues that the level of O&M savings which may be implemented by DP&L is directly dependent upon the outcome of this proceeding, and more specifically, the level of SSR authorized. It appears from this statement that DP&L is holding the Public Utilities Commission of Ohio ("Commission") hostage for the SSR levels it proposed. If the Commission does not grant the level of SSR requested by DP&L, then savings may or may not occur. This argument further strengthens the recognition of the O&M savings. Under DP&L's arguments, ratepayers would be better off not paying the full SSR rate as ratepayers would receive no savings anyway. The Commission should not be held hostage for recognizing O&M savings and using them as a reduction to any SSR level.

DP&L's Reconciliation Rider as Proposed Should Be Rejected

In its Initial Post-Hearing Brief at page 53, DP&L asserts that the Commission should conclude that DP&L's proposal for its Reconciliation Rider is a reasonable proposal that will protect customers.

FEA asserts that DP&L's proposal does not in fact protect customers. To the contrary, DP&L's proposal could harm customers to the extent they are forced to pay for costs associated with generation supply that they did not cause to be incurred. For example, at page 22 of DP&L's Initial Post-Hearing Brief, DP&L states that evidence was presented at the hearing that demonstrated that almost all of DP&L's non-residential load has already switched from DP&L supply. Under the Company's proposal, these non-residential customers, who have switched suppliers and who do not take generation supply service from DP&L, would be responsible for paying any deferred costs that

exceed 10% of the balance associated with bypassable riders (Fuel rider, RPM rider, TCRR-B rider, AER rider, and CBT rider) even if they remain on alternative generation supply service during the full term of the ESP. Though these non-residential customers would initially avoid all charges under bypassable riders by taking supply service from a Competitive Retail Electric Service ("CRES") supplier, under DP&L's proposal, these non-residential customers would be responsible for paying for all deferred costs that exceed 10% of the balance of the bypassable riders. Though these non-residential customers did not cause the costs incurred under these bypassable riders which were incurred by DP&L to supply power to other customers (mainly residential), they could eventually pay for these costs under the Company's proposal.

FEA agrees that DP&L should be entitled to recover prudently incurred costs to provide generation supply service to its customers. However, DP&L should recover these costs from the customers that have caused them. This is FEA's position as argued in its Initial Brief at pages 10-14 and as presented in the direct testimony of FEA witness Brian Collins.

For the reasons described in FEA's Initial Brief at pages 10-14, DP&L's proposed Reconciliation Rider should be rejected or modified because it does not reconcile costs incurred by DP&L to be paid for by the customers for whom the costs were actually incurred. Rather, DP&L proposes to reconcile costs for bundled customers from all customers irrespective of how they procured generation supply service, whether it be from DP&L or an alternative supplier. This is simply not a reasonable price-setting mechanism and fails to meet the state's policy of setting ESP prices which are just and reasonable.

TCRR-N/TCRR-B

In its Initial Post-Hearing Brief at page 56, DP&L proposes to split its current bypassable Transmission Cost Recovery Rider ("TCRR") into non-bypassable ("TCRR-N") and bypassable ("TCRR-B") riders. As argued by FEA in its Initial Brief at pages 14-15, the Commission should reject DP&L's proposal to bifurcate the TCRR into bypassable and non-bypassable components because it violates Rule 4901:1-36-04(B), O.A.C., which requires that transmission costs be fully avoidable by shopping customers. Although this rule may be waived for good cause, DP&L has failed to demonstrate that good cause exists for the waiver.[1] DP&L's Application and pre-filed direct testimony of DP&L witness Seger-Lawson indicated DP&L was seeking a waiver of Rule 4901:1-36-04(B), O.A.C., however, neither the Application, nor Ms. Seger-Lawson's direct testimony offered any analysis to demonstrate that good cause existed for the waiver.[2] Thus, good cause for the waiver does not exist. Without good cause or the Application to explain the reason for the waiver, the Commission should reject this proposal.

Respectfully submitted,

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[1] Rule 4901:1-36-02(B), O.A.C.

[2] *See* DP&L's Revised Application at 16 (Oct. 5, 2012) (DP&L did not move to admit the Application into the record); DP&L Ex. 9 at 5.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Reply Brief* by the Federal Executive Agencies has been served upon those persons listed below via electronic mail this 5th day of June, 2013.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/5/2013 9:46:50 AM

in

Case No(s). 12-0426-EL-SSO

Summary: Reply FEA Reply Brief electronically filed by MR CHRIS C THOMPSON on behalf of FEDERAL EXECUTIVE AGENCIES ATTY