

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

|   |                                 |                         |
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| In the Matter of the Application of The<br>AES Corporation, Dolphin Sub, Inc.,<br>DPL Inc. and The Dayton Power and<br>Light Company for Consent and<br>Approval for a Change of Control of<br>The Dayton Power and Light<br>Company. | )<br>)<br>)<br>)<br>)<br>)<br>) | Case No. 11-3002-EL-MER |
| In the Matter of the Application of The<br>Dayton Power and Light Company for<br>Approval of its Electric Security Plan.  | )<br>)<br>)                     | Case No. 08-1094-EL-SSO |
| In the Matter of the Application of the<br>Dayton Power and Light Company for<br>Approval of Revised Tariffs.   | )<br>)<br>)                     | Case No. 08-1095-EL-SSO |
| In the Matter of the Application of The<br>Dayton Power and Light Company for<br>Approval of Certain Accounting<br>Authority Pursuant to Ohio Rev. Code<br>§4905.13.  | )<br>)<br>)<br>)<br>)           | Case No. 08-1096-EL-SSO |
| In the Matter of the Application of The<br>Dayton Power and Light Company for<br>Approval of its Amended Corporate<br>Separation Plan.  | )<br>)<br>)<br>)                | Case No. 08-1097-EL-SSO |
| In the Matter of the Application of The<br>Dayton Power and Light Company for<br>Approval of its Market Rate Offer.   | )<br>)<br>)                     | Case No. 12-426-EL-SSO  |
| In the Matter of the Application of The<br>Dayton Power and Light Company for<br>Approval of Revised Tariffs.   | )<br>)<br>)                     | Case No. 12-427-EL-ATA  |
| In the Matter of the Application of The<br>Dayton Power and Light Company for<br>Approval of Certain Accounting<br>Authority.   | )<br>)<br>)<br>)                | Case No. 12-428-EL-AAM  |

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

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

ENTRY

The Commission finds:

- (1) The Dayton Power and Light Company (DP&L) is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) On March 30, 2012, DP&L filed an application for a standard service offer (SSO), pursuant to Section 4928.141, Revised Code. The application was for a market rate offer in accordance with Section 4928.142, Revised Code. On September 7, 2012, DP&L withdrew its application for a market rate offer. On October 5, 2012, as amended on December 12, 2012, DP&L filed an application for an electric security plan (ESP) pursuant to Section 4928.143, Revised Code. Additionally, DP&L filed accompanying applications for approval of revised tariffs, for approval of certain accounting authority, for waiver of certain Commission rules, and to establish tariff riders.
- (3) On September 26, 2012, Intervenors filed a joint motion and memorandum in support seeking enforcement of approved settlement agreements and orders issued by the Public Utilities Commission of Ohio. The motion and memorandum requested the Commission to direct DP&L to refile its tariffs from its previously approved ESP without the Rate Stabilization Charge (RSC) effective for service rendered on or after January 1, 2013. On October 11, 2012, DP&L filed a memorandum contra to the motion arguing that eliminating the RSC without considering whether the resulting rates are just and reasonable would be engaging in single issue ratemaking. DP&L argues that Ohio law and

the terms of the current ESP both support continuing existing rates until a new standard service offer is authorized. On October 18, 2012, Intervenors filed a reply to DP&L's memorandum contra arguing that Ohio law supports continuing the existing ESP but that the Commission should determine if the non-bypassable status of the RSC is a part of the existing ESP that may continue into 2013. Intervenors also argues that both the plain language and the intent of the existing ESP support allowing the existing ESP to continue into 2013 without the RSC.

- (4) On November 7, 2012, DP&L filed a motion to continue its current rates, with the RSC, until the Commission issues an order regarding the ESP application. On November 23, 2012, Intervenors filed a memorandum contra to DP&L's motion to continue current rates arguing, much like in the motion seeking enforcement of approved settlement agreements, that the RSC is separate from the ESP and should end on December 31, 2012. No reply to the memorandum contra was filed.
- (5) Section 4928.141, Revised Code, provides that the rate plan of an electric distribution utility shall continue until a standard service offer is first authorized under Section 4928.142 or Section 4928.143, Revised Code. Similarly, Section 4928.143(C)(2)(b), Revised Code, directs that if a utility terminates an application for an ESP, the Commission will issue an order to continue the provisions, terms, and conditions of the utility's most recent standard service offer, along with any expected increases or decreases in fuel costs, until a subsequent offer is authorized. On September 7, 2012, DP&L withdrew its application for a market rate offer and subsequently, on October 5, 2012, filed an application for an ESP. On November 14, 2012, the attorney examiner issued an entry setting a procedural schedule extending this case into year 2013. The effective date of DP&L's current ESP, as well as the RSC, was to end on December 31, 2012. While parties agree that DP&L's current ESP should continue until a subsequent offer is authorized, parties disagree on whether the RSC should be considered as one of

the provisions, terms, or conditions of the ESP and continue with it into 2013.

Although the General Assembly has not provided specific guidance in the event that an electric distribution utility were to terminate an MRO and file a new ESP, as is the case here, the Commission finds that it would be consistent with both Section 4928.141 and Section 4928.143(C)(2)(b), Revised Code, to order that the terms and conditions of the current ESP should continue until a subsequent offer is authorized.

Intervenors reference Case No. 08-935-EL-SSO, *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, and argue that ordering DP&L to cease collecting the RSC would be consistent with Commission precedent. However, this case is inapplicable here because the RSC is a provider of last resort (POLR) charge and not a transition charge like the charge in Case No. 08-935-EL-SSO.

On June 24, 2008, the Commission issued an Opinion and Order in Case No. 08-1094-EL-SSO, *In the Matter of the Application of the Dayton Power and Light Company for Approval of its Electric Security Plan, et. al.*, adopting the stipulation and recommendation of the parties to the case to establish an ESP. The Commission finds that the provisions, terms, and conditions of the ESP include the RSC. As one of the provisions, terms, or conditions of the current ESP, the RSC should continue with the ESP until a subsequent standard service offer is authorized. For the reasons stated herein, the Commission finds that Intervenors' motion seeking enforcement of approved settlement agreements is denied and DP&L's motion to continue its rates, including the RSC, is reasonable and should be granted.

- (6) On November 8, 2012, DP&L filed a supplement to its ESP application, which included requests for waivers. In the first waiver request DP&L seeks a waiver of the requirement to include the information set forth in the schedules in the Appendix to Section 4901:1-36-03, O.A.C., because they

require historical data that does not exist for the proposed rider TCRR-N. On November 27, 2012, Intervenors filed a memorandum contra to DP&L's request for waivers. However, the memorandum contra addressed only the second waiver request and not the request for a waiver of the requirement to include the information in the schedules in the Appendix to Section 4901:1-36-03, O.A.C. The Commission finds that the request for waiver of the requirement to include the information in the schedules in the Appendix to Section 4901:1-36-03, O.A.C., is reasonable and should be granted.

- (7) In the second waiver request DP&L seeks a waiver of Rule 4901:1-36-04(B), O.A.C., which requires that a transmission cost recovery rider be avoidable by all customers who choose alternative generation suppliers. On November 21, 2012, Intervenors filed a memorandum contra to DP&L's requests for waivers addressing only this second waiver request for waiver of Rule 4901:1-36-04(B), O.A.C. Intervenors argue that DP&L did not demonstrate good cause for the waiver and that no waiver should be granted until after the evidentiary hearing. On November 27, 2012, DP&L filed a reply to Intervenors' memorandum contra, arguing that the memorandum contra was procedurally in error because DP&L's request for waivers was not in the form of a motion but in the form of a supplement to its ESP application. DP&L argues that the Commission should consider the TCRR-N as a term of the ESP application as a whole and withhold a final decision until formal discovery has been completed. The Commission finds that the argument made by both DP&L and Intervenors that the waiver request should not be considered until after the evidentiary hearing holds merit and that the non-bypassable TCRR-N is one of the provisions, terms, or conditions of the proposed ESP; accordingly, the Commission will determine whether proposed rider TCRR-N is bypassable when it considers the proposed ESP as a whole.

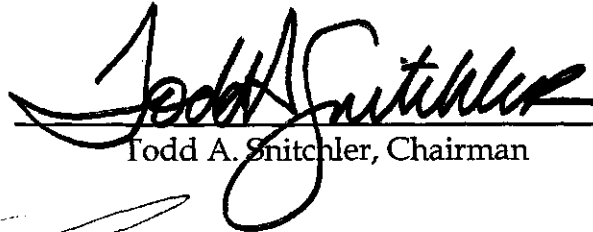
It is, therefore,

ORDERED, That Intervenors' motion seeking enforcement of approved settlement agreements is denied and DP&L's motion to continue its rates, including the rate stabilization charge, is granted in accordance with finding (5). It is, further,

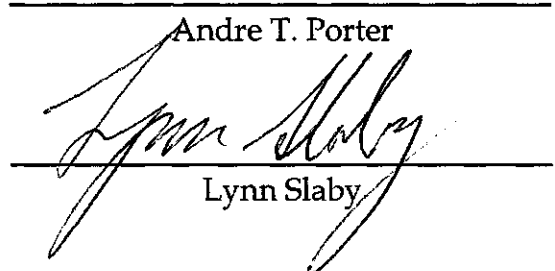
ORDERED, That DP&L's waiver request for a waiver of the requirement to include the information in the schedules in the Appendix to Section 4901:1-36-03, O.A.C., is reasonable and should be granted in accordance with finding (6). It is, further,

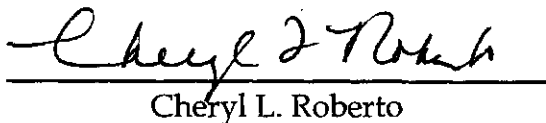
ORDERED, That a copy of this Entry be served upon all parties of record.

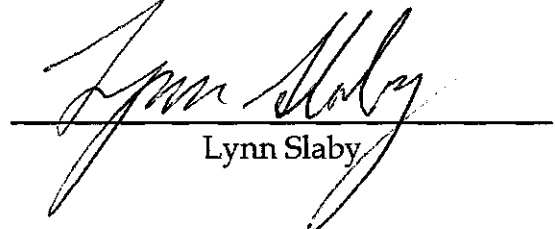
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Steven D. Lesser

  
Andre T. Porter

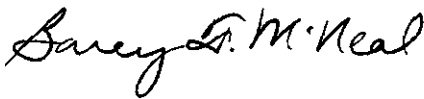
  
Cheryl L. Roberto

  
Lynn Slaby

BAM/sc

Entered in the Journal

**DEC 19 2012**



Barcy F. McNeal  
Secretary