BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of The 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

POST HEARING BRIEF OF THE CITY OF DAYTON, OHIO

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I. INTRODUCTION

The City of Dayton, Ohio ("City" or "Dayton"), on behalf of itself and its residential and commercial citizens, hereby submits this Brief that identifies and discusses the following issues that the Public Utilities Commission of Ohio ("Commission") should consider regarding the Dayton Power and Light Company's ("DP&L") proposed Electric Security Plan ("ESP"). Dayton has long been serviced by and is reliant upon the services of DP&L, and currently uses DP&L to provide electric service to its municipally owned buildings and facilities as well as municipal traffic signals and a large number of City-owned street lights. For example, the City spent approximately $10,238,802 and $11,533,561 in 2010 and 2011 respectively on electric service costs, which does not account for additional costs incurred by the City in its efforts to retrofit the City's street lights with LED lighting.

The history of DP&L, its growth and development is deeply intertwined with that of Dayton's. Dayton and Dayton's citizens rely on DP&L to provide quality electric service at reasonable rates, and Dayton along with many of Dayton's citizens rely on DP&L for much more than just electric service. DP&L employs a significant number of Dayton citizens, is a large part of Dayton's tax base and is integral to Dayton's ability to attract and retain commercial and residential citizens. DP&L has also been a philanthropic and economic development partner of Dayton's, and has assisted Dayton in development endeavors for a century.

DP&L's development efforts with the City have increased significantly since 2009 when DP&L began contributing to the City's economic development initiatives as part of a prior SSO. This assistance, coupled with the declining economic climate that continues to exist in the Dayton area, has resulted in a mutually beneficial partnership between the City and DP&L that has become vital to the City's continued development and renewal.

For these reasons, the City has a very significant interest in the proposed ESP and continuing its present relationship and partnership with DP&L.

II. STATEMENT OF THE CASE

DP&L originally filed an application for a standard service offer (SSO) in March 2012. The application was for a market rate offer in accordance with Section 4928.142, Revised Code. DP&L subsequently withdrew its application for a market rate offer in September 2012 and filed the present application for an electric security plan ("ESP Application") October 5, 2012. According to DP&L, the ESP Application is designed to balance DP&L's need to maintain its financial integrity with customers' desire to receive standard service offer (SSO) rates that are set through a competitive bidding process.

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 the current ESP Application reflecting corrections to certain errors that DP&L discovered in the initial filing.

Dayton intervened as a full party of record in the proceedings due to the potential impact the proposed ESP would have on Dayton as a consumer. The case proceeded through numerous settlement negotiations and conferences before settlement discussions eventually broke down. As a result, the case proceeded to hearing on March 18, 2013, and continued through April 3, 2013. Upon conclusion, the Attorney Examiners ordered that post-hearing briefs filed by May 20, 2013. It is pursuant to this Order that the City hereby submits the following issues.

III. <u>STATEMENT OF FACTS</u>

DP&L is seeking the Commission's approval of an ESP with a term from January 1, 2013 through December 31, 2017 ("ESP Term"). The principal terms of DP&L's proposed ESP seek to establish SSO rates for the period beginning January 1, 2013 through May 31, 2016 that will consist of a blend of DP&L's current ESP generation rates and rates resulting from a proposed competitive bidding process. By June 1, 2016, the ESP Application proposes that 100% of the SSO rates will result from this competitive bidding process.

Additionally, the proposed ESP seeks the approval of a non-bypassable Service Stability Rider (SSR) of $120 million annually through the ESP Term and the establishment of a placeholder for a non-bypassable Alternative Energy Rider (AER) for future recovery of costs for the Yankee Solar Generation Facility.

Approval of the proposed ESP will result in electricity price and service modifications that will impact Dayton's budget and its citizens. Dayton believes itself to be the second largest single consumer of electric service in DP&L's service territory, and as such is an extremely large user of electric service, spending more than $11 million dollars on electric service in recent years. Accordingly, any change in DP&L's current rate or service structure has great potential to severely impact the City and its residents.

Dayton has similarly intervened in previous DP&L cases before the Commission. *See* Case Nos. 08-1094-EL-SSO ("SSO Case"), 11-3002-EL-MER ("Merger Case"). Both the SSO Case and the Merger Case resulted in settlements that established a partnership between the City and DP&L whereby DP&L has provided annual financial contributions to the City since 2009 to assist the City in establishing, promoting, and maintaining an energy efficiency audit and implementation program and to assist in the City's economic development initiatives. These contributions will continue through December 31, 2014.

This assistance has made it possible for Dayton to conduct and maintain energy efficiency audits and implementation, as well as continuing to pursue economic development initiatives despite the economic decline that continues to plague the Dayton region.

IV. FACTUAL AND LEGAL ARGUMENTS

Dayton does not oppose Commission approval of the proposed ESP. Still, while the City wants to ensure the viability of DP&L, the City does possess concerns regarding its population and economic development that could be significantly impacted by the proposed ESP. Dayton's economic development efforts are directly related to increasing demand for electric services within the region, and DP&L has been very supportive of Dayton's economic development initiatives during this most recent period of decline. However, Dayton will be unable to expand its current level of energy efficiency implementation and economic development without the continued assistance of DP&L. Furthermore, Dayton has concerns as to whether the proposed ESP is consistent with Ohio's Electric Service Policy under R.C. 4928.02. To this end, Dayton respectfully requests that the Commission will consider these and the following issues to ensure that DP&L remains a committed partner to Dayton and its citizens throughout this ESP Term.

A. DP&L's Continued Support of Dayton's Energy Efficiency and Economic Development Initiatives Must Continue to Offset the Impact that Increasing Rates will have on Dayton and its Residents.

One of the City's chief concerns regarding the proposed ESP is the impact the increased rates, new riders, and service modifications will have on the City and its residential and commercial residents.

1. *Dayton Flight – Population & Economic Decline*

The Dayton Metropolitan Statistical Area (MSA), which includes Montgomery, Greene, Miami and Clark counties, has suffered a population decline over the past several decades that continues to this day. Montgomery County's population fell from 608,413 in 1970 to 559,062 in 2000. According to the 2010 Census, Montgomery County's population has fallen an additional 23,909 to 535,153. The City itself felt the hardest impact of this population decline having lost over 120,000 citizens since 1960.

This dramatic decline in the number of Dayton residents has led to significantly diminished tax revenues for the City. Since 2008, the City of Dayton's income tax revenues fell 9.1% and 2.3% in 2009 and 2010 respectively before experiencing a modest increase of 1.6% in 2011 and 1.9% in 2012. Although the drastic decline appears to have slightly stabilized in recent years, the City's income tax revenue remains more than $12 million less than it was in 2006. This has contributed to the current financial crisis the City is experiencing.

Like the population decline, the Dayton region lost approximately 57,000 jobs, or about 13.1 percent of the employment base between November 2000 and 2012 including the loss of approximately 38,600, or 48.9 percent, of the Dayton MSA's manufacturing jobs. Employment within the City has also continued to decline, going from a peak of 3,148 jobs in 1976 to less than 2,400 jobs in 2010 due to budget constraints.

Understanding the foregoing decline in population and employment opportunities in and around the City, it is not surprising that poverty rate in Dayton has continued to increase as well. In fact, the poverty rate in Dayton has increased from 23 percent (%) in 2000 to 32.5 percent (%) in 2010. Dayton represents approximately 26.4 percent (%) of Montgomery County's population, yet its residents represent more than 50 percent (%) of the County's impoverished at-risk citizens. The City's median household income has increased from $25,928 in 2005 to $28,843 in 2010; however, this still falls well below the median household income for the United States at $52,762. Nearly 42,000 Dayton residents live below the state and federal poverty levels, and this represents more than half of all Montgomery County citizens living below the poverty level. As a result, this puts a very significant portion of Dayton's residents "at-risk," and any increase in electricity rates would create a severe burden upon Dayton's at-risk population.

2. *Challenges to Economic Development*

Given the aforementioned decline in the Dayton area, the need to create and maintain economic development initiatives in the City has increased significantly. One of the City's main challenges stems from its lack of available space, both land and buildings, for companies to locate or expand into. Dayton primarily competes against sprawling suburban locations that either have easily-developable, inexpensive land to build upon or new, or relatively new, buildings that were built speculatively, all of which can offer much lower costs to the prospective purchaser as compared to renovation of an existing building or developing a brownfield site. As a result, Dayton must be able to offer cost savings in other ways to remain competitive because most companies' final decisions are based primarily on cost or, more accurately, available cost savings.

The cost for electric service is a large component of a company's total costs that can serve as a catalyst for attracting businesses or a barrier to further development. Dayton already faces many obstacles to its economic development efforts, including crime, a high percentage of vacant structures, insufficient parking, high poverty rate, and competition from nearby suburban areas for new businesses. Dayton's national image, as portrayed by the media, is one of urban flight and decay. For example, Forbes magazine previously listed Dayton as one of its "Fastest

Dying Cities." If businesses located in the City have to pay even more for electric service than the current rates, Dayton will be an even less desirable place for businesses.

3. *Dayton & DP&L – A Reciprocal Relationship*

As indicated in the Testimony of Dayton witness Shelley Dickstein, DP&L has a history of working cooperatively with Dayton in studying electric usage characteristics of buildings and facilities in Dayton and by making recommendations for ways Dayton can further control demand and energy usage through multiple avenues, such as energy efficiency. DP&L also has made annual financial contributions to the City since 2009 to assist the City in establishing, promoting, and maintaining an energy efficiency audit and implementation program, and for economic development purposes. *See* Case Nos. 08-1094-EL-SSO & 11-3002-EL-MER. As one of the largest consumers of electric service in DP&L's service territory and the host city for DP&L's operating headquarters, Dayton is positioned in an integral relationship with DP&L.

Because of this relationship, Dayton is and has been a very interested party in regards to DP&L's continued operations. This has been further illustrated by Dayton's participation in the Commission's proceedings in the SSO Case (Case No. 08-1094-EL-SSO) and Merger Case (Case No. 11-3002-EL-MER). In the SSO Case, Dayton intervened and eventually became a signatory party to a Stipulation that was approved by the Commission. This Stipulation, amongst other things, implemented an "avoidable alternative energy rider" and obligated DP&L to "establish a collaborative process to address energy efficiency and demand response programs." *See* Case No. 08-1094-EL-SSO, *Op. & Order*, p. 5 (June 24, 2009).

Consistent with the Stipulation and Commission's Order, DP&L has made annual financial contributions in the amount of $350,000 to Dayton from 2009 through 2012 to assist the City in its energy efficiency audit and implementation program. As stated above, this assistance has made it possible for Dayton to conduct and maintain energy efficiency audits and implementation despite the economic decline that still plagues the Dayton region. Without DP&L's assistance, Dayton would be unable to expand its current level of energy efficiency implementation.

Dayton also intervened in and subsequently became a signatory party to an approved Stipulation in the Merger Case. As a result of this Stipulation, DP&L, as well as its parent companies, agreed to protect the City's concerns by compensating the City for certain differences in payroll tax revenue, maintaining its operating headquarters in Dayton for at least five (5) years, and by making economic development payments to the City in the amount of $350,000 in 2013 and 2014. *See* Case No. 11-3002-EL-MER, *Finding and Order*, pg. 6-7 (Nov. 22, 2011). These economic development payments are integral to the City's ability to attract and retain businesses as well as the City's ability to offer alternative cost savings incentives. Moreover, DP&L also stands to gain from the City's economic development efforts, which are directly related to increasing demand for electric services within the Dayton area.

4. *DP&L's Proposed ESP*

As it relates to Dayton, the proposed ESP has the potential to increase electric service costs to the detriment of the City and its residents. For instance, the proposed ESP plans to institute a process by which DP&L will set its SSO rates through a competitive bidding process that is substantially similar to auctions previously approved by the Commission for First Energy and Duke Energy-Ohio. DP&L proposes to recover these newly incurred costs associated with the bidding process through a non-bypassable Reconciliation Rider (RR). These costs include auction costs, consultant fees, Commission consultant fees, audit costs, supplier default costs, and carrying costs. The RR will also include future costs incurred in the implementation of certain competitive retain enhancements.

In addition to the RR, the proposed ESP also seeks the establishment of the non-bypassable SSR and a placeholder for a future AER that is also non-bypassable. The SSR has been the subject of considerable attention throughout these proceedings. DP&L proposes the SSR to ensure its financial integrity because of an alleged decrease in DP&L's returns on equity during the new ESP Term, increases in customer switching, and the transition to the competitively bid process for providing generation necessary for the SSO.

If approved, these riders would continue to drive rates higher to the detriment of the City and its residents within the DP&L service territory. Such an increase in rates, without any offset or added benefit, would be an unreasonable burden added to Dayton's at-risk population, which includes approximately 30 percent of the City's residents. The at-risk population has already seen a significant drop in its median household income. Increased electricity rates would only create an additional burden for the at-risk residents of Dayton.

Moreover, an increase in electric service rates would serve to discourage economic development in Dayton. While DP&L has stated in the testimony of witness Philip Harrington that "the primary goal of this ESP is to balance the interests of other intervening parties" (Harrington Testimony, p. 3, lines 14-15) and that "the design of the ESP will have a positive influence on economic development initiatives within the State" (Harrington Testimony, p. 7, line 10) the proposed ESP fails to comport with this testimony. The City acknowledges that DP&L has consistently addressed the issue of economic development within the City in the past through its proceedings before the Commission, and submits that DP&L should again address the issue in the proposed ESP.

B. DP&L's Continued Support of Dayton's Energy Efficiency and Economic Development Initiatives is Consistent with and Supportive of the State Electric Services Policy Pursuant to R.C. 4928.02.

The State Electric Services Policy articulates a list of objectives that are to be followed throughout the State of Ohio. Specifically, R.C. 4928.02 makes it a policy of the State of Ohio to do each of the following:

> (L) Protect *at-risk populations*, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource;
>
> (M) Encourage the education of small business owners in this state regarding the use of, and *encourage the use of, energy efficiency programs* and alternative energy resources in their businesses;
>
> (N) Facilitate the state's *effectiveness in the global economy*. (emphasis added).

Without DP&L's continued support of the City's energy efficiency and economic developments initiatives, it is doubtful whether the proposed ESP comports with the policy set forth in R.C. 4928.02.

DP&L witness Philip R. Herrington testified that DP&L's proposed ESP will protect at-risk populations by ensuring that they will receive the best available market price. DP&L Exhibit 8 at 7. However, under the proposed ESP, low-income customers will receive the same supposed "best available market price" that all other customers will receive. Moreover, DP&L does not address how the increases in rates that will result from the establishment of the SSR, RR, and AER protects at-risk populations either. This is of particular concern to Dayton given Dayton's high percentage of at-risk residents. Accordingly, it is questionable how the proposed ESP comports with R.C. 4928.02(L).

Additionally, DP&L has been supporting Dayton's energy efficiency audit and implementation program since 2009. Under the proposed ESP, the funding that DP&L has been providing to the City for energy efficiency purposes on an annual basis will cease. There is no proposed alternative to this funding either. Dayton witness Shelley Dickstein stated in her testimony that DP&L could assist Dayton in maintaining its energy efficiency program by assisting in the conversion of the City's street lights to LED street lights. (Dickstein Testimony, p. 7, lines 20-22). Most of Dayton's street lights consist of high-pressure sodium lights, especially in the City's residential areas. Assistance in retrofitting the City's nearly 4,500 City-owned street lights would allow for increased energy efficiency that could help alleviate the burden and offset any increase in electric rates would have on the City and especially its at-risk residents. However, the proposed ESP makes no provision for such a continuation of support for the City's energy efficiency program. Accordingly, it is difficult to see how the proposed ESP encourages the use of energy efficiency programs in Dayton, one of the largest electric service users in DP&L's Service Territory.

Finally, as the preceding section demonstrates, Dayton's challenges to economic growth and development are significant. To facilitate the State's effectiveness in the global economy pursuant to R.C. 4928.02(N), it is important that DP&L continue to invest economic development resources to support and attract new investment and improve job growth in Ohio. As the chief population center and economic engine in DP&L's Service Territory, Dayton serves as the territory's catalyst for economic development and job retention. A strong Dayton supports a strong service territory, which supports a stronger DP&L. DP&L has been a committed partner to Dayton in the past in these regards, but does not provide for such ongoing support in the proposed ESP.

Given the extenuating economic conditions and circumstances that continue to exist in Dayton, it is more imperative now for DP&L to continue to support the City's economic development initiatives than ever before. Such continuing support would allow Dayton to continue its current efforts to attract new businesses and retain existing business. This would improve job growth and help facilitate the State's effectiveness in the global economy. Without DP&L's support, however, it is again questionable whether the proposed ESP would comply with R.C. 4928.02.

The foregoing is analogous to the circumstances present in Case No. 11-346-EL-SSO in which the Commission ordered that AEP-Ohio reinstate the Ohio Growth Fund in light of extenuating economic circumstances. *See* Case No. 11-346-EL-SSO, *Op. & Order*, p. 67. The Ohio Growth Fund helps to create private sector economic development resources to support and work in conjunction with other resources to attract new investment and improve job growth in Ohio. *Id.*

V. <u>CONCLUSION</u>

Based on the foregoing, the Commission should ensure that the proposed ESP be modified to comply with R.C. 4928.02, and that DP&L remains a committed partner to the City and its residents throughout this ESP Term. The proposed ESP purports to discontinue a mutually beneficial partnership between the City and DP&L that is vital to the long-term success of the City and DP&L. Job growth and retention in Dayton increases demand for electric service and simultaneously attracts residents and improves quality of life. The Commission should order DP&L to continue contributing economic support payments to Dayton for the continuance and maintenance of the City's energy efficiency and economic development programs.

The proposed ESP also fails to protect the at-risk population in the DP&L service territory. More than 50 percent (%) of the County's impoverished at-risk citizens call Dayton home, and the proposed ESP, if approved, will have a far reaching impact on these Citizens. The Commission should recognize this fact and modify the proposed ESP to assure its compliance with Ohio law.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Brief on Behalf of the City of Dayton, Ohio was served upon the parties of record listed below this 20th day of May, 2013 first class mail and via electronic mail.

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