BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

MEMORANDUM CONTRA
OF OHIO PARTNERS FOR AFFORDABLE ENERGY AND
THE EDGEMONT NEIGHBORHOOD COALITION

I. Introduction

Ohio Partners for Affordable Energy and the Edgemont Neighborhood Coalition, advocates for low-income residential customers of The Dayton Power and Light Company ("DP&L"), hereby submit to the Public Utilities Commission of Ohio ("Commission") this memorandum contra the June 27, 2016 motions of DP&L to withdraw these electric security plan ("ESP") applications and to implement rates that were in effect before the Commission's September 4, 2013 Opinion and Order approving these applications. DP&L moves to implement

rates approved by the Commission in its Opinion and Order dated June 24, 2009 in Case Nos. 08-1094-EL-SSO, et al., which were in effect before the Commission's September 4, 2013 Opinion and Order approving the instant applications. The Commission must deny these two motions.

II. The Commission has no authority to negate mandates of the Supreme Court of Ohio.

According to the DP&L motions to withdraw these instant applications and implement the rates approved by the Commission on June 24, 2009 in Case Nos. 08-1094-EL-SSO, et al., Ohio Revised Code ("R.C.") Section 4928.143(C)(2)(a) allows this maneuver. DP&L is wrong.

R.C. 4928.143(C)(2)(a) provides that if the Commission modifies and approves an ESP application, the utility may withdraw the application, thereby terminating it. However, the modification on which DP&L relies to invoke this statute has not been made by the Commission, but has been mandated by the Supreme Court of Ohio.

The Supreme Court of Ohio found that the Commission's decision in these applications allowing the equivalent of transition charges must be reversed on the authority of *In re Application of Columbus S. Power Co*., 2016-Ohio-1608. Supreme Court Case No. 2014-1505, Judgment Entry, June 20, 2016. In *Columbus S. Power Co.*, the Court found that the Commission had erred in focusing solely on whether the utility had expressly sought to receive transition revenues rather than looking at the nature of the costs recovered. The Court found that R.C. 4928.38 bars the "receipt of transition revenues or any equivalent revenues by an electric utility." Based on the record, the Court found that that

the utility was recovering the equivalent of transition revenue and that the Commission erred when it found otherwise. *Columbus S. Power*, Slip Opinion No. 2016-Ohio-1608 at 9. The Court reiterated its finding in the DP&L case, Supreme Court Case No. 2014-1505.

DP&L's argument would render futile an appeal to the Supreme Court of a Commission decision approving an ESP, because if the appeal were successful and the Court remanded the decision back to the Commission for the correction of errors, as here, the utility could simply move the Commission to withdraw the ESP application and negate the Court's mandate to correct the errors. This would allow the Commission to issue an order negating the mandate of the Supreme Court of Ohio. No statute gives the Commission the authority to negate a mandate of the Supreme Court of Ohio. There is a statutory right to appeal a Commission decision, and the Commission cannot act in a manner that would effectively deny that right. R.C. 4903.13.

DP&L also argues that the Court reversed the Commission's September 4, 2013 Opinion and Order in total so that the Commission must now modify and approve the modified applications as mandated by the Court, giving DP&L the right to withdraw them under R.C. 4928.143(C)(2)(a). Aside from the Commission's lack of authority to negate mandates of the Supreme Court of Ohio**,** the Court did not reverse the entire Commission decision. The Court found that transition revenues must not be recovered, so that DP&L needs only to eliminate current charges to customers that are the equivalent of transition revenues.

When transition revenues are eliminated, DP&L's customers will pay less per month. The result of the Court's ruling is a rate decrease for DP&L's customers. DP&L's motions would result in a rate increase instead of the Court's mandate to decrease existing ESP rates. This attempt to implement even higher rates after the Court's ruling to reduce rates disregards the Court's mandate. The Commission cannot validate this unlawful maneuver. The Commission must now reduce DP&L's ESP rates in order to comply with the Court's ruling.

III. Rates no longer in effect cannot be continued.

DP&L asks the Commission to issue an order to implement the provisions of DP&L's Case Nos. 08-1094-EL-SSO, et al., which the Commission adopted in its Opinion and Order of June 24, 2009 pursuant to a stipulation filed on February 24, 2009. DP&L cites R.C. 4928.143(C)(2)(b) which states that if the utility terminates an application or if the Commission disapproves an application, the Commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent standard service offer until a subsequent offer is authorized. However, the SSO rates set in Case Nos. 08-1094-EL-SSO, et al., are not in effect and therefore cannot be "continued".

The instant ESP applications that DP&L now seeks to withdraw have already been in effect for 32 months, with only 4 months to go. R.C. 4928.143(C)(2)(b) makes sense if the Commission-modified and approved applications were withdrawn after they had been modified and approved by the Commission but before they have gone into effect. It makes no sense that an

ESP may be withdrawn so as to continue SSO rates that are not in effect and have not been in effect for almost three years.

Finally, the 2008 ESP rates are not lawful under the Supreme Court's decision. The Supreme Court of Ohio has ordered that transition charges are unlawful and must be eliminated. Similar transition charges were also unlawfully included in the 2008 ESP rates. The elimination of these charges has been mandated by the Supreme Court of Ohio, and the Commission must follow the Court's mandate. The Court has ordered that rates be reduced to reflect the removal of transition charges. DP&L's attempt to increase rates by going back to the 2008 ESP rates, which include transition charges, is unlawful and must be rejected.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum Contra will be served on this 11th day of August 2016 by the Commission's e-filing system to these parties who have electronically subscribed to these cases.

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Case No(s). 12-0426-EL-SSO, 12-0427-EL-ATA, 12-0429-EL-WVR, 12-0428-EL-AAM, 12-0672-EL-RDR

Summary: Memorandum Contra Dayton Power and Light Company electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy and Edgemont Neighborhood Coalition