

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
The Dayton Power and Light Company) Case No. 12-426-EL-SSO
for Approval of Its Market Rate Offer.)

In the Matter of the Application of)
The Dayton Power and Light Company) Case No. 12-427-EL-ATA
for Approval of Revised Tariffs.)

In the Matter of the Application of)
The Dayton Power and Light Company) Case No. 12-428-EL-AAM
for Approval of Certain Accounting)
Authority.)

In the Matter of the Application of)
The Dayton Power and Light Company) Case No. 12-429-EL-WVR
for Waiver of Certain Commission Rules.)

In the Matter of the Application of)
The Dayton Power and Light Company) Case No. 12-672-EL-RDR
to Establish Tariff Riders.)

**JOINT MOVANTS' MOTION SEEKING AN ORDER DIRECTING THE DAYTON
POWER AND LIGHT COMPANY TO COMPLY WITH THE STANDARD FILING
REQUIREMENTS FOR AN ELECTRIC SECURITY PLAN AND MEMORANDUM IN
SUPPORT AND MEMORANDUM CONTRA THE DAYTON POWER AND LIGHT
COMPANY'S REQUESTS FOR WAIVERS**

October 22, 2012

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**JOINT MOVANTS'¹ MOTION SEEKING AN ORDER DIRECTING THE DAYTON
POWER AND LIGHT COMPANY TO COMPLY WITH THE STANDARD FILING
REQUIREMENTS FOR AN ELECTRIC SECURITY PLAN**

On October 5, 2012, the Dayton Power and Light Company (“DP&L”) filed an application (“Application”) to establish a standard service offer (“SSO”) in the form of an electric security plan (“ESP”). DP&L’s Application, however, does not comply with the standard filing requirements for an ESP as established by Rule 4901:1-35-03, Ohio Administrative Code (“O.A.C.”). Specifically, DP&L’s Application failed to include:

¹ The Joint Movants filing this pleading are Industrial Energy Users-Ohio (“IEU-Ohio”), Ohio Partners for Affordable Energy (“OPAE”), The Kroger Company (“Kroger”), the Ohio Energy Group (“OEG”), Honda of America Manufacturing, Inc. (“Honda”), SolarVision, LLC (“SolarVision”), the OMA Energy Group (“OMAEG”) and the Office of the Ohio Consumers’ Counsel (“OCC”).

(1) “the projected costs” of the Yankee Solar project;² (2) a “quantification or estimation” of the switching tracker;³ (3) “a description of the effect on large-scale governmental aggregation of any unavoidable generation charge proposed to be established in the ESP;”⁴ and (4) “a section demonstrating that its current corporate separation plan is in compliance with section 4928.17 of the Revised Code, Chapter 4901:1-37 of the Administrative Code, and consistent with the policy of the state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code.”⁵ Further, it failed to fully quantify the impact of the Reconciliation Rider (“RR”); and because of these omissions the Application fails to properly quantify the pro forma financial projections and projected rate impacts that are required.⁶ Additionally, DP&L has claimed that it will suffer financial harm if the Commission does not approve its ESP.⁷ To this end, DP&L has included projected total company financial information with its Application; however, DP&L has failed to segregate its financial information by function, *i.e.* on a distribution, transmission, and generation-only basis. Finally, DP&L’s failure to quantify the impact of the issues addressed above violates Section 4928.143(C)(1), Revised Code, which requires the Commission to consider “pricing and all other terms and conditions [of an ESP], including any deferrals and any future recovery of deferrals” before the Commission can approve a proposed ESP. DP&L’s failure to provide a quantification of

² Rule 4901:1-35-03(C)(9)(b)(i), O.A.C.

³ Rule 4901:1-35-03(C)(9)(c)(ii), O.A.C. This rule applies to charges that an electric distribution utility (“EDU”) seeks to recover under Section 4928.143(B)(2)(d), Revised Code. DP&L relies on this Section as authority to implement its Service Stability Rider (“SSR”) and implicitly the switching tracker.

⁴ Rule 4901:1-35-03(C)(7), O.A.C.

⁵ Rule 4901:1-35-03(F), O.A.C.

⁶ Rule 4901:1-35-03(C)(2)-(3), O.A.C.

⁷ See, e.g., Direct Testimony of William J. Chambers at 1-2.

these issues effectively prohibits the Commission from properly conducting the statutorily required ESP v. market rate offer (“MRO”) test.

The information is essential to the parties’ and the Commission’s ability to conduct a proper and lawful review of DP&L’s Application. Moreover, DP&L requested a waiver of only the first item regarding the Yankee Solar project; however, DP&L has failed to demonstrate that good cause exists for the waiver. Accordingly, the Commission should deny DP&L’s waiver request as to the first item and should grant Joint Movants’ motion and direct DP&L to timely file the information as required by Rule 4901:1-35-03, O.A.C., including pro forma financial projections segregated on a generation/distribution/transmission basis. Finally, the Commission should suspend the procedural schedule in this case until DP&L complies.

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| In the Matter of the Application of The Dayton Power and Light Company to Establish Tariff Riders. |))) | Case No. 12-672-EL-RDR |

**MEMORANDUM IN SUPPORT AND MEMORANDUM CONTRA
THE DAYTON POWER AND LIGHT COMPANY'S REQUESTS FOR WAIVERS**

I. INTRODUCTION

On March 30, 2012, DP&L filed an application for an SSO in the form of an MRO. After months of settlement discussions, on September 7, 2012, DP&L withdrew its MRO application. Late on Friday, October 5, 2012, DP&L filed its Application to set a successor SSO in the form of an ESP. DP&L's Application, however, does not comply with the standard filing requirements for an ESP as established by Rule 4901:1-35-03, O.A.C. The Joint Movants have identified at least six areas in which DP&L's Application fails to comply with the Commission's standard filing requirements:

- (1) DP&L failed to provide “the projected costs” of the Yankee Solar project.⁸
- (2) DP&L failed to provide a “quantification or estimation” of the switching tracker.⁹
- (3) DP&L failed to provide “a description of the effect on large-scale governmental aggregation of any unavoidable generation charge proposed to be established in the ESP.”¹⁰
- (4) DP&L failed to provide “a section demonstrating that its current corporate separation plan is in compliance with section 4928.17 of the Revised Code, Chapter 4901:1-37 of the Administrative Code, and consistent with the policy of the state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code.”¹¹ Although DP&L witness Sobecki provides testimony regarding corporate separation, her testimony falls well short of compliance with the standard filing requirements.
- (5) A complete quantification of the RR, specifically the cost of retail enhancements.
- (6) Because of these omissions, the Application fails to properly quantify the pro forma financial projections and projected rate impacts that are required by the standard filing requirements. Additionally, the pro forma financial projections are on a total company basis rather than being broken down on a generation/distribution/transmission basis.

DP&L’s Application requests a waiver of the requirement to provide the projected costs of the Yankee Solar project; however, the Application fails to demonstrate that good cause exists for that waiver. Because DP&L has failed to offer any legitimate reason for the waiver, and has failed to otherwise comply with the standard filing requirements, the Commission should grant Joint Movants’ motion seeking an order directing DP&L to file *all* the information required by the Commission’s rules and accordingly should deny DP&L’s waiver request. Until DP&L complies with the

⁸ Rule 4901:1-35-03(C)(9)(b)(i), O.A.C.

⁹ Rule 4901:1-35-03(C)(9)(c)(ii), O.A.C.

¹⁰ Rule 4901:1-35-03(C)(7), O.A.C.

¹¹ Rule 4901:1-35-03(F), O.A.C.

Commission's rules and provides the required and necessary information, the Commission should suspend further action on the Application.

II. ARGUMENT

A. **The Commission's rules and previous orders require that SSO applications must comply with the Commission's standard filing requirements unless the EDU can demonstrate good cause for a waiver.**

The Commission's standard filing requirements are rooted in sound regulatory policy. A transparent and open process is a fundamental cornerstone to an effective regulatory process.¹² By failing to provide all of the information required by the Commission's rules, DP&L's Application hides the true costs and impacts that the Application will have on customers. Specifically, DP&L's Application fails to quantify the costs of many of its riders and therefore understates the bill impacts upon customers and the financial benefits DP&L will receive. If the Commission is to avoid the surprising and rate-shocking outcome that occurred from the incomplete record in Ohio Power Company's ("AEP-Ohio") ESP that was rejected in February, the Commission

¹² See *In the Matter of the Commission's Review of Chapters 4901:1-9, 4901:1-10, 4901:1-21, 4901:1-22, 4901:1-23, 4901:1-24, and 4901:1-25 of the Ohio Administrative Code*, Case No. 06-653-EL-ORD, Finding and Order at 26 (Nov. 5, 2008) ("The Commission believes that the proposed rules, as modified herein, provide for regulations, standards, and enforcement of those regulations and standards that will provide for a transparent and public process, which should result in more accountability as well as greater reliability of the electric utilities' distribution systems."); see *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan, et al.*, Case Nos. 11-346-EL-SSO, *et al.*, Opinion and Order at 34-35 (Dec. 14, 2011) (enough facts existed to demonstrate settlement discussions were open and transparent supporting a finding that the Stipulation was in the public interest); Section 4905.15, Revised Code (Commission records are open to the public); see also *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Columbia Gas of Ohio, Inc., and Related Matters*, Case Nos. 05-221-GA-GCR, *et al.*, Opinion and Order, *Concurring Opinion of Commissioner Paul A. Centolella* at 2 (Jan. 23, 2008) ("Parties before this Commission have a responsibility to promote openness, transparency, and public confidence in the regulatory process."); Rule 4901:1-35-08, O.A.C. (competitive bid solicitation process should be open, fair, and transparent).

must require DP&L to supplement its Application to bring it into compliance with the Commission's rules.

Chairman Snitchler's acknowledgment of the importance of complete and accurate information was highlighted in the Commission's press release following its rejection of the stipulation in AEP-Ohio's ESP proceeding in February 2012:

"Our decision effectively hits the reset button on AEP's electric security plan, allows us to start over from the beginning, *ensure that we have a complete picture of any proposal*, and balance the interests of all customers and the utility," Chairman Todd A. Snitchler stated. "Ohio remains committed to continuing down the path towards fully competitive markets."

...

The Commission also acknowledges that small businesses and residential customers were negatively impacted by the order approved last December. *Bills for certain customers significantly exceeded what was expected based on the record in the case.*

"The evidence in the record inadvertently *failed to present a full and accurate record of the actual bill impacts to be felt by customers*," Snitchler continued. "This is particularly true with respect to low load factor customers who have high electricity demand for short periods and low usage the rest of the time." (Emphasis added.)¹³

Requiring DP&L to comply with the standard filing requirements will provide the Commission, Staff, and all interested parties an ability to thoroughly review the filing and provides additional transparency. DP&L has not demonstrated any valid reason why it should not supply the information required by the Commission's rules. In fact, DP&L's Application does not even seek waivers for most of the areas where its Application is in

¹³ PUCO Press Release, *PUCO revokes AEP-Ohio electric security plan settlement agreement* (Feb. 23, 2012), available on the Commission's website at: <http://www.puco.ohio.gov/puco/index.cfm/media-room/media-releases/puco-revokes-aep-ohio-electric-security-plan-settlement-agreement/>.

non-compliance. And, the Commission has held that it will not grant a general waiver for an ESP application that does not comply with the standard filing requirements.¹⁴

Additionally, as part of its compliance with the Commission's rules, the Commission must direct DP&L to file its pro forma financial information by function. This requirement is of heightened importance since DP&L has claimed that it needs a rate increase to ensure its financial integrity. By requiring DP&L to provide more transparent and complete financial information, the Commission will be more informed when it addresses DP&L's claims. Moreover, the Commission's rules require DP&L to detail the effect of the ESP upon DP&L's finances. Such a requirement would be of little meaning if the financial information is masked behind total company numbers.¹⁵ Thus, as part of the Commission's decision directing DP&L to comply with the standard filing requirements, the Commission should make it clear that DP&L must file its pro forma projections by business function.

The standard filing requirements require necessary and essential information to be filed along with an SSO application. The Commission has recently been sensitized to the necessity of transparency in ESP proceedings. In the spirit of and requirements for fairness and transparency, and in accordance with Commission rules, the Commission should deny DP&L's waiver request and require DP&L to update its Application with the information required by Commission rules. Rejecting the waiver

¹⁴ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Entry at 3 (Mar. 23, 2011) (hereinafter "AEP ESP II Case"); *AEP ESP II Case*, Entry at 3 (Apr. 25, 2012).

¹⁵ Additionally, if DP&L's distribution business is suffering financial harm, DP&L may seek relief through an application under Section 4909.16, Revised Code. Also, if DP&L's transmission business is suffering financial harm, DP&L may only seek relief from the Federal Energy Regulatory Commission ("FERC"). Reading this together with the Commission's rule requiring all EDUs to detail the effect that the ESP will have on their finances, it is clear that the Commission's rules require DP&L to file its pro forma projections by business function.

request and directing DP&L to supplement its Application would be the first step to “ensure that [the Commission] [has] a complete picture of any proposal.”¹⁶ Accordingly, the Commission should direct DP&L to file the information addressing the six items identified by the Joint Movants above, as well as any other information that is necessary to bring the Application into compliance with the Commission’s rules.

B. DP&L has failed to offer any legitimate or lawful reason why the Commission should grant DP&L’s waiver request with respect to the Yankee Solar facility.

The Commission should deny DP&L’s waiver request with respect to the Yankee Solar facility because DP&L has failed to demonstrate good cause to support a waiver. Rule 4901:1-35-02, O.A.C., provides that “[t]he commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, *for good cause shown.*” (Emphasis added.) DP&L’s only argument in support of the waiver request is its claim that “DP&L will file its application to recover such charges for its Yankee Solar Generating Facility within six months of a Commission order in this case [and therefore] there is no need for compliance with” the Commission’s rules at this time.¹⁷ DP&L’s assertion that it will not seek cost recovery until six months after a decision in this case does not eliminate the costs of the facility, which will impact customers’ bills and which will provide DP&L with additional financial security.

First, it is clear that the Commission should be fully apprised of the rate impacts of the Application before it takes any action on the Application. Without a full

¹⁶ PUCO Press Release, *PUCO revokes AEP-Ohio electric security plan settlement agreement* (Feb. 23, 2012), available on the Commission’s website at: <http://www.puco.ohio.gov/puco/index.cfm/media-room/media-releases/puco-revokes-aep-ohio-electric-security-plan-settlement-agreement/>.

¹⁷ Application at 9-10.

understanding of the proposed ESP's impacts, the Commission will not be able to properly analyze individual effects of the proposal, leading to a repeat of the unfortunate results customers faced in early 2012 in AEP-Ohio's ESP proceeding.

Second, the Commission has already determined the need for information regarding recovery of a plant addition, *i.e.* AEP-Ohio's Turning Point Solar project, required by Rule 4901:1-35-03(C)(9)(b), O.A.C, for purposes of conducting the ESP v. MRO test. In its application to the Commission, AEP-Ohio attempted to exclude the effects of its Turning Point Solar project from consideration in the ESP v. MRO test. In its December 14, 2011 Opinion and Order in AEP-Ohio's ESP proceeding, however, the Commission determined that the Turning Point Solar project's rate effects were relevant to the application of the statutory test that the ESP must satisfy under Section 4928.143(C)(1), Revised Code. The Commission found that AEP-Ohio witness Thomas had improperly excluded the costs associated with the Turning Point Solar project from the calculation of the ESP v. MRO test, and categorized the error as a "material flaw[.]"¹⁸ The Commission, instead, agreed with Staff witness Fortney who testified that it was "reasonable to include an estimated charge for the [Generation Resource Rider ("GRR")]"¹⁹

Likewise, in the second go-around on AEP-Ohio's ESP, the Commission again rejected AEP-Ohio's claim that the Turning Point Solar facility could be ignored when conducting the ESP v. MRO test.²⁰ Ohio law and the Commission's precedent are

¹⁸ *AEP-Ohio ESP II Case*, Opinion and Order at 30 (Dec. 14, 2011).

¹⁹ *Id.* Although the Commission has counted part of the cost of a facility anticipated to be authorized under Section 4928.143(C)(2)(b)-(c), Revised Code, *i.e.* Turning Point Solar, in conducting the ESP v. MRO test, the Commission failed to include the total cost of facility over its entire life as required by those sections. IEU-Ohio has sought rehearing of this issue in the *AEP-Ohio ESP II Case*.

²⁰ *AEP-Ohio ESP II Case*, Opinion and Order at 75 (Aug. 8, 2012).

clear: if an EDU proposes to create a rider under Sections 4928.143(B)(2)(b)-(c), Revised Code, and regardless of whether the EDU proposes an initial rate of zero for the rider, the costs of the facility must be addressed in the ESP v. MRO test.

In analyzing DP&L's Application, DP&L is requesting that the Commission once again address the propriety of establishing a recovery mechanism for plant additions and the effect of those additions on the statutory test the ESP must pass before the Commission may approve it.²¹ Because DP&L is seeking the Alternative Energy Rider Non-bypassable ("AER-N") (essentially a duplicate of AEP-Ohio's GRR) and the Commission must review the ESP "in the aggregate," DP&L must provide the required information regarding the Yankee Solar facility in accordance with Ohio law and the Commission's filing requirements.

Additionally, because DP&L has indicated in its long-term forecast report ("LTFR") proceeding that it "plans to construct additional solar generating facilities to be on-line in 2012," the Commission should require DP&L to file the costs of all facilities that DP&L may potentially seek to recover through the AER-N.²²

The Commission's rules require DP&L to provide information so that the Commission can determine the impact of the proposal under review. DP&L's waiver request would deprive the Commission of the information required to evaluate the rate impact associated with a potential non-bypassable charge for the life-cycle of the Yankee Solar facility, and any of the other solar facilities that DP&L plans to recover through the AER-N. Not only would DP&L's waiver request deprive the Commission of

²¹ IEU-Ohio has previously indicated in the *AEP-Ohio ESP II Case* that Section 4928.143(B)(2)(c), Revised Code, does not support the inclusion of a placeholder rider, as DP&L has requested in its Application.

²² *In the Matter of the Long-Term Forecast Report of Dayton Power and Light Company and Related Matters*, Case No. 10-505-EL-FOR, Opinion and Order at 2 (Apr. 19, 2011).

the information required to determine the impact of the proposal on customers' bills, it would also deprive the Commission of the ability to determine if the proposed ESP is more favorable than an MRO. Accordingly, the Commission should not grant DP&L's waiver request. DP&L has failed to make the necessary demonstration of good cause to waive the rules, and Ohio law as well as the Commission's precedent demonstrates that a waiver is not warranted.

III. CONCLUSION

As discussed above, DP&L has failed to comply with the Commission's standard filing requirements for an ESP. The Joint Movants have identified at least six areas in which DP&L's Application is deficient. Moreover, DP&L has failed to demonstrate good cause exists to waive the Commission's standard filing requirements with regard to the Yankee Solar facility. The information DP&L has not provided is relevant to properly conducting the ESP v. MRO test and is required to analyze the rate impact customers will face from DP&L's proposal. Additionally, because DP&L has claimed that it will suffer financial harm if the Commission does not grant its Application, the Commission should require DP&L to disclose all sources of revenue that its proposed ESP will produce, and should require DP&L to segregate its financial information on a generation/distribution/transmission basis. If DP&L is not required to supplement its Application, the Commission will again be presented an incomplete picture of the actual impact on customers.²³

²³ PUCO Press Release, *PUCO revokes AEP-Ohio electric security plan settlement agreement* (February 23, 2012).

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Joint Movants' Motion Seeking an Order Directing the Dayton Power and Light Company to Comply with the Standard Filing Requirements for an Electric Security Plan and Memorandum in Support and Memorandum Contra the Dayton Power and Light Company's Requests for Waivers* was served upon the following parties of record this 22nd day of October 2012, via electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

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Summary: Motion --Joint Movants' Motion Seeking an Order Directing DP&L to Comply with the Standard Filing Requirements for an ESP and Memorandum Contra DP&L's Requests for Waivers filed by IEU, OP&E, Kroger, OEG, Honda, SolarVision, OMAEG and OCC electronically filed by Mr. Matthew R. Pritchard on behalf of Industrial Energy Users-Ohio