

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION)
OF THE DAYTON POWER AND LIGHT)
COMPANY FOR AUTHORITY TO ISSUE)
AND SELL AN AMOUNT NOT TO)
EXCEED \$490 MILLION OF FIRST)
MORTGAGE BONDS, DEBENTURES,)
NOTES, OR OTHER EVIDENCES OF)
INDEBTEDNESS OR UNSECURED)
NOTES.)

Case No. 13-0893-EL-AIS

MEMORANDUM OF APPLICANT, THE DAYTON POWER AND LIGHT COMPANY

OPPOSING APPLICATION FOR REHEARING BY

THE OHIO CONSUMERS' COUNSEL

The Applicant, The Dayton Power and Light Company ("DP&L"), respectfully urges the Public Utilities Commission of Ohio (the "Commission") to deny the Application for Rehearing filed by the Ohio Consumers' Counsel ("OCC"), because as explained more fully below, the OCC has failed to demonstrate that the Commission's Order is unjust or unreasonable.

In order to address OCC's arguments, DP&L has divided them into two groups. Group A includes the procedural arguments posed by the OCC in Argument III(A) (OCC alleges the Commission failed to comply with R.C. 4903.09) and Argument III(D) (OCC alleges the Commission failed to find that DP&L's Application should be considered under R.C. 4905.40(A)(1) and 4905.40(F)). Group B includes OCC's "substantive" arguments including Argument III(B) (OCC argues the reasonableness of the repayment/redemption costs to be incurred by this financing; Argument III(C) (OCC

argues that the Commission should address the reasonableness of projected financing fees now versus in the context of a future rate proceeding); and Argument III(E) (OCC argues that the Order permitting DP&L to issue long term debt for up to 30 years is unnecessary and unreasonable. DP&L will address the Group A (OCC's procedural) arguments first.

In OCC's Argument III(A), the OCC alleges the Commission violated R.C. 4903.09 by failing to provide reasons and findings of fact to support its Order in this case. R.C. 4903.09 states, in pertinent part, that in contested cases "...the commission shall file, with the records of such cases, findings and fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact." R.C. 4903.09. While there are numerous cases interpreting R.C. 4903.09, in MCI Telecommunications Corp. v. P.U.C., the Ohio Supreme Court stated that: "...to meet the requirements of R.C. 4903.09, the PUCO's order must show, in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the PUCO in reaching its conclusion." MCI Telecommunications Corp. v. P.U.C., 32 Ohio St. 3rd 306, 314 (1987). As detailed below, the Commission clearly met this standard.

In the Order under review, the Commission's first three words are, "The Commission finds." Thereafter the Commission recites the history of this proceeding including a description of the terms of the proposed bonds, the expected use of the proceeds of the bonds, the negotiation of terms of the bonds with one or more underwriters and that DP&L has stated that the bonds will be issued in accordance with DP&L's electric transition plan and DP&L's pending electric security plan, including DP&L's corporate separation plan. Subsequently, in paragraph 12 of the Order, the Commission found that the cost of issuance of the bonds was reasonable. It further

found that the aggregate principal amount of the bonds to be issued and the probable cost to DP&L as set forth in the Application were not unreasonable or unjust. This finding is corroborated in paragraph 13 of the Order, where the Commission references the content of DP&L's Application and stating that the new bonds are required by DP&L to meet its present and prospective obligation to provide utility service. The Commission made a series of findings and from its review of the Application, Exhibits and its review of the comments and concerns raised by OCC, the Commission found for DP&L.

OCC's argument that the Commission failed to comply with R.C. 4903.09 is without merit and accordingly, the Commission should deny OCC's Application for Rehearing.

OCC's second procedural argument is in Argument III(D), where the OCC alleges the Commission failed to expressly find that DP&L's Application was to be considered under R.C. 4905.40(A)(1) and 4905.40(F). In OCC's argument, it is confusing whether the OCC is alleging the Commission failed to properly review the Application on the sections of the state law recited above or whether the OCC believes the fault lies with DP&L for not specifically stating the statutory authorization for the Application. In either case, the OCC is incorrect.

Regarding DP&L's responsibility to identify the statutory authority by which it made the Application, OCC admits in a footnote in its Application for Rehearing that "DP&L merely admits that it filed its Application 'under the provisions of Sections 4905.40 and 4905.41.'" OCC Application for Rehearing, p. 8. Although not citing the subsection, it is clear that DP&L has adequately outlined the authority by which DP&L made this Application. In turn, in the Order the Commission properly addressed each of

the standards set forth in R.C. 4905.40(F). The first standard is that the Commission must decide is whether the new bonds are "...reasonably required by the utility to meet its present and prospective obligations to provide utility service." Paragraph 13 of the Commission's Order states that "Based on the information contained in the Application and the Exhibits attached thereto, the purposes to which the proceeds from the New Bonds shall be applied appear to be reasonably required by the Applicant to meet its present and prospective obligations to provide utility service..." Finding and Order, p.4. The Commission clearly addressed this standard in the Order.

The second standard under R.C. 4905.40(F) states in pertinent part that the Commission must address "Whether the amount of the issue and the probable cost of such...bonds...is just and reasonable." The Commission addressed this standard of care in Paragraph 12 of its Order when it states: "...the Commission finds that the aggregate principal amount of the New Bonds, and the probable cost to Applicant and other terms thereof, which are no less favorable than the parameters set forth in the Application, do not appear to be unjust or unreasonable." Finding and Order, p. 3. The Commission's finding on the size and cost of the new bonds satisfies this second standard.

The third standard under R.C. 4905.40(F) states in pertinent part that the Commission must determine "What effect, if any, the issuance of such...bonds...and the cost thereof will have upon the present and prospective revenue requirements of the utility." As with the previous two standards, the Commission also addressed this standard in its Order. In the Order, the Commission stated that "...the effect on Applicant's revenue requirements resulting from the issuance of the Securities can be

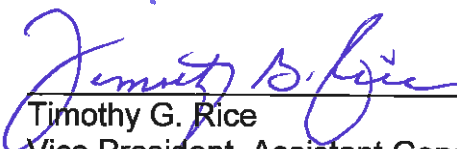
determined only in rate proceedings in which all factors affecting rates are taken into account according to law.” Finding and Order, p. 3-4.

In light of the Commission’s clear articulation of its finding and orders in compliance with R.C. 4905.40(1)(a) and 4905.40(F), and in light of DP&L’s proper reference in its Application to R.C. 4905.40 and 4905.41 as the statutory authority to make the Application, OCC’s Application for Rehearing should be denied.

Turning to OCC’s Group B arguments which include: Argument III(B) (OCC argues the reasonableness of the repayment/redemption costs to be incurred by this financing); Argument III(C) (OCC argues that the Commission should address the reasonableness of projected financing fees now versus in the context of a future rate proceeding); and Argument III(E) (OCC argues that the Order permitting DP&L to issue long term debt for up to 30 years is unnecessary and unreasonable.). For each of these arguments, DP&L’s response is the same. The Commission carefully reviewed DP&L’s Application, Exhibits and Supplements. The Commission thoroughly considered the motions filed within the case and the arguments of counsel. As set forth clearly in the Order, the Commission, in compliance with all statutory requirements (see *infra*), ruled that the cost of issuing the new bonds and the cost of redeeming the old bonds was reasonable. The Commission granted approval sought in the Application based on the terms and conditions set forth in the Application, including such matters as the term of the new bonds. OCC’s Group B arguments surrounding the cost of the financing and the term of the new bonds are meritless. The Commission should deny the OCC’s Application for Rehearing.

WHEREFORE, for the reasons cited herein, DP&L moves the Commission to deny OCC's Application for Rehearing

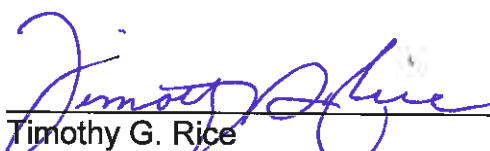
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum Opposing Application for Rehearing of Ohio Consumers' Counsel was served on the persons stated below by electronic transmission this 19th day of August, 2013.



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Case No(s). 13-0893-EL-AIS

Summary: Memorandum of the Applicant, The Dayton Power and Light Company opposing Application for Rehearing by the Ohio Consumers' Counsel electronically filed by Mrs. Jessica E Kellie on behalf of The Dayton Power and Light Company