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November 13, 2012

Ms. Donielle Hunter
Public Utilities Commission of Ohio
Docketing
180 East Broad Street, 12th Floor
Columbus, Ohio 43215

RE: In the Matter of the Application of The Dayton Power and Light Company;
PUCO Case Nos. 12-426-EL-SSO, *et al.*, Joint Movants' Reply to the
Dayton Power and Light Company's Memorandum in Opposition to 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

Dear Ms. Hunter:

It has come to our attention that the *Joint Movants' Reply to the Dayton Power and Light Company's Memorandum in Opposition to 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* ("Joint Reply") filed in this docket earlier this afternoon inadvertently omitted SolarVision, LLC as a signatory party to the pleading. Please accept the attached amended version of the Joint Reply, which corrects this omission.

Very truly yours,

A handwritten signature in cursive script that reads "Matt Pritchard".

Matthew R. Pritchard

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**JOINT MOVANTS'¹ AMENDED REPLY² TO THE DAYTON POWER AND LIGHT
COMPANY'S MEMORANDUM IN OPPOSITION TO 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**

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

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

² This amended version of this pleading is being filed to include SolarVision, LLC as a signatory party to the pleading. SolarVision, LLC was inadvertently omitted from the prior list of signatory parties.

Administrative Code ("O.A.C."). Because the Application is non-compliant, on October 22, 2012, the Joint Movants filed a motion ("Motion") seeking an order from the Public Utilities Commission of Ohio ("Commission") directing DP&L to comply with the standard filing requirements and requested the Commission stay the procedural schedule until DP&L complies.

DP&L responded on November 6, 2012 acknowledging that its Application was not in compliance with several standard filing requirements.³ DP&L stated that it would remedy some of the violations identified by Joint Movants' Motion at some point in the future through a supplemental filing. DP&L also incorrectly argues that it is in compliance with several of the areas of alleged non-compliance identified in Joint Movants' Motion.

On November 8, 2012, DP&L filed its supplement to its Application ("Supplement"); however, the Supplement still fails to provide all of the information required by the standard filing requirements. As discussed in greater detail below, the Commission should direct DP&L to comply with the standard filing requirements, including, but not limited to, the requirements specifically addressed below.

I. DP&L'S Supplement Still Fails To Comply With The Standard Filing Requirements.

Although DP&L acknowledged that its Application was in non-compliance and subsequently filed additional information through its Supplement, DP&L still has not satisfied the standard filing requirements. Specifically, the Supplement fails to include updated bill impacts and pro forma financial projections to account for the quantification

³ See The Dayton Power and Light Company's Memorandum in Opposition to the 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 Request for Waivers at 2 (Nov. 6, 2012) (refiled with docketing on Nov. 8, 2012) (hereinafter "DP&L Memorandum in Opposition").

of the costs associated with the Yankee Solar project and DP&L's estimate of the impact of the switching tracker. This information is required by Rule 4901:1-35-03(C)(2)-(3), O.A.C. Further, DP&L has not demonstrated good cause why it should not have to update its pro forma financial projections and bill impacts. Accordingly, the Commission should grant Joint Movants' Motion and direct DP&L to update its pro forma financial projections and bill impacts to include the effects of the costs associated with the Yankee Solar project and the switching tracker.

II. DP&L Incorrectly Argues That It Has Complied With The Commission's Rules Regarding (1) The Effect Its ESP Will Have On Large-Scale Governmental Aggregation, (2) Corporate Separation, (3) The Impact Of The Reconciliation Rider ("RR"), And (4) Argues That It Does Not Need To File Pro Forma Financial Projections By Business Function.

DP&L's Application and Supplement fail to present certain information required by the standard filing requirements. DP&L has failed to provide (1) "[a] description of how the electric utility proposes to address governmental aggregation programs and implementation of divisions (I), (J), and (K) of section 4928.20 of the Revised Code"⁴ and "[a] description of the effect on large-scale governmental aggregation of any unavoidable generation charge proposed to be established in the ESP,"⁵ (2) "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,"⁶ (3) a complete quantification of the RR, and (4) pro forma financial projections by business function, *i.e.*, segregated on a distribution/generation/transmission basis.

⁴ Rule 4901:1-35-03(C)(6), O.A.C.

⁵ Rule 4901:1-35-03(C)(7), O.A.C.

⁶ Rule 4901:1-35-03(F), O.A.C. (emphasis added).

First, DP&L's Application is non-compliant because it fails to address the impact that non-bypassable riders will have on governmental aggregation programs and implementation of Section 4928.20(I)-(K), Revised Code. Although, DP&L's Memorandum in Opposition states that the testimony of DP&L witness Seger-Lawson (at "page 18, lines 4 to 13"⁷) satisfies Rule 4901:1-35-03(C)(6)-(7), O.A.C.,⁸ Ms. Seger-Lawson's testimony does not discuss the effect that non-bypassable charges will have on large-scale governmental aggregation, and does not discuss the implementation of Section 4928.20(I)-(K), Revised Code. Page 18, lines 4 to 13 of Ms. Seger-Lawson's testimony, states:

Q. Ohio Administrative Code §4901:1-35-03(C)(6) and (7) require the utility to discuss how its ESP plan impacts governmental aggregation programs. How does DP&L's plan address governmental aggregation programs?

A. DP&L's ESP plan does not provide disincentives for municipal corporations or townships to implement governmental aggregation programs. DP&L has had a number of communities pass ballot issues allowing them to implement opt out governmental aggregation programs, and has several communities that have moved forward with government aggregation efforts in 2012. There is nothing in DP&L's ESP plan that would provide disincentives for governmental aggregation programs to go forward with their plans to aggregate.

Claiming that its proposed ESP will not provide a disincentive, and noting that aggregation has occurred in the past, simply does not satisfy Rule 4901:1-35-03(C)(6)-(7), O.A.C. The rule requires a discussion of the impact non-bypassable charges will have on the programs and requires DP&L to discuss how its ESP will comply with Sections 4928.20(I)-(K), Revised Code. DP&L's Application and Supplement do not even mention non-bypassable riders or the requirements of Divisions I, J, and K of

⁷ DP&L Memorandum in Opposition at 4.

⁸ *Id.*

Section 4928.20, Revised Code. Thus, DP&L's Application does not comply with the standard filing requirements.

Second, DP&L's Application is non-compliant because it fails to demonstrate that its corporate separation plan satisfies the state policies set forth in Section 4928.02, Revised Code, as required by Rule 4901:1-35-03(F), O.A.C. Although DP&L claims that it satisfied that Rule through the material contained on pages 1-30 of its "Third Amended Corporate Separation Plan, which is located in Book III, Appendix A ...,"⁹ the only reference to the state policies in relation to DP&L's corporate separation plan is contained at page 6 of Appendix A:

DP&L acknowledges the policy goals of the state of Ohio as described in Revised Code Section 4928.02. Accordingly, consistent with the corporate separation rules, DP&L will not extend any undue preference or advantage to any of its affiliates that engage in the business of providing a competitive retail electric service or a non-electric retail product or service without just compensation as provided herein. Further, DP&L will act so as to effectuate the policy specified in Revised Code Section 4928.02 and to satisfy the public interest in preventing unfair competitive advantage and abuse of market power.

As required by Revised Code Section 4928.17 and the corporate separation rules, DP&L will not engage, either directly or through an affiliate, in the business of supplying a noncompetitive retail electric service and either a competitive retail electric service or a product or service other than retail electric service, except as otherwise authorized by law and except pursuant to the provisions of this Third Amended Corporate Separation Plan as approved by the Commission.¹⁰

This statement, however, does not satisfy Rule 4901:1-35-03(F), O.A.C. DP&L merely acknowledges that state policy exists and states that its plan will not violate those policies. There is a difference between "stating" and "demonstrating" with the latter

⁹ DP&L Memorandum in Opposition at 5.

¹⁰ The remainder of the material on pages 1-30 of Appendix A also do not contain any discussion of how DP&L's corporate separation plan will comply with state policies. The only two other references to state policy in Appendix A can be found on pages 4 and 5 of that appendix.

requiring some level of analysis. It is this analysis that is missing from DP&L's Application and Appendix A and which is required by Rule 4901:1-35-03(F), O.A.C.

DP&L also states that it has in fact fully quantified the RR and argues that, in any event, the Joint Movants failed "to cite any statute or code provision that would require DP&L to disclose such information in its ESP Application."¹¹ Contrary to DP&L's claims, the Joint Movants did provide citations to Rule 4901:1-35-03(C)(2)-(3), O.A.C., and to Section 4928.143(C)(1), Revised Code. The Rule requires DP&L to include pro forma financial projections and customer bill impacts, and the statute places a burden on DP&L to demonstrate that its ESP is more favorable than a market rate offer ("MRO").¹² Although DP&L has partially quantified the RR, it failed to include the costs of retail enhancements in the cost of the rider despite providing the projected cost of retail enhancements in the testimony of DP&L witness Seger-Lawson.¹³ The incomplete and understated cost of the RR, however, is what was used by DP&L in the pro forma financial information and bill impacts. If DP&L understates the cost of the rider, the pro forma financial projections and customer bill impacts will be incomplete and the cost of its proposed ESP will be understated. Thus, DP&L should be directed to update its pro forma financial projections and bill impacts.

Finally, DP&L states that Joint Movants "fail to cite any statute or code provision that requires DP&L to break down pro forma financial projections in its ESP Application on a generation, distribution, and transmission basis."¹⁴ As mentioned above, however,

¹¹ DP&L Memorandum in Opposition at 5.

¹² Joint Movants' Motion at 2.

¹³ DP&L Memorandum in Opposition at 5 (citing Ms. Seger-Lawson's testimony, which identifies the estimated cost of the retail enhancements at \$2.5 million).

¹⁴ DP&L Memorandum in Opposition at 6.

DP&L's Application must demonstrate that it is in compliance with the state policies contained in Section 4928.02, Revised Code (as part of the corporate separation requirements).¹⁵ Among other things, that Section provides that state policy includes ensuring "effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates." Thus, DP&L has an affirmative obligation to demonstrate that its proposed ESP, among other things, will not provide anti-competitive subsidies.

And DP&L has no excuse for why it cannot file the information by business unit inasmuch as DP&L admits Ohio law and the Commission's rules require DP&L to keep its records separated by business function:

As required by Revised Code Section 4928.17(A)(1) and corporate separation rule OAC Section 4901:1-37-04(B), DP&L and each affiliate or business unit in the DP&L group will maintain, in accordance with generally accepted accounting principles, an applicable uniform system of accounts, books, records, and accounts that are separate from the books, records and accounts of each other affiliate or business unit.¹⁶

Because the Commission must determine that DP&L is not engaged in cross-subsidization, and because DP&L is required to keep the information by business function, the Commission should direct DP&L to file pro forma financial projections by business function.

¹⁵ Rule 4901:1-35-03(F), O.A.C. Section 4928.17(C), Revised Code (which allows an electric distribution utility ("EDU") to operate under functional separation, as DP&L currently does), also requires DP&L to maintain ongoing compliance with Section 4928.02, Revised Code.

¹⁶ ESP Application, Appendix A at 8.

Although DP&L asserts deficiencies in its Application “can be addressed in discovery,” IEU-Ohio has sought information specific to the segregated business functions to which DP&L objected and has provided less than complete answers. For instance, IEU-Ohio requested DP&L “[i]dentify any documents that describe or discuss the contribution to net income, earnings per share or margin associated with each of DP&L's business segments”¹⁷ DP&L objected claiming that “business segments” was undefined and subject to varying interpretations; and then cited to the total company numbers referenced in the testimony of DP&L witnesses Jackson and Chambers. Therefore, in the matter of efficiency, fairness, because the standard filing requirements and Section 4928.143(C)(1), Revised Code, place the burden upon DP&L to produce such information, and because Section 4928.17, Revised Code, and the corporate separation rules require DP&L to keep the information separated by business unit, the Commission should grant Joint Movants’ Motion. Specifically, the Commission should direct DP&L to file its pro forma financial information on a segregated generation/transmission/distribution basis and should direct DP&L to include the uniform system of accounts information applicable to each business function.

III. Conclusion

In summary, the Joint Movants have identified multiple areas where DP&L has failed to comply with the standard filing requirements. The Commission’s rules place a burden on DP&L to present accurate and complete information in its Application to allow the Commission and parties a meaningful opportunity to review DP&L’s proposal. Additionally, the Ohio Revised Code places a burden upon DP&L to demonstrate that its

¹⁷ Objections and Responses of the Dayton Power and Light Company to Industrial Energy Users-Ohio’s Interrogatories, Requests for Production of Documents, and Requests for Admissions upon Dayton Power and Light Company ESP First Set, October 23, 2012 at 26 (Nov. 8, 2012).

ESP is more favorable than an MRO. By filing an admittedly non-compliant Application, DP&L has effectively attempted to move its burden onto the Commission, Staff, and intervening parties. Although DP&L claims that deficiencies can be addressed through discovery, DP&L's assertion would undermine the reasons for standard filing requirements and would unfairly shift DP&L's statutory burden to the Commission, Staff, and intervening parties. Finally, if DP&L's responses to IEU-Ohio's first set of discovery are any indication of what parties can expect to receive through the discovery process, discovery will not alleviate the deficiencies contained in DP&L's Application and Supplement.

Accordingly, the Commission should grant Joint Movants' Motion and direct DP&L to comply with the standard filing requirements, including, but not limited to, the areas raised herein, and should direct DP&L to do so in a timely fashion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Joint Movants' Amended Reply to the Dayton Power and Light Company's Memorandum in Opposition to 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* was served upon the following parties of record this 13th day of November 2012, via electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

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