

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan.	)	)	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

ENTRY

The attorney examiner 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, DP&L filed an application for an electric security plan in accordance with

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. On December 12, 2012, DP&L amended its application for an electric security plan.

- (3) On January 4, 2013, a joint motion was filed by over fifteen parties to vacate or amend the procedural schedule and to schedule a prehearing conference. The joint motion included a proposed procedural schedule. In light of the substantial revision filed on December 12, 2012, to DP&L's second application, the attorney examiner finds that the motion to vacate or amend the procedural schedule is reasonable and should be granted. The new procedural schedule will be as follows:
  - (a) January 29, 2013 - Local Public Hearings
  - (b) January 30, 2013 - Prehearing Conference
  - (c) February 25, 2013 - Intervenor Testimony Due
  - (d) March 4, 2013 - Staff Testimony Due
  - (e) March 11, 2013 - Hearing
- (4) On December 6, 2012, the attorney examiner scheduled the local public hearings in this matter for January 29, 2013. Included in the entry scheduling this matter for local public hearings was a notice to be published in a newspaper of general circulation in each county in DP&L's certified territory. Subsequently, on December 11, 2012, the Office of the Ohio Consumers' Counsel (OCC) filed an interlocutory appeal, request for certification to full Commission, and application for review arguing that the notice of the local public hearings failed to grant adequate notice to the public. On December 12, 2012, DP&L filed a memorandum in response to OCC's interlocutory appeal agreeing that adequate notice should be granted and suggesting that OCC withdraw its interlocutory appeal and confer with DP&L about the form of notice. On January 11, 2013, DP&L and OCC filed a joint motion for approval of revised public

notice. The memorandum in support of the joint motion states that if the revised notice is approved and DP&L is directed to publish the notice, then OCC agrees to withdraw its interlocutory appeal, request for certification to full commission, and application for review.

- (5) Although the attorney examiner finds below that certification of OCC's interlocutory appeal and application for review should be denied, the attorney examiner finds that the joint motion of DP&L and OCC is reasonable and should be granted. Therefore, the attorney examiner directs DP&L to file the revised public notice as modified by the attorney examiner. DP&L is directed to publish notice in the same newspapers of general circulation, and to the best of its ability in the same sections of those newspapers, as it published its initial public notice. The public notice to be published by DP&L should read as follows:

The Public Utilities Commission of Ohio (PUCO) has scheduled two local public hearings where the public may testify in Case No. 12-426-EL-SSO, *In the Matter of the Application of The Dayton Power and Light Company (DP&L) to Establish a Standard Service Offer in the Form of an Electric Security Plan*. The Commission is considering DP&L's application for approval of an Electric Security Plan (Plan) to supply customers with Standard Service Offer electric generation service, for the period of January 1, 2013 through December 31, 2017.

Major issues in the case include DP&L's proposals to collect from customers \$137.5 million each year for five years for its financial stability and to phase-in competitive auctions for setting the prices that its generation customers pay. DP&L estimates that, if the Commission adopts its proposals, rates would slightly increase (0%-3%) for residential customers using between 750 and 2,000 kilowatt hours of its electric generation service, during the first 17-month period of the proposed five-year Plan. Non-residential customers may also be affected by DP&L's proposals. Participants in the case may make their own proposals that could lower or increase DP&L's estimation of the impact on customers' bills.

Customers may testify at two local public hearings, without intervening as a party in the case. The first local public hearing will commence on Tuesday, January 29, 2013, at 1:00 p.m., at the Dayton Municipal Building, Council Chambers, 101 W. Third Street, Third & Ludlow, Second Floor, Dayton, Ohio 45401.

The second local public hearing will commence on Tuesday, January 29, 2013, at 6:00 p.m., at the Dayton Municipal Building, Council Chambers, 101 W. Third Street, Third & Ludlow, Second Floor, Dayton, Ohio 45401. Also, the evidentiary hearings regarding DP&L's Plan, which are scheduled to begin March 11, 2013, will be held at the Columbus offices of the Commission and will be open to the public.

Further information may be obtained by contacting the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio, 43215; viewing the Commission's web page at <http://www.puco.ohio.gov>, clicking on the link to the Docketing Information System and entering the case number, 12-426-EL-SSO; or by contacting the Commission's call center at 1-800-686-7826.

- (6) Pursuant to Rule 4901-1-15(B), Ohio Administrative Code, (O.A.C.) the attorney examiner finds that certification of OCC's interlocutory appeal and application for review should be denied.

Rule 4901-1-15, O.A.C., sets forth the substantive standards for interlocutory appeals. The rule provides that no party may take an interlocutory appeal from a ruling by an attorney examiner unless that ruling is one of four specific rulings enumerated in paragraph (A) of the rule or unless the appeal is certified to the Commission by the attorney examiner pursuant to paragraph (B) of the rule. Paragraph (B) of Rule 4901-1-15, O.A.C., specifies that an attorney examiner shall not certify an interlocutory appeal unless the attorney examiner finds that the appeal presents a new or novel question of law or policy and an immediate determination by the Commission is needed to prevent the likelihood of undue prejudice or expense to one or more of

the parties should the Commission ultimately reverse the ruling in question.

The attorney examiner notes that the December 6, 2012, entry ordering that notice be published does not fall within the four enumerated rulings specified by Rule 4901-1-15(A), O.A.C., from which interlocutory appeals may be taken without certification by the attorney examiner. Therefore, the attorney examiner finds that an interlocutory appeal of the December 6, 2012, entry may only be taken if the attorney examiner certifies the appeal pursuant to Rule 4901-1-15(B), O.A.C.

Further, the attorney examiner finds that OCC has not raised a “new or novel question of interpretation, law, or policy” or demonstrated that the December 6, 2012, entry “represents a departure from past precedent” within the ambit of Rule 4901:1-15(B), O.A.C. Ordering the publication of notice in a Commission proceeding is a routine matter with which the Commission and its examiners have had long experience and the notice ordered to be published was consistent with past Commission practice.

Moreover, the attorney examiner finds that an immediate determination of the Commission regarding the December 6, 2012, entry is *not* needed to prevent the likelihood of undue prejudice or expense to any of the parties to this proceeding.

- (7) On December 12, 2012, Federal Executive Agencies filed a motion to intervene and a memorandum in support. On December 17, 2012, People Working Cooperatively, Inc. filed a motion to intervene and a memorandum in support. No memorandum contra has been filed. The attorney examiner finds that the motions are reasonable and should be granted.
- (8) On January 3, 2013, a motion and memorandum was filed in support for Major Christopher C. Thompson to appear *pro hac vice* on behalf of Federal Executive Agencies. No memorandum contra was filed. The attorney examiner

finds that the motion for Christopher C. Thompson to appear *pro hac vice* is reasonable and should be granted.

ORDERED, That the procedural schedule in this case is vacated and a new procedural schedule adopted in accordance with finding (3). It is, further,

ORDERED, That the joint motion of DP&L and OCC for approval of revised public notice is granted in accordance with finding (5). It is, further,

ORDERED, That certification of OCC's interlocutory appeal and application for review is denied in accordance with finding (6). It is, further,

ORDERED, That the motions to intervene filed by Federal Executive Agencies and People Working Cooperatively, Inc., are granted in accordance with finding (7). It is, further,

ORDERED, That the motion to appear *pro hac vice* for Major Christopher C. Thompson is granted in accordance with finding (8). It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Bryce A. McKenney

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By: Bryce A. McKenney  
Attorney Examiner

JRJ/sc

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

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**in**

**Case No(s). 12-0426-EL-SSO, 12-0427-EL-ATA, 12-0428-EL-AAM, 12-0429-EL-WVR, 12-0672-EL-RDR**

Summary: Attorney Examiner Entry granting the motion to vacate the procedural schedule, setting a new procedural schedule, denying certification of the interlocutory appeal, and granting the motions to intervene; electronically filed by Debra Hight on behalf of Bryce A. McKenney, Attorney Examiner, Public Utilities Commission of Ohio.