

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of : Case No. 16-0395-EL-SSO
The Dayton Power and Light Company for
Approval of Its Electric Security Plan :

In the Matter of the Application of : Case No. 16-0396-EL-ATA
The Dayton Power and Light Company for
Approval of Revised Tariffs :

In the Matter of the Application of : Case No. 16-0397-EL-AAM
The Dayton Power and Light Company for
Approval of Certain Accounting Authority :
Pursuant to Ohio Rev. Code § 4905.13

**THE DAYTON POWER AND LIGHT COMPANY'S MEMORANDUM IN RESPONSE
TO MOTION FOR AN EXTENSION OF THE ATTORNEY EXAMINER'S
PROCEDURAL SCHEDULE BY SIERRA CLUB, THE PJM POWER PROVIDERS
GROUP, THE ELECTRIC POWER SUPPLY ASSOCIATION, THE RETAIL ENERGY
SUPPLY ASSOCIATION, AND INTERSTATE GAS SUPPLY, INC.**

As explained in Section I below, The Dayton Power and Light Company ("DP&L") does not oppose an adjustment to the case management schedule, which currently sets September 30, 2016 as the deadline for intervenors to file testimony. However, the motion for an extension takes the wrong case management approach, and would harm DP&L. The motion for an extension essentially asks the Commission to stay this case, based upon speculation about the timing of the FirstEnergy case. An open-ended stay would prejudice DP&L as its financial integrity is in jeopardy and the "let's wait until the FirstEnergy case is completed" approach would make DP&L's case hostage to the timing of the FirstEnergy case.

I. DP&L'S CASE MANAGEMENT PROPOSAL

To allow the parties time to conduct settlement negotiations, DP&L does not object to vacating the September 30 deadline for intervenor testimony and asks for a scheduling conference.

II. THE MOTION FOR AN EXTENSION SHOULD BE DENIED

The Commission should reject the indefinite continuance proposed by Joint Movants Sierra Club, PJM Power Providers Group, the Electric Power Supply Association, the Retail Energy Supply Association, and Interstate Gas Supply, Inc., which would push back the filing of intervenor testimony and the evidentiary hearing until after the Commission issues an entry on rehearing in FirstEnergy's pending ESP case.¹ That extension would adversely affect the financial integrity of DP&L.

The United States Supreme Court has long-recognized that an applicant "for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else." Landis v. N. Am. Co., 299 U.S. 248, 255, 57 S. Ct. 163 (1936). "Only in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both." Id. (emphasis added). "Thus the burden is on the party seeking the stay to show that there is pressing need for delay, and that neither the other party nor the public will suffer harm from entry of the order." Ohio Env'tl. Council v. U.S. Dist. Court, S. Dist. of Ohio, 565 F.2d 393, 396 (6th Cir. 1977). "A court should be particularly hesitant when, as here, the stay will disrupt a statutory or administrative timetable." Id. (emphasis added).

¹ In the Matter of the Application of Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co. for Authority to Provide for a Standard Service Offer Pursuant to R.C. 149.143 in the Form of an Electric Security Plan, Case No. 14-1297-EL-SSO.

The proposed open-ended continuance threatens DP&L's financial integrity. It is important for the Commission to recall its factual findings in Case No. 12-426-EL-SSO ("DP&L ESP II") that DP&L needed a stability charge so that it could provide stable distribution, transmission and generation service:

"the Commission believes that [a stability charge] would have the effect of stabilizing or providing certainty regarding retail electric service. We agree with DP&L that if its financial integrity becomes further compromised, it may not be able to provide stable or certain retail electric service Although generation, transmission, and distribution rates have been unbundled, DP&L is not a structurally separate utility; thus, the financial losses in the generation, transmission, or distribution business of DP&L are financial losses for the entire utility. Therefore, if one of the businesses suffers financial losses, it may impact the entire utility, adversely affecting its ability to provide stable, reliable, or safe retail electric service. The Commission finds that [a stability charge] will provide stable revenue to DP&L for the purpose of maintaining its financial integrity."

Sept. 4, 2013 Opinion and Order, pp. 21-22, DP&L ESP II.

Recent actions by credit rating agencies demonstrate the continuing need for such relief following the Supreme Court's reversal of the Commission's decision in that case. On June 27, 2016, S&P Global Ratings ("S&P") stated that the Supreme Court's decision reversing the Commission's decision in Case No. 12-426-EL-SSO "increases the likelihood of a weaker financial risk profile, reflecting weaker financial measures for DPL and DP&L that could result in a near term ratings downgrade." *Id.* at 2. S&P further stated that it would "resolve the CreditWatch listing depending on the responses of the PUCO and the company to the Ohio Supreme Court's reversal." *Id.* at 3. Similarly, on July 12, 2016, FitchRatings ("Fitch") revised the Rating Outlook for DP&L and DPL Inc. from stable to negative. Fitch explained that "[t]he resolution of the Negative Outlook will depend upon the amount, sustainability and timeliness of

alternative regulatory relief from PUCO, as well as the companies' ability to refinance or repay the 2016 maturities in a timely manner with reasonable terms." Id. at 1. The agency "continues to believe that the PUCO will ultimately authorize an alternative rider for DP&L to mitigate the Ohio Supreme Court ruling. However, the path and timing to that end are primary credit concerns." Id.

Pursuant to Ohio Rev. Code § 4903.10, after the Commission issues an entry on rehearing, the parties in the FirstEnergy case will have 30 days to file additional applications for rehearing. Accord: Ohio Admin. Code § 4901-1-35(A). Memoranda in opposition may then be filed within 10 days. Ohio Admin. Code § 4901-1-35(B). Once the Commission reaches a decision on those applications, the process can repeat itself over and over again. Indeed, in DP&L ESP II, the Commission issued five entries on rehearing. July 23, 2015 Fifth Entry on Rehearing. After that process has exhausted itself, a party may file an appeal to the Supreme Court within 60 days. Ohio Rev. Code § 4903.11. Waiting on the Supreme Court to decide the case may take years. In re Dayton Power & Light Co., Case No. 2014-1505 (time between initial notice of appeal and decision was 661 days). Thus, even if the Commission were to provide some insight into how the parties should approach the evidentiary hearing in ruling on the pending applications for rehearing in FirstEnergy's case, it may be only fleeting.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing The Dayton Power and Light Company's Memorandum in Response to Motion for an Extension of the Attorney Examiner's Procedural Schedule by Sierra Club, The PJM Power Providers Group, The Electric Power Supply Association, the Retail Energy Supply Association, and Interstate Gas Supply, Inc. and Request for Expedited Ruling, has been served via electronic mail upon the following counsel of record, this 21st day of September, 2016:

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Summary: Memorandum The Dayton Power and Light Company's Memorandum in Response to Motion for an Extension of the Attorney Examiner's Procedural Schedule by Sierra Club, The PJM Power Providers Group, The Electric Power Supply Association, The Retail Energy Supply Association, and Interstate Gas Supply, Inc. electronically filed by Mr. Charles J. Faruki on behalf of The Dayton Power and Light Company