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Via E-File

April 29, 2016

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

In re: Case Nos. 16-0395-EL-SSO, 16-0396-EL-ATA and 16-0397-EL-AAM

Dear Sir/Madam:

Please find attached the OHIO ENERGY GROUP'S MEMORANDUM CONTRA MOTION TO IMPLEMENT THE SSR EXTENSION RIDER 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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MLKkew
Encl.
Cc: 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 Electric Security Plan	:	Case No. 16-0395-EL-SSO
In The Matter Of The Application Of The Dayton Power And Light Company For Approval of Revised Tariffs	:	Case No. 16-0396-EL-ATA
In The Matter Of The Application Of Dayton Power And Light Company For Approval Of Certain Accounting Authority Pursuant to Ohio Rev. Code §4905.13	:	Case No. 16-0397-EL-AAM

MEMORANDUM CONTRA
MOTION TO IMPLEMENT THE SSR EXTENSION RIDER OF THE OHIO ENERGY GROUP

On March 30, 2016, The Dayton Power and Light Company ("DP&L" or "Company") filed a Motion ("Motion") asking the Public Utilities Commission of Ohio ("Commission") to approve recovery of $45.8 million from customers through the SSR Extension Rider ("SSR-E") from January 1, 2017 through April 30, 2017, unless and until the proposed Reliable Electricity Rider ("RER") is authorized and implemented. For the reasons discussed below, DP&L's Motion should be rejected outright. At minimum, the Commission should provide intervenors the opportunity to conduct discovery, submit expert testimony, cross-examine DP&L witnesses at a formal evidentiary hearing, and file briefs on the Company's request before any order on that request is issued.

I. DP&L's Motion Should Be Denied Because Recovery Of *"Financial Integrity"* Costs Through The SSR-E Is Barred By R.C. 4928.38 And Beyond The Scope Of Allowable Costs Set Forth In R.C. 4928.143(B).

A. The $45.8 Million Requested By DP&L Amounts To the *"Equivalent of Transition Revenue,"* Which Is No Longer Recoverable Pursuant To R.C. 4928.38.

The Commission should reject DP&L's request outright because the Supreme Court of Ohio has recently ruled that riders such as the SSR-E are unlawful. The SSR-E was established in DP&L's last Electric Security Plan ("ESP") case in order to provide DP&L with revenue in the event that *"its financial integrity remains*

compromised" after the SSR expires on December 31, 2016.[1] Similarly, Ohio Power Company's ("AEP Ohio") Retail Stability Rider ("RSR") was established in its previous ESP case in order *"to provide [the utility] with sufficient revenue to maintain its financial integrity and ability to attract capital...."*[2]

On April 21, 2016, the Supreme Court of Ohio issued an opinion finding that the portion of AEP Ohio's RSR dedicated to ensuring the utility's *"financial integrity"* was unlawful since that portion of the rider allowed the utility to receive the *"equivalent of transition revenues"* in violation of R.C. 4928.38.[3] The Court explained that transition revenues are *"generation costs that the utility incurred to serve its customers that would have been recovered through regulated rates before competition began, but that are no longer recoverable from customers who have switched to another generation provider."*[4] R.C. 4928.38 provides:

> *The utility's receipt of transition revenues shall terminate at the end of the market development period. With the termination of that approved revenue source, the utility shall be fully on its own in the competitive market. The commission shall not authorize the receipt of transition revenues or any equivalent revenues by an electric utility except as expressly authorized in sections 4928.31 to 4928.40 of the Revised Code.*

Hence, after the *"market development period"* referred to in R.C. 4928.38 ended on December 31, 2010,[5] utilities could no longer lawfully recover *"transition revenues or any equivalent revenues"* from customers.

The Court found the portion of AEP Ohio's RSR dedicated to ensuring the utility's *"financial integrity"* in the midst of the competitive market was the "*equivalent of transition revenues.*"[6] Even though the stated purpose of the RSR was not to collect generation-related transition revenues, the Court stated that *"[t]he fact that AEP did not explicitly seek transition revenues does not foreclose a finding that the company is receiving the equivalent of transition revenue under the guise of the RSR."*[7] The Court noted that *"the RSR was designed to generate enough revenue for the company to achieve a certain rate of return on its generation assets as it transitions to full auction pricing for energy and capacity by June 2015"* and held that *"after looking at the*

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[1] Motion at 1-2 (citing Opinion and Order, Case Nos. 12-426-EL-SSO *et al* (September 4, 2013) at 26 and Entry Nunc Pro Tunc, Case Nos. 12-426-EL-SSO *et al* (September 6, 2013) at 2).
[2] *In re Application of Columbus S. Power Co.,* Slip Opinion 2016-Ohio-1608 (April 21, 2016) at ¶8.
[3] *In re Application of Columbus S. Power Co.,* Slip Opinion 2016-Ohio-1608 (April 21, 2016).
[4] Id. at ¶15.
[5] R.C. 4928.40.
[6] Id. at ¶22-23.
[7] *In re Application of Columbus S. Power Co.,* Slip Opinion 2016-Ohio-1608 (April 21, 2016) at ¶21.

nature of the revenue recovered under the RSR, we find that the record supports a finding that AEP is receiving the equivalent of transition revenues through that rider."[8]

Just like the unlawful portion of the RSR, DP&L's SSR-E is intended to provide the Company *"financial integrity"* in the midst of the competitive market. And just like the unlawful portion of the RSR, the SSR-E would result in overcompensation of the utility for providing electric service.[9] Because recovery of any *"financial integrity"* costs through DP&L's SSR-E would amount to recovery of the *"equivalent of transition revenues,"* which is unlawful, DP&L's Motion to collect $45.8 million from customers through the SSR-E should be denied outright.

B. The $45.8 Million That DP&L Seeks to Collect Through The SSR-E Does Not Fit Into Any Of The Recoverable Categories of Costs Set Forth in R.C. 4928.143(B).

R.C. 4928.143(B) provides that *"[n]otwithstanding any other provision"* in R.C. Title 49 *"to the contrary,"* except the provisions in "*[d]ivision (D) of this section, divisions (I), (J), and (K) of section 4928.20, division (E) of section 4928.64, and section 4928.69 of the Revised Code*," an ESP may provide or include, without limitation, several categories of costs associated with providing electric service. [10] But DP&L's request to recover $45.8 million does not fall into any of those categories of lawful costs.

While the Commission previously found that the SSR-E fell within the language of R.C. 4928.143(B)(2)(D), the Commission should reevaluate that finding in this proceeding. The SSR-E may relate to default service and bypassability, but it will not *"have the effect of stabilizing or providing certainty regarding retail electric service"* in accordance with the statute. Improving DP&L's *"financial integrity"* is not the equivalent of stabilizing customer rates. It is the opposite. It destabilizes rates by increasing them. Charging customers $45.8 million to increase the profits of a utility, with no corresponding customer benefit, is unlawful. If customers are required to pay, then they should get something in return. If the Commission ultimately approves the RER, then customers would pay a charge or receive a credit in exchange for rate stability through a cost-of-service hedge. But that is a far cry from paying $45.8 million and getting nothing in exchange.

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[8] Id. at ¶22-23.
[9] Id. at ¶34 and 37.
[10] Id., Concurrence at 27-29 and fn 5.

II. If DP&L's Motion Is Not Denied Outright, Then The Commission Should Reject DP&L's Attempt To Deprive Intervenors Of Their Due Process Rights And Should Allow Intervenors A Full And Fair Opportunity To Respond To The Company's Request.

DP&L's attempt to secure approval of the SSR-E through the filing of a motion in its ESP case is also procedurally improper. In its September 6, 2013 Entry Nunc Pro Tunc in DP&L's last ESP case, the Commission stated that "*DP&L will still be required to file an **application** to implement the SSR-E.*"[11] The Commission subsequently explained that *"[t]he provision...DP&L may file an **application**, in a separate docket, to set the amount of the SSR-E, was for clarity of the record and administrative ease."*[12] The Commission later added that *"if DP&L files an **application** to recover an SSR-E amount, [intervenors] will have **a full and fair opportunity** to present their arguments on the proper amount to be authorized at that time."*[13]

Rather than filing a formal application in a separate docket as required by the Commission, DP&L attempts to bypass the Commission's procedural instructions and lessen the potential opportunities for intervenor opposition by filing its Motion in this proceeding. By filing its request to recover $45.8 million in SSR-E charges from customers through a motion, rather than an application, DP&L essentially seeks to foreclose intervenors from discovery rights, the ability to submit expert testimony, the opportunity for cross-examination of DP&L witnesses at a formal evidentiary hearing, and the chance to submit post-hearing briefs on DP&L's request. The Commission should reject DP&L's attempts to deprive intervenors of the due process previously granted to them by the Commission and should give intervenors a full and fair opportunity to address DP&L's request. The easiest manner in which to do so at this point may be to require that the merits of DP&L's Motion be considered pursuant to the same procedural schedule that will apply to consideration of the other issues raised by DP&L's February 22, 2016 application in the above-captioned proceedings. Yet even if the Commission decides to adopt another approach, the Commission should protect the due process rights of intervenors and allow them to conduct discovery, submit expert testimony, cross-examine DP&L witnesses at a formal evidentiary hearing, and file briefs on the Company's request to recover $45.8 million from customers through the SSR-E.

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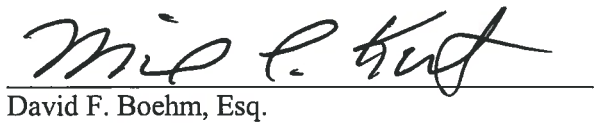
[11] Entry Nunc Pro Tunc, Case Nos. 12-426-EL-SSO *et. al* (September 6, 2013) at 2 (emphasis added).
[12] Second Entry on Rehearing, Case Nos. 12-426-EL-SSO *et. al* (March 19, 2014) at 12 (emphasis added).
[13] Fourth Entry on Rehearing, Case Nos. 12-426-EL-SSO *et al.* (June 4, 2014) at 11-12 (emphasis added).

WHEREFORE, for the foregoing reasons, the Commission should deny DP&L's Motion outright. At minimum, the Commission should provide intervenors an opportunity to conduct discovery, submit expert testimony, cross-examine DP&L witnesses at a formal evidentiary hearing, and file briefs on the Company's request to recover $45.8 million from customers through the SSR-E.

Respectfully submitted,



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April 29, 2016

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 29th day of April, 2016 to the following:

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Summary: Memorandum Ohio Energy Group (OEG) Memorandum Contra Motion to Implement the SSR Extension Rider electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group