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Via E-File

April 17, 2014

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

**In re: Case Nos. 12-426-EL-SSO, 12-427-EL-ATA, 12-428-EL-AAM, 12-429-EL-WVR,
12-672-EL-RDR**

Dear Sir/Madam:

Please find attached the OHIO ENERGY GROUP'S SECOND APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT for filing in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,



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DFB/kew

Encl.

Cc: ALJ Bryce McKenney
ALJ Gregory Price
Certificate of Service

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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

SECOND APPLICATION FOR REHEARING OF THE OHIO ENERGY GROUP

Pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35, the Ohio Energy Group ("OEG") submits this Second Application for Rehearing of the Second Entry on Rehearing ("Entry") issued by the Public Utilities Commission of Ohio ("Commission") on March 19, 2014. In light of the Commission's recent decision to expedite the date by which The Dayton Power and Light Company ("DP&L" or "Company") must divest its generation assets to another entity, OEG submits that the Entry is unreasonable because the Commission did not also instruct DP&L to terminate the Service Stability Rider ("SSR") on the effective date of divestiture.

A memorandum in support of this Second Application for Rehearing is attached.

Respectfully submitted,



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COUNSEL FOR OHIO ENERGY GROUP

**BEFORE THE
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In the Matter of the Application of Dayton Power And Light Company For Approval of its Market Rate Offer	:	Case No. 12-426-EL-SSO
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In the Matter of the Application of Dayton Power And Light Company For Approval of Certain Accounting Authority	:	Case No. 12-428-EL-AAM
	:	
In the Matter of the Application of Dayton Power And Light Company For Waiver of Certain Commission Rules	:	Case No. 12-429-EL-WVR
	:	
In the Matter of the Application of Dayton Power And Light Company to Establish Tariff Riders	:	Case No. 12-672-EL-RDR
	:	

MEMORANDUM IN SUPPORT

I. In light of its recent decision to expedite the date by which DP&L must divest its generation assets to another entity, the Commission erred by not instructing DP&L to terminate the Service Stability Rider on the effective date of divestiture.

In its recent Entry, the Commission significantly altered its initial requirement that DP&L divest its generation assets no later than May 31, 2017. Pursuant to that Entry, the Company is now required to divest its generation assets no later than January 1, 2016.¹ In light of the Commission's recent decision to require DP&L to divest its generation assets at an earlier date, the Commission should reevaluate the current termination date of the SSR (December 31, 2016) and should require DP&L to cease collecting SSR revenues on the effective date of divestiture.

When the Commission established the current December 31, 2016 termination date for the SSR, it appeared likely that DP&L would not divest its generation assets prior to May 31, 2017, particularly given the Company's claims that it could not reasonably divest prior to September 1, 2016.² It was therefore unlikely that

¹ Entry at 17-18.

² Order, Case No. 12-426-EL-SSO *et al* (September 4, 2013)("ESP Order") at 15; Entry at 17.

the SSR would continue to exist long after DP&L had divested its generation assets. Now, circumstances have significantly changed and divestiture could occur as early as this year.³ If it does, DP&L would recover the SSR charge from customers for two years after divestiture has occurred. And even if divestiture does not occur until the newly-established Commission deadline of January 1, 2016, DP&L would recover the SSR charge from customers for a full year after divestiture. Given the fact that DP&L will now divest its generation assets sooner than originally expected, the current December 31, 2016 expiration date for the SSR is no longer reasonable.

The purpose of the SSR charge is to ensure DP&L's financial integrity by offsetting its declining return on equity ("ROE"), which was caused by losses in the Company's generation business. Specifically, in this case, the Company claimed that its declining ROE was driven principally by three generation-related factors: increased customer switching, declining wholesale prices, and declining capacity prices.⁴ Hence, it is DP&L's retention of its generation business that jeopardizes the Company's financial integrity and necessitated the establishment of the SSR.

In contrast, DP&L's transmission and distribution businesses are financially healthy in the absence of the SSR charge. The Company conceded that it is already receiving a reasonable rate of return on both its transmission and distribution businesses.

Examiner Price: ... Do you believe that Dayton Power & Light is getting a reasonable rate of return on its distribution business at this time?

Company witness Jackson: We have not looked at the ROE per se on the T and D business.

Examiner Price: I'm just asking distribution right now.

Company witness Jackson: Yes, on distribution. You know, that said, as I indicated before, I do think we are getting adequate revenues on our -- over the forecasted period. So that would, I guess that would imply that, yes, I believe we are getting an adequate return.

Examiner Price: Okay. How about on the transmission side, do you believe you're getting a reasonable rate of return on your transmission business at this time?

Company witness Jackson: I do believe so.⁵

³ Entry at 17 (citing DP&L's February 25, 2014 Supplemental Application in Case No. 13-2420-EL-UNC).

⁴ DP&L's Initial Post-Hearing Brief (May 20, 2013) at 2.

⁵ Tr. Vol. I at 270:1-19.

The Company also conceded that its transmission and distribution businesses would remain financially stable if DP&L's generation assets were divested:

Q. ...in the event that DP&L were to transfer its generating assets to an unregulated affiliate, would you agree that the remaining transmission and distribution utility would not have a financial integrity concern?

Company witness Jackson: I guess as I look at this, this is a filing for DP&L and that filing includes transmission, distribution, and generation, and we had discussed the rationale for the decreases in ROE over that period of time which was tied to market pricing, customer switching, and capacity pricing, obviously, which, yes, are tied on the generation side.

Q. So the answer is that the remaining distribution and transmission utility would not have a financial integrity concern...

Company witness Jackson: I believe that the T and D business has sufficient revenue included in it so I do not believe it would have a financial integrity issue for the T and D business.”⁶

Because the Company does not need to continue collecting SSR revenues from customers in order to remain financially viable after its generation business is transferred to another entity and the Company becomes solely a transmission and distribution utility, it is unreasonable to allow DP&L to collect the SSR charge for even a brief period of time after divestiture occurs. If DP&L suffers financial losses in its transmission and distribution businesses sometime after its generation assets are divested, then it will continue to have the option to file a rate case requesting an increase in its still-regulated transmission and distribution rates. The Company is therefore effectively immune from severe financial losses since it retains a regulatory solution to prevent such losses after divestiture.

Further, the Commission's initial Order approving the SSR contemplated that the rider would expire prior to the divestiture of DP&L's generation assets. Indeed, the Commission explained that “...the SSR will ensure that DP&L can provide adequate, reliable and safe retail electric service **until it divests its generation assets.**”⁷ Relying upon DP&L's claims that it could not reasonably divest its generation assets prior to September 1, 2016,⁸ the Commission initially held that the SSR should only extend through December 2015.⁹ While the termination date of the SSR was subsequently extended to December 2016,¹⁰ the Commission's rationale that the SSR is only necessary *until* DP&L divests its generation assets remains applicable.

⁶ Tr. Vol. I at 150:9-151:9.

⁷ ESP Order at 51 (emphasis added).

⁸ ESP Order at 15.

⁹ ESP Order at 25.

¹⁰ Entry Nunc Pro Tunc, Case No. 12-426-EL-SSO *et al.* (September 6, 2013) at 2.

Because the SSR was established to offset financial losses caused by DP&L's generation business, the Company should not continue to collect the SSR once that generation business is transferred to another entity. Instead, the Company should stop collecting SSR revenues on the effective date that it divests its generation assets since it will no longer need the SSR to sustain its financial integrity. Similarly, the Commission should not permit DP&L to recover any SSR-E revenues after divestiture has occurred.

DP&L may argue that the Commission permitted the stability riders of the Ohio Power Company ("AEP Ohio") and Duke Energy Ohio, Inc. ("Duke") to continue after generation asset divestiture. But the circumstances surrounding Commission approval in those cases differed significantly from the circumstances of this case. The Commission's decision to permit AEP Ohio's Retail Stability Rider ("RSR") to continue after divestiture and to allow RSR revenues to flow through to AEP Ohio's affiliate was based upon that utility's status as a Fixed Resource Requirement ("FRR") entity in PJM and the capacity obligations associated with that status, which the affiliate would take on post-divestiture.¹¹ And the Commission's decision to allow Duke's Electric Service Stability Rider to extend through December 31, 2014, irrespective of whether Duke divested its generation assets before that date, was given as part of its approval of a comprehensive Stipulation package. Unlike either of those utilities, DP&L is not an FRR entity in PJM and will not be transferring any FRR capacity obligations to the entity that ultimately buys its generation assets. Nor did DP&L settle the matter of how long it could collect SSR revenues if the Company divested its generation assets prior to the SSR's expiration. Therefore, the Commission can and should take a different approach to DP&L's SSR.

¹¹ Entry on Rehearing, Case No. 11-346-EL-SSO *et al.*, (January 30, 2013) at 26-27 ("*...in order for AEP-Ohio, and the newly created generation affiliate to continue to provide capacity consistent with its FRR obligations, we maintain our position that AEP-Ohio is entitled to its actual cost of capacity, which will in part, be collected through the RSR in order for AEP Ohio to begin paying off its capacity deferral. As we previously established, parties cannot claim that AEP-Ohio's generation affiliate is receiving an improper subsidy when in fact, it is only receiving its actual cost of service.*").

As DP&L itself recently explained in its generation asset divestiture case, it is well-settled that the Commission may reconsider its prior orders, provided the Commission explains its reason for doing so.¹² Accordingly, in this case, the Commission can reconsider its previous orders and alter the current December 31, 2016 termination date for the SSR charge while explaining that it would be unreasonable for DP&L to continue to collect that charge long after it divests its generation assets to another entity.

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April 17, 2014

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¹² DP&L Supplemental Reply Comments, Case No. 13-2420- at 16 (citing *Ohio Consumers' Counsel v. Pub. Utils. Comm'n of Ohio*, 114 Ohio St. 3d 340, 2007-Ohio-4276, 872 N.E. 2d 269 ¶14 ("The commission may change or modify earlier orders so long as it justifies any changes.")).

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or ordinary mail, unless otherwise noted, this 17th day of April, 2014 to the following:



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Summary: App for Rehearing Ohio Energy Group's (OEG) Second Application for Rehearing electronically filed by Mr. David F. Boehm on behalf of Ohio Energy Group