

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The AES Corporation, Dolphin Sub, Inc., DPL Inc. and The Dayton Power and Light Company for Consent and Approval for a Change of Control of The Dayton Power and Light Company.)))))))	Case No. 11-3002-EL-MER
In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan.)))	Case No. 08-1094-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.)))	Case No. 08-1095-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code §4905.13.)))))	Case No. 08-1096-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of its Amended Corporate Separation Plan.))))	Case No. 08-1097-EL-SSO
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) Case No. 12-429-EL-WVE
Waiver of Certain Commission Rules.)

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

ENTRY ON REHEARING

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 (MRO). 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, the Office of the Ohio Consumers' Counsel (OCC), Industrial Energy Users-Ohio (IEU-Ohio), Ohio Partners for Affordable Energy, OMA Energy Group (OMAEG), Solarvision, The Kroger Company (Kroger), Ohio Energy Group (OEG), Honda of America Manufacturing, Inc. (Honda), (collectively 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 Intervenors 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 and on October 18, 2012, Intervenors filed their reply.

- (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 pending ESP application. On November 23, 2012, IEU-Ohio, OMAEG, Solarvision, Honda, Wal-Mart Stores East, LP, and Sam's East, Inc. (Wal-Mart) filed a memorandum contra to DP&L's motion to continue current rates. No reply to the memorandum contra was filed.
- (5) On December 19, 2012, the Commission denied Intervenors' motion seeking enforcement of approved settlement agreements and granted DP&L's motion to continue its rates until a subsequent ESP is approved by the Commission. The Commission held that the RSC is a term or provision of the ESP and should continue with the ESP. Therefore, the Commission determined that the RSC cannot be severed from the ESP and that the RSC should continue with the ESP until a subsequent SSO is authorized.
- (6) Pursuant to Section 4903.10, Revised Code, any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.
- (7) On January 18, 2013, OCC, IEU-Ohio, Ohio Partners for Affordable Energy, OMAEG, Solarvision, Kroger, OEG, Honda, and Wal-Mart (collectively Joint Movants), filed an application for rehearing arguing that allowing the RSC to continue into 2013 was in error and contravened a previously signed settlement agreement, that relying on Section 4928.143(C)(2)(b), Revised Code, to support the Commission's finding was in error, and that there is no evidence to support the RSC or the RSC as a provider of last resort (POLR) charge.
- (8) On January 28, 2013, DP&L filed a memorandum in opposition to the Joint Movants' application for rehearing arguing that Ohio law mandates that DP&L's existing ESP continue until a new ESP is approved, that DP&L's financial integrity would be jeopardized if the Commission were to eliminate the RSC, that the stipulation in Case No. 08-1094-EL-SSO does not prohibit the RSC from continuing after December 31, 2012, that the RSC is supported in Case Nos. 05-0276-EL-AIR and 08-1094-EL-SSO,

that DP&L has acted in good faith, and that Ohio law prohibits the Commission from altering DP&L's rates without a hearing.

- (9) Joint Movants first argue that allowing the RSC to continue into 2013 contravenes the settlement agreement signed by the parties in Case No. 08-1094-EL-SSO, which continued the RSC with the ESP. Joint Movants argue that in Case No. 08-1094-EL-SSO, the Commission approved a settlement between the parties. The settlement contained a provision providing for the RSC to continue as a nonbypassable charge through December 31, 2012. Therefore, Joint Movants argue, the RSC should have ended on December 31, 2012.

DP&L argues that Case No. 08-1094-EL-SSO established an ESP through December 31, 2012, and that the RSC is a term of the ESP that should continue with the ESP. According to DP&L, Sections 4928.141(A) and 4928.143(C)(2)(b), Revised Code, mandate that DP&L's current rates continue until a new ESP is approved by the Commission. Therefore, if the RSC is a term of the ESP, then it must continue until a subsequent ESP is authorized.

Furthermore, DP&L argues that Joint Movants' reading of the settlement in Case No. 08-1094-EL-SSO is flawed. DP&L points out that the settlement states that DP&L's current rate plan should continue through December 31, 2012, and it states that the RSC will continue as a nonbypassable charge through December 31, 2012. DP&L claims that, to allow DP&L's current rate plan to continue beyond December 31, 2012, but not to allow the RSC to continue beyond December 31, 2012, would be inconsistent and would violate the basic tenet of interpretation that words and phrases used more than once in the same document have the same meaning throughout.

DP&L further argues that it has acted in good faith during the course of this proceeding and that this proceeding is continuing into 2013 despite its good faith actions. DP&L also argues that changing the RSC would be a change to DP&L's rates and DP&L would be entitled to a full evidentiary hearing before the change.

- (10) The Commission finds that allowing the ESP to continue, with the RSC, does not contravene the settlement agreement signed

by the parties in Case No. 08-1094-EL-SSO. The settlement agreement states that the ESP is to continue through December 31, 2012, and that the RSC will continue as a nonbypassable charge through December 31, 2012. There needs to be an SSO in place after the termination date of the ESP. The Commission cannot arbitrarily choose some of the various provisions of the ESP to continue after the termination date of the ESP and choose other provisions of the ESP not to continue.

Furthermore, Joint Movants argue that they intended for the RSC to end on December 31, 2012. However, Joint Movants have not demonstrated any evidence of this intention. The Commission finds that this argument is an unpersuasive and an unsupported *ex post facto* proclamation of the parties' intentions at the time of signing the stipulation. Therefore, this ground for rehearing should be denied.

- (11) Joint Movants next argue that the Commission erred in relying on Section 4928.143(C)(2)(b), Revised Code, to support its decision to continue the RSC. Joint Movants argue that this provision of law may only be utilized if the Commission disapproves or approves an application with modification. Here, the application was neither disapproved nor approved with modification. The application was withdrawn by DP&L under its own initiative and, therefore, reliance on Section 4928.143(C)(2)(b), Revised Code, was in error. Because the MRO application was withdrawn by DP&L, Joint Movants argue that Section 4928.143(C)(2), Revised Code, is inapplicable.

DP&L argues that Sections 4928.143(C)(2)(b) and 4928.141(A), Revised Code, establish that the terms of DP&L's ESP, including the RSC, continue until a new ESP is approved. DP&L further points out that Joint Movants have conceded on multiple occasions that the ESP must continue until a new ESP is approved.

- (12) The Commission finds that there is no provision of the statute which applies to this particular situation, where the company has proposed an MRO, withdrawn the proposal, and proposed an ESP, which is still pending before the Commission at the time of the termination of the previous ESP. However,

allowing the ESP to continue, with the RSC, is consistent with Sections 4928.143(C)(2)(b) and 4928.141(A), Revised Code, which apply to similar situations where an approved ESP is not in place at the end of the previous rate plan. The Commission notes that these sections direct that the ESP should continue until a new ESP or MRO is authorized by the Commission. Joint Movants argue that Section 4928.143(C)(2)(b), Revised Code, which states that the provisions, terms, and conditions of the most recent SSO continue until a subsequent offer is authorized, does not apply here, yet Joint Movants then concede that the ESP should continue until a subsequent offer is authorized. Joint Movants have taken an inconsistent position on this issue and the Commission finds that the Joint Movants' arguments are unpersuasive. Furthermore, the Commission did not find that Section 4928.143(C)(2)(b), Revised Code, is directly applicable, but that the Commission's finding would be consistent with the provisions of that section. The Commission finds that its determination is consistent with the intent of the General Assembly and the procedures to be followed under the similar circumstance of an application being terminated after being modified and approved by the Commission. Therefore, the Commission finds that the RSC is a term of the ESP and will continue with the ESP until an SSO is authorized and that rehearing should be denied on this issue.

- (13) Joint Movants next argue that the RSC has not been adequately supported and that there is no support for the RSC as a POLR charge. Joint Movants argue that the Commission erred in finding that the RSC is a POLR charge and that this finding should have no significance to the Commission's finding. Joint Movants argue that the Commission erred in authorizing a POLR charge, which is the RSC, without making findings of fact, based on an evidentiary record necessary to authorize a POLR charge. Joint Movants argue that DP&L did not present an evidentiary basis to support the continuation of the RSC charge and the Commission put forth no basis to justify its claim that the RSC is a POLR charge.

DP&L argues that it does not need to file evidentiary support for the RSC because it should continue as a term of the ESP. DP&L then argues that the RSC has been supported by evidence, specifically in Case No. 05-276-EL-AIR and that the RSC was, thereafter, stipulated to by the parties to the case,

which also happened to be signed by two of the Joint Movants in the present case. The RSC was, thereafter, continued by a stipulation in Case No. 08-1094-EL-SSO, and that stipulation was signed by even more of the Joint Movants to the present case.

- (14) The Commission finds that the RSC has been adequately supported. The Commission notes that we determined that the RSC was adequately supported in Case No. 05-276-EL-AIR. On December 28, 2005, the Commission issued an Opinion and Order in Case No. 05-276-EL-AIR adopting the stipulation of the parties, as amended, finding that the RSC was fair, reasonable, and supported by the record. On June 24, 2009, the Commission issued an Opinion and Order in Case No. 08-1094-EL-SSO adopting the stipulation of the parties to continue the RSC, based upon the evidence in the record of that proceeding. Therefore, the Commission finds that the RSC has been adequately supported and, therefore, this request for rehearing should be denied.

It is, therefore,

ORDERED, That the application for rehearing is denied in accordance with the findings set forth above. It is, further,

ORDERED, That the RSC continue as a term of the ESP until an SSO is authorized by the Commission. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

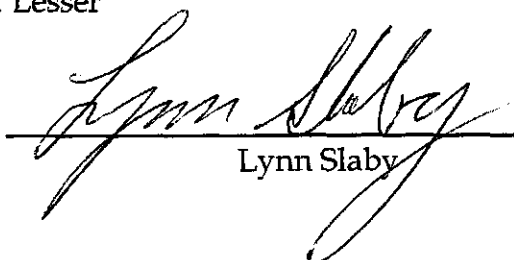


Todd A. Snitchler, Chairman



Steven D. Lesser

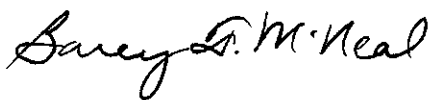
Andre T. Porter



Lynn Slaby

BAM/sc

Entered in the Journal
FEB 19 2013



Barcy F. McNeal
Secretary