

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton) Power and Light Company for Approval of) The Market Rate Offer.)	Case No. 12-426-EL-SSO
In the Matter of the Application of The Dayton) Power and Light Company for Approval of) Revised Tariffs.)	Case No. 12-427-EL-ATA
In the Matter of the Application of The Dayton) Power and Light Company for Approval of) Certain Accounting Authority.)	Case No. 12-428-EL-AAM
In the Matter of the Application of The Dayton) Power and Light Company for Waiver of) Certain Commission Rules.)	Case No. 12-429-EL-WVR
In the Matter of the Application of The Dayton) Power and Light Company to Establish Tariff) Riders.)	Case No. 12-672-EL-RDR

REPLY BRIEF OF THE CITY OF DAYTON, OHIO

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REPLY BRIEF OF THE CITY OF DAYTON, OHIO

The City of Dayton, Ohio (“City” or “Dayton”), on behalf of itself and its residential and commercial citizens, hereby submits this Reply Brief in response to initial briefs filed in the above-captioned proceedings.

REPLY ARGUMENT

I. The Commission Should Modify the Proposed Electric Security Plan to Ensure that it Comports with the State of Policy as set forth in Section 4928.02 of the Ohio Revised Code.

The City is generally in support of many of the arguments made by the Intervenor supporting an Electric Security Plan (“ESP”) that fosters a competitive market in the Dayton Power and Light (“DP&L”) Service Territory, which in turn drives electric service rates

downward thereby affording protection to at-risk populations and promoting State and regional economic growth. However, as a longtime partner, the City also has a vested interest in ensuring the viability of DP&L on a going-forward basis. As a result, the City, like the Commission, must endeavor to balance these interests when analyzing the proposed ESP.

a. The Commission Has Express Authority to Modify an ESP

Pursuant to R.C. 4928.143(C)(1), the Commission may “modify and approve” any ESP filed under R.C. 4928.143(A). The Supreme Court has further opined that the Commission “must consider more than price” in determining whether an ESP should be modified and approved. *See In re Columbus S. Power Co.*, 128 Ohio St.3d 402, 2011-Ohio-958, 945 N.E.2d 501, ¶ 27. According to the Court, R.C. 4928.143(C)(1) “instructs the commission to consider ‘pricing *and all other terms and conditions.*’” *Id.* Therefore, while pricing is to be considered, the Commission must consider more than price in determining whether an ESP should be modified.

b. The Proposed ESP Does Not Promote or Advance Ohio Policy

As pointed out by nearly every intervening party, there are certain portions of the proposed ESP that are not in line with the State Policy. For example, the proposed Switching Tracker (“ST”) has been labeled “anticompetitive” and is almost universally opposed by all parties in their briefs, including Staff. Many parties also view the proposed Service Stability Rider (“SSR”) and Reconciliation Rider (“RR”) as anticompetitive measures as well. Finally, arguments have been presented that the proposed ESP does not protect at-risk populations or facilitate the State’s effectiveness in the global economy.

The City shares many of these same concerns addressed by the intervening parties, but believes that these concerns can be alleviated by the Commission. Accordingly, the Commission

should address these issues consistent with R.C. 4928.143(C)(1) in determining whether the proposed ESP should be modified.

c. The ESP Should be Modified to Protect Dayton's Large At-Risk Population

As the City exclaimed in its initial Post Hearing Brief, the poverty level in Dayton has increased to 32.5% and is home to more than half of Montgomery County's impoverished at-risk citizens. DP&L's initial position that the proposed ESP will protect at-risk populations by ensuring that they will receive the best available market price merely ensures that low-income customers will receive the same supposed "best available market price" that all other customers will receive, and simply does not protect at-risk populations consistent with R.C. 4928.02(L). DP&L's additional arguments advanced in its Post Hearing Brief also fall short.

First, while DP&L states that its current intent is to provide "some level" of support for low-income residents in its service territory, it fails to explain what this level of support would consist of. (DP&L Brief p. 62) Moreover, DP&L's reference to "current intent" intimates wavering support, lack of commitment, or a possible future shift away from the pledged "some level" of support. Recognizing that DP&L's "intent" could change and/or the "level" of support could change, this is disconcerting given the City's large low-income population.

Secondly, DP&L states that the Percentage of Income Payment Plan ("PIPP") Program is the proper vehicle to assist low-income residents, and that it is the General Assembly's responsibility to determine what funds should be provided to low-income residents. (DP&L Brief p. 62). Again, this fails to comply with R.C. 4928.02(L). As Ohio Partners for Affordable Energy ("OPAE") and the Edgemont Neighborhood Coalition ("Edgemont") pointed out in their initial Post Hearing Brief, there has been a 90% increase in the number of PIPP customers being disconnected for non-payment in DP&L's Service Territory, and a 140% increase in the number

of customers who need special Commission winter reconnection procedures to have services reconnected during the winter months in DP&L's Service Territory. (OPAE Brief p. 5). Further, PIPP enrollment has increased by 68%. (*Id.*).

These statistics clearly demonstrate that the PIPP program alone does not adequately protect at-risk populations. With the high at-risk population present in the City, it is apparent that additional protection is needed. OPAE and Edgemont have recognized this fact and have asked the Commission to continue and expand the current fuel fund that DP&L has funded since 2009 to provide bill payment assistance to low-income residential customers. (OPAE Ex. 1 at 3). The City supports this reasoning as assistance to at-risk populations is needed from DP&L to counterbalance the increase in cost of electricity that will occur if the proposed ESP is approved, and is necessary to bring the proposed ESP in compliance with Ohio Policy.

For these reasons, the City restates its argument made its initial Post Hearing Brief that DP&L should directly expend capital in its service territory to protect at-risk populations by:

- Continuing DP&L's financial support of the City's energy efficiency audit and implementation program (DP&L has provided financial support since the 2009 Stipulation in Case No. 08-1094-EL-SSO), which will cease at the end of 2014 under the proposed ESP.
- Assist in retrofitting the City's nearly 4,500 City-owned street lights, most of which are located in low-income residential areas.

Furthermore, the City supports the position taken by OPAE and Edgemont that continued funding from DP&L is needed to protect at-risk populations due to the increase in poverty in the City and DP&L's Service Territory, the declines in average household income of low-income families in the City and DP&L's Service Territory, and the projected increase in the cost of electricity that will result from this ESP.

II. DP&L Should be Required to Invest In Economic Development Initiatives Within Its Service Territory Either Through the Direct Expenditure of Capital or Through Special Rate Treatment

The City restates its argument made its initial Post Hearing Brief that DP&L should directly expend capital in its service territory to support the City's initiatives to further economic development by:

- Continuing to make economic development payments to the City in the amount of at least \$350,000 throughout the duration of this ESP to support and attract new investment and improve job growth in Dayton and the State of Ohio.
- Entering into productive pilot programs (such as street light and signal projects) with the City, as such projects will create jobs and infrastructure improvements.

The City submits that the foregoing will allow the City to continue its current efforts to attract new businesses and retain existing business, which will improve job growth and development within the City and DP&L Service Territory. Furthermore, the City submits that this continued assistance will help facilitate the State's effectiveness in the global economy, thereby promoting and advancing Ohio Policy pursuant to R.C. 4928.02(N). This argument is analogous to the one promulgated in Case No. 11-346-EL-SSO in which the Commission ordered that AEP-Ohio reinstate the Ohio Growth Fund in light of extenuating economic circumstances to attract new investment and improve job growth in Ohio.

In the alternative, rate relief would be of tremendous consequence to the City and to the State of Ohio. It would directly assist the City financially, which would in turn lower the cost of living for City residents. Logically, this would have a positive impact on economic development in the City and the State as a whole.

III. Conclusion

Based on the foregoing, the City respectfully requests that the Commission consider and adopt the recommendations made herein.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Reply Brief on Behalf of the City of Dayton, Ohio was served upon the parties of record listed below this 5th day of June, 2013 first class mail and via electronic mail.



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