

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
APPLICATION FOR REHEARING**

Pursuant to Ohio Rev. Code § 4903.10 and Ohio Admin. Code § 4901-1-35, The Dayton Power and Light Company ("DP&L") seeks rehearing of the Commission's October 20, 2017 Opinion and Order ("Order") on the following grounds:

1. The Order is unreasonable and unlawful to the extent that it modified the March 14, 2017 Amended Stipulation and Recommendation ("Amended Stipulation") by finding that AES Corporation, through DP&L and DPL Inc., committed to use the proceeds from the sale of any generation assets to pay down debt.
2. The Order is unreasonable and unlawful to the extent that it modified the Amended Stipulation by finding that DP&L committed to pursue closure of any coal-fired generation stations.

Pursuant to Ohio Admin. Code § 4901-1-35(A), a memorandum in support setting forth an explanation of the basis for each ground for rehearing is attached.

Respectfully submitted,

/s/ Jeffrey S. Sharkey

Jeffrey S. Sharkey (0067892)

(Counsel of Record)

D. Jeffrey Ireland (0010443)

Christopher C. Hollon (0086480)

FARUKI IRELAND COX RHINEHART &
DUSING P.L.L.

110 North Main Street, Suite 1600

Dayton, OH 45402

Telephone: (937) 227-3747

Telecopier: (937) 227-3717

Email: jsharkey@ficlaw.com

djireland@ficlaw.com

chollon@ficlaw.com

Attorneys for The Dayton Power
and Light Company

**MEMORANDUM IN SUPPORT OF THE DAYTON POWER
AND LIGHT COMPANY'S APPLICATION FOR REHEARING**

I. INTRODUCTION AND SUMMARY

In this narrow application for rehearing, The Dayton Power and Light Company ("DP&L") seeks to correct two statements in the October 20, 2017 Opinion and Order ("Order") that, as written, misstate commitments made by DP&L in this proceeding. The statements lack record support and are, therefore, unreasonable and unlawful. Ohio Rev. Code § 4903.10; Ohio Admin. Code § 4901-1-35. DP&L believes that the Commission did not intend to modify the Amended Stipulation in the two statements, but instead, inadvertently misstated DP&L's commitments in the Amended Stipulation.

First, the Order states, "AES Corporation, through DP&L and DPL Inc., has committed to use the proceeds from the sale of any generation assets to pay down debt (Co. Ex. 3 at 19; Jt. Ex. 1 at 4)."¹ Order, ¶ 77 (emphasis added). Although AES Corporation agreed to use the proceeds from the sale of generation assets to make discretionary debt repayments at DP&L and DPL Inc., that commitment was limited to proceeds from the sale of Conesville, Miami Fort, and Zimmer stations. Amend. Stip., p. 4; Schroder Test., p. 19; Transcript of Proceedings, Vol. II, p. 306.

Second, the Order states, "as part of the Amended Stipulation, DP&L committed to transfer all of its generation assets to an affiliate and to pursue either a sale or closure of its coal-fired generation plants." Order, ¶ 104 (emphasis added). In the Amended Stipulation, DP&L committed to transfer its generation assets to AES Ohio Generation, LLC and to

¹ Jt. Ex. 1 is the March 14, 2017 Amended Stipulation and Recommendation ("Amended Stipulation" or "Amend. Stip."); Co. Ex. 3 is the March 22, 2017 Testimony of Sharon R. Schroder in Support of the Amended Stipulation and Recommendation ("Schroder Test.").

commence a sale process for Conesville, Miami Fort, and Zimmer; however, it did not commit to close any generation stations.

The Commission should grant rehearing to correct those statements and ensure that the significant commitments made by DP&L in reaching the Amended Stipulation, which was signed by a diverse group of capable and knowledgeable parties after serious negotiation,² are accurately reflected in the Commission's Order.

II. THE COMMISSION SHOULD GRANT REHEARING TO CORRECT TWO STATEMENTS IN ITS ORDER THAT MISSTATE DP&L COMMITMENTS AND, THUS, LACK RECORD SUPPORT

It is well settled that the Commission's decisions must have "record support," and that a Commission order is unlawful if "no evidence supports" the decision. In re Application of Columbus S. Power Co., 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 29. Accord: Elyria Foundry Co. v. Pub. Util. Comm., 114 Ohio St.3d 305, 2007-Ohio-4164, 871 N.E.2d 1176, ¶ 29 (a Commission order is unlawful if there was no "factual basis supporting the commission's finding"); Indus. Energy Users-Ohio v. Pub. Util. Comm., 117 Ohio St.3d 486, 2008-Ohio-990, 885 N.E.2d 195, ¶ 30 ("[I]n order to meet the requirements of R.C. 4903.09, the PUCO's order must show, in sufficient detail, the facts in the record upon which the order is based") (internal quotation marks and citation omitted).

Here, to the extent the Commission's Order misstates commitments made by DP&L in this proceeding, it lacks record support and should be corrected on rehearing. Ohio Rev. Code § 4903.10; Ohio Admin. Code § 4901-1-35.

² Mar. 22, 2017 Testimony of Patrick Donlon ("Donlon Test.") (Staff Ex. 2), pp. 3-4; Schroder Test., pp. 4-8.

A. There is No Record Support to Find that DP&L Committed to Apply the Proceeds of the Sale of "Any" Generation Asset to Pay Down Debt

In reaching the Amended Stipulation, DP&L made several commitments on behalf of itself and DPL Inc. to allow DP&L to provide stable and certain distribution service and to modernize its distribution grid. Amend. Stip., pp. 3-8. Among those commitments, DP&L agreed to the following:

"c. Assuming FERC approval, DP&L agrees to transfer its generation assets and non-debt liabilities to AES Ohio Generation, LLC, an affiliated subsidiary of DPL Inc., within 180 days following final Commission approval of this Stipulation, provided that the Commission approves this Stipulation without material modifications.

d. DP&L (or the affiliate to whom the generation assets are transferred) will commit to commence a sale process to sell to a third party its ownership in Conesville, Miami Fort, and Zimmer Stations.

e. AES Corporation will use all proceeds from any sale of the coal generation assets to make discretionary debt repayments at DP&L and DPL Inc."

Id. at 4. Thus, DP&L committed to (1) transfer its generation assets to an affiliate, (2) commence a sale process to sell three coal-fired plants (i.e., Conesville, Miami Fort, and Zimmer), and (3) use the "proceeds from any sale of the coal generation assets," (again, Conesville, Miami Fort, and Zimmer) to pay down debt at DP&L and DPL Inc. DP&L did not commit to use proceeds from the sale of any other generation asset for any particular purpose.

Company witness Sharon Schroder confirmed the limited scope of DP&L's commitment. In her pre-filed testimony, she explained, "DP&L (or the affiliate to whom the generation assets are transferred) has committed to commence a sale process to sell to a third party its ownership interests in three of its coal-fired generation assets, and to use the proceeds to

further pay off debt at DPL Inc. and DP&L," citing "Amended Stipulation, ¶ II.1. d. & e."

Schroder Test., p. 19 (emphasis added). Thus, the proceeds to be used to pay down debt are the proceeds from any sale of Conesville, Miami Fort, and Zimmer. Id.

On cross-examination, Ms. Schroder was asked about the scope of DP&L's commitment by an attorney for The Office of the Ohio Consumers' Counsel:

"Q. The quote-unquote coal generation assets referenced in [subsection] e, Ms. Schroder, is that referring only to Conesville, Miami Fort, and Zimmer?

A. Can you repeat that question, please?

Q. Certainly. You will see in e it talks about 'coal generation assets'?

A. Yes, I see that.

Q. Okay. And by 'coal generation assets,' is that limited to Conesville, Miami Fort, and Zimmer?

A. I don't know, but I think it's a reasonable interpretation that it's in the same section that's referring to the section – subsection just prior to when it says the coal generation assets – that are referenced in the prior one.

Q. Okay. So you say that's a reasonable interpretation. Is that how you would expect the Commission to interpret it?

A. Yes."

Transcript of Proceedings, Vol. II, pp. 305-06 (emphasis added).

Elsewhere, the Order acknowledges the scope of DP&L's commitment and the link between proceeds from the sale of Conesville, Miami Fort, and Zimmer to debt repayments. Order, ¶ 27 (stating that "with the sale of certain coal-fired generation assets, DP&L states it will use the proceeds to pay down debt at DP&L and DPL Inc. and thus improve its financial well-being and allow the Company to better serve customers") (emphasis added); id. at ¶ 71 ("As part

of the Amended Stipulation, DP&L committed to transfer its generating assets to an affiliate of DPL Inc., as well as to commence a sale process to sell its ownership in its Conesville, Miami Fort, and Zimmer generation stations. Further, AES agreed to use the proceeds from any sale to make discretionary debt repayments at DP&L and DPL Inc.") (emphasis added).

The Order, nevertheless, also states, "AES Corporation, through DP&L and DPL Inc. has committed to use the proceeds from the sale of any generation assets to pay down debt" Order, ¶ 77 (emphasis added). To the extent the Commission found that DP&L committed to use the proceeds from the sale of generation assets other than Conesville, Miami Fort, and Zimmer in any particular way, the finding lacks record support and should be corrected on rehearing. In re Application of Columbus S. Power Co., 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 29.

B. There is No Record Support to Find that DP&L Committed to the Closure of Any Generation Asset

The Order further states, "as part of the Amended Stipulation, DP&L committed to transfer all of its generation assets to an affiliate and to pursue either a sale or closure of its coal-fired generation plants." Order, ¶ 104 (emphasis added). As part of the Amended Stipulation, DP&L committed to transfer its generation assets to AES Ohio Generation, LLC and to commence a sale process to sell Conesville, Miami Fort, and Zimmer stations. Amend. Stip., p. 4.

However, DP&L did not commit to close any generation facilities. Id. Ms. Schroder further testified that she "certainly [had not] talked about anything about the closure [in her testimony] because it's not part of the stipulation." Transcript of Proceedings, Vol. II, p. 410 (emphasis added). To the extent the Commission found that DP&L committed to any closure as

part of this proceeding, that finding lacks support in the record. Moreover, the Commission cites no evidence as to whether the closure of any generation assets would benefit ratepayers or be in the public interest. Office of Consumers' Counsel v. Pub. Util. Comm., 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). Given the lack of record support, this finding also should be corrected on rehearing. In re Application of Columbus S. Power Co., 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 29.

III. CONCLUSION

For the foregoing reasons and to ensure that the commitments made by DP&L in this proceeding are accurately reflected in the Commission's Order, this narrow Application for Rehearing should be granted

Respectfully submitted,

/s/ Jeffrey S. Sharkey
Jeffrey S. Sharkey (0067892)
(Counsel of Record)
D. Jeffrey Ireland (0010443)
Christopher C. Hollon (0086480)
FARUKI IRELAND COX RHINEHART &
DUSING P.L.L.
110 North Main Street, Suite 1600
Dayton, OH 45402
Telephone: (937) 227-3747
Telecopier: (937) 227-3717
Email: jsharkey@ficlaw.com
djireland@ficlaw.com
chollon@ficlaw.com

Attorneys for The Dayton Power
and Light Company

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing The Dayton Power and Light Company's Application for Rehearing has been served via electronic mail upon the following counsel of record, this 20th day of November, 2017:

Thomas McNamee
Natalia Messenger
Public Utilities Commission of Ohio
30 East Broad Street, 16th Floor
Columbus, OH 43215-3793
Email:
thomas.mcnamee@ohioattorneygeneral.gov
natalia.messenger@ohioattorneygeneral.gov

Attorneys for PUCO Staff

William J. Michael (Counsel of Record)
Kevin F. Moore
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Email: william.michael@occ.ohio.gov
andrew.garver@occ.ohio.gov
kevin.moore@occ.ohio.gov

Attorneys for the Ohio Consumers' Counsel

Kimberly W. Bojko
James D. Perko, Jr.
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, OH 43215
Email: bojko@carpenterlipps.com
perko@carpenterlipps.com

Attorneys for The Ohio Manufacturers'
Association Energy Group

Frank P. Darr (Counsel of Record)
Matthew R. Pritchard
McNees Wallace & Nurick
21 East State Street, 17th Floor
Columbus, OH 43215
Email: fdarr@mwncmh.com
mpritchard@mwncmh.com

Attorneys for Industrial Energy Users – Ohio

David F. Boehm
Michael L. Kurtz
Kurt J. Boehm
Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
Email: dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com

Attorneys for The Ohio Energy Group

Joseph Olikier (Counsel of Record)
Matthew White
Evan Betterton
IGS Energy
6100 Emerald Parkway
Dublin, OH 43016
Email: joliker@igsenergy.com
mwhite@igsenergy.com
Ebetterton@igsenergy.com

Attorney for IGS Energy

Kevin R. Schmidt
88 East Broad Street, Suite 1770
Columbus, OH 43215
Email: schmidt@sppgrp.com

Attorney for The Energy Professionals of Ohio

Evelyn R. Robinson
2750 Monroe Boulevard
Audubon, PA 19403
Email: evelyn.robinson@pjm.com

Attorney for PJM Interconnection, L.L.C.

Jeffrey W. Mayes
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Valley Forge Corporate Center
Eagleville, PA 19403
Email: jeffrey.mayes@monitoringanalytics.com

Attorneys for Monitoring Analytics, LLC as
The Independent Market Monitor for PJM

Joel E. Sechler (Counsel of Record)
Carpenter Lipps & Leland
280 N. High St., Suite 1300
Columbus, OH 43215
Email: sechler@carpenterlipps.com

Attorneys for EnerNOC, Inc.

Trent Dougherty
1145 Chesapeake Ave., Suite 1
Columbus, OH 43212-3449
Email: tdougherty@the OEC.org

Attorney for Ohio Environmental
Council

Angela Paul Whitfield
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, OH 43215
Email: paul@carpenterlipps.com

Attorney for The Kroger Co.

Miranda Leppla
Ohio Environmental Council
1145 Chesapeake Ave., Suite 1
Columbus, OH 43212-3449
Email: mleppla@the OEC.org

Attorney for the Environmental Defense Fund

Colleen Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
Email: cmooney@ohiopartners.org

Attorney for Ohio Partners for Affordable
Energy

Michael D. Dortch
Richard R. Parsons
Kravitz, Brown & Dortch, LLC
65 East State Street, Suite 200
Columbus, OH 43215
Email: mdortch@kravitzllc.com
rparsons@kravitzllc.com

Attorneys for Calpine Energy Solutions LLC

Richard C. Sahli
Richard C. Sahli Law Office, LLC
981 Pinewood Lane
Columbus, OH 43230-3662
Email: rsahli@columbus.rr.com

Christopher M. Bzdok (pro hac vice)
Olson Bzdok & Howard, P.C.
420 East Front Street
Traverse City, MI 49686
Email: chris@envlaw.com

Tony G. Mendoza, Staff Attorney (pro hac vice)
Kristin Henry, Senior Staff Attorney (pro hac vice)
Gregory E. Wannier, Staff Attorney (pro hac vice)
Sierra Club Environmental Law Program
2101 Webster Street, 13th Floor
Oakland, CA 94612
Email: tony.mendoza@sierraclub.org
kristin.henry@sierraclub.org
greg.wannier@sierraclub.org

Attorneys for Sierra Club

Michelle Grant
Dynergy Inc.
601 Travis Street, Suite 1400
Houston, TX 77002
Email: michelle.d.grant@dynergy.com

Attorneys for Dynergy Inc.

Madeline Fleisher
Kristin Field
Environmental Law & Policy Center
21 West Broad Street, Suite 500
Columbus, OH 43215
Email: mfleisher@elpc.org
kfield@elpc.org

Attorneys for The Environmental Law & Policy Center

Lisa M. Hawrot
Spilman Thomas & Battle, PLLC
Century Centre Building
1233 Main Street, Suite 4000
Wheeling, WV 26003
Email: lhawrot@spilmanlaw.com

Derrick Price Williamson
Spilman Thomas & Battle, PLLC
1100 Bent Creek Blvd., Suite 101
Mechanicsburg, PA 17050
Email: dwilliamson@spilmanlaw.com

Carrie M. Harris
Spilman Thomas & Battle, PLLC
310 First Street, Suite 1100
P.O. Box 90
Roanoke, VA 24002-0090
Email: charris@spilmanlaw.com

Steve W. Chriss
Senior Manager, Energy Regulatory Analysis
Greg Tillman
Senior Manager, Energy Regulatory Analysis
Wal-Mart Stores, Inc.
2001 SE 10th Street
Bentonville, AR 72716-0550
Email: Stephen.Chriss@walmart.com
Greg.Tillman@walmart.com

Attorneys for Wal-Mart Stores East, LP
and Sam's East, Inc.

Michael J. Settineri
Stephen M. Howard
Gretchen L. Petrucci
Ilya Batikov
William A. Sieck
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, OH 43215
Email: mjsettineri@vorys.com
smhoward@vorys.com
glpetrucci@vorys.com
ibatikov@vorys.com
wasiack@vorys.com
Attorneys for Dynegy Inc.,
PJM Power Providers Group, and
Retail Energy Supply Association

Glen Thomas
1060 First Avenue, Suite 400
King of Prussia, PA 19406
Email: gthomas@gtpowergroup.com

Sharon Theodore
Electric Power Supply Association
1401 New York Ave. NW 11th Floor
Washington, DC
Email: stheodore@epsa.org

Laura Chappelle
201 North Washington Square, Suite 910
Lansing, MI 48933
Email: laurac@chappelleconsulting.net

Attorneys for PJM Power Providers Group

Ellis Jacobs
Advocates for Basic Legal Equality, Inc.
130 West Second Street, Suite 700 East
Dayton, OH 45402
Email: ejacobs@ablelaw.org

Attorney for Edgemont Neighborhood Coalition

Steven D. Lesser
James F. Lang
N. Trevor Alexander
Mark T. Keaney
Calfee, Halter & Griswold LLP
41 South High Street
1200 Huntington Center
Columbus, OH 43215
Email: slesser@calfee.com
jlang@calfee.com
talexander@calfee.com
mkeaney@calfee.com

Attorneys for The City of Dayton and
Honda of America Mfg., Inc.

John R. Doll
Matthew T. Crawford
Doll, Jansen & Ford
111 West First Street, Suite 1100
Dayton, OH 45402-1156
Email: jdoll@djflawfirm.com
mcrawford@djflawfirm.com

Attorneys for Utility Workers of
America Local 175

Richard L. Sites
Ohio Hospital Association
155 East Broad Street, 3rd Floor
Columbus, OH 43215-3620
Email: rick.sites@ohiohospitals.org

Matthew W. Warnock
Dylan F. Borchers
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
Email: mwarnock@bricker.com
dborchers@bricker.com

Attorneys for The Ohio Hospital Association

Amy B. Spiller
Jeanne W. Kingery
Elizabeth H. Watts
Duke-Energy Ohio, Inc.
139 East Fourth Street
1303-Main
Cincinnati, OH 45202
Email: amy.spiller@duke-energy.com
jeanne.kingery@duke-energy.com
elizabeth.watts@duke-energy.com

Attorneys for Duke-Energy Ohio, Inc.

Carl Tamm, President
Classic Connectors, Inc. 382 Park Avenue East
Mansfield, OH 44905
Email: crtamm@classicconnectors.com

John F. Stock
Orla E. Collier
Benesch, Friedlander, Coplan & Aronoff LLP
41 South High Street, 26th Floor
Columbus, OH 43215
Email: jstock@beneschlaw.com
ocollier@beneschlaw.com

Attorneys for Murray Energy Corporation and
Citizens to Protect DP&L Jobs

Mark Landes
Brian M. Zets
Isaac Wiles Burkholder & Teetor, LLC
Two Miranova Place
Suite 700
Columbus, OH 43215
Email: mlandes@isaacwiles.com
bzets@isaacwiles.com

Attorneys for Adams County Commissioners

Terrence N. O'Donnell
Raymond D. Seiler
Christine M.T. Pirik
William V. Vorys
Dickinson Wright PLLC
150 East Gay Street, Suite 2400
Columbus, OH 43215
Email: todonnell@dickinsonwright.com
rseiler@dickinsonwright.com
cpirik@dickinsonwright.com
wvorys@dickinsonwright.com

Attorneys for Mid-Atlantic Renewable
Energy Coalition

C. David Kelley, Prosecutor
Dana N. Whalen
110 West Main Street
West Union, OH 45693
Email: prosecutorkelley@usa.com
dana.whalen@adamscountyoh.gov

Attorneys for Monroe Township, Ohio, Sprigg
Township, Manchester Local School District,
and Adams County Ohio Valley School
District

Devin D. Parram
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
Email: dparram@bricker.com

Attorney for People Working
Cooperatively, Inc.

/s/ Christopher C. Hollon
Christopher C. Hollon

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/20/2017 3:51:41 PM

in

Case No(s). 16-0395-EL-SSO, 16-0396-EL-ATA, 16-0397-EL-AAM

Summary: App for Rehearing The Dayton Power and Light Company's Application for Rehearing electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company