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

FOURTH ENTRY ON REHEARING

The Commission finds:

(1) The Dayton Power and Light Company (DP&L) is a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

(2) On September 4, 2013, the Commission issued its Opinion and Order (Order), approving DP&L's proposed electric security plan (ESP), with certain modifications. On September 6, 2014, the Commission issued an Entry Nunc Pro Tunc modifying the Order.

(3) Pursuant to R.C. 4903.10, 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.

(4) On October 4, 2013, Ohio Partners for Affordable Energy and Edgemont Neighborhood Coalition (OPAE/Edgemont), the Ohio Consumers' Counsel (OCC), Industrial Energy Users-Ohio (IEU-Ohio), FirstEnergy Solutions Corp. (FES), the Ohio Hospital Association (OHA), Ohio Energy Group (OEG), the Kroger Co. (Kroger), and DP&L filed applications for rehearing. On October 31, 2013, memoranda contra the applications for rehearing were filed by FES, OCC, DP&L, OEG, the Retail Energy Supply Association (RESA), Kroger, IEU-Ohio, and the City of Dayton.

(5) On October 23, 2013, the Commission issued an Entry on Rehearing *granting rehearing for further consideration of the matters specified in the applications for rehearing.* The Commission also denied two assignments of error filed by DP&L and FES, and ordered DP&L to conduct the initial auction for standard service offer load under the ESP.

(6) On March 19, 2014, the Commission issued a Second Entry on Rehearing granting, in part, and denying, in part, the applications for rehearing filed by OCC, FES, Kroger, and DP&L. Additionally, the Commission's Second Entry on Rehearing denied the applications for rehearing filed by OPAE/Edgemont, IEU-Ohio, OHA, and OEG.

(7) On April 17, 2014, IEU-Ohio and OEG filed second applications for rehearing, and, on April 18, 2014, DP&L and OCC filed their second applications for rehearing.

(8) The Commission has now reviewed and considered all of the assignments of error raised in the second applications for rehearing. Any arguments on rehearing not specifically discussed herein have been thoroughly and adequately considered by the Commission and are hereby denied. The Commission will address the merits of the assignments of error as set forth below.

(9) In its first assignment of error, DP&L asserts that the Commission's Second Entry on Rehearing was unreasonable or unlawful because it accelerated the competitive bid process (CBP) auction schedule, which will cause substantial financial harm to DP&L. DP&L asserts that it will lose substantial revenue if the CBP auction schedule is accelerated and its financial integrity will be jeopardized. Additionally, DP&L avers that the Commission based its decision to accelerate the CBP auction schedule based upon the mistaken belief that DP&L could transfer its generation assets sooner than September 1, 2016. However, DP&L contends that, since it cannot transfer its generation assets to an affiliate sooner than September 1, 2016, the Commission should grant rehearing and reinstitute the previous CBP auction schedule. DP&L asserts that it demonstrated at hearing that its financial integrity would be jeopardized if the accelerated CBP auction schedule is implemented. DP&L Ex. 16A at 6, CLJ-6; DP&L Ex. 14A at 5-9, 28-29; Tr. Vol. III at 637-638, 640-641; Tr. Vol. IV at 1096; Tr. Vol. V at 1298.

OCC argues in its memorandum contra the application for rehearing that the Commission's decision to accelerate the CBP auction schedule was both lawful and reasonable. OCC asserts that the Commission should not further delay flowing through the benefits of the competitive market to DP&L's customers.

(10) The Commission finds that rehearing on DP&L's first assignment of error should be denied. We have held that a more rapid implementation of market rates is consistent with the policies of this state enumerated in R.C. 4928.02(A) and (B). Order at 50. Accordingly, in the Second Entry on Rehearing, we stated that our intent was to implement full market-based rates as soon as practicable and we noted that customers would benefit from a more rapid move to full market-based rates. Second Entry on Rehearing at 18, 19. DP&L has not persuaded the Commission that the CBP auction schedule established in the Second Entry on Rehearing is not practicable or that the CBP auction schedule jeopardizes DP&L's financial integrity. In addition, the Commission has established the SSR-E mechanism, which

provides DP&L with an opportunity to recover a financial integrity charge of up to $45.8 million in 2017 if DP&L demonstrates, at that time, that its financial integrity has been jeopardized and if DP&L has satisfied the other conditions established by the Commission. Order at 27-28.

(11) DP&L argues, in its second assignment of error, that the Commission's Second Entry on Rehearing was unlawful or unreasonable because it resulted from a miscommunication regarding DP&L's ability to divest its generation assets. DP&L asserts that at the time of hearing, it was DP&L's strategic plan to transfer its generation assets to an affiliate. DP&L avers that witnesses Herrington, Jackson, and Rice each testified at hearing that there were structural and financial obstacles that prevented DP&L from transferring its generation assets to an affiliate prior to the end of the ESP term. DP&L Ex. 16A at 2-4; Tr. Vol. I at 260-262; Tr. Vol. III at 800-805; Tr. Vol. V at 1148-1150; Tr. Vol. XI at 2897; Tr. Vol. XII at 2911. However, DP&L notes that since the hearing, circumstances have changed which have forced DP&L to explore different business courses than that which it had planned at the time of hearing. One of those different business courses was for DP&L to explore the potential sale of its generation assets to a third party, which could occur as early as 2014. DP&L contends that it might be capable of selling its generation assets to a third party in 2014, but it cannot transfer them to an affiliate before 2017. Further, DP&L argues that it is still unclear whether a sale to a third party can be accomplished in 2014, but if a sale does not occur, then the generation assets cannot be transferred to an affiliate before 2017 without additional financial resources.

DP&L argues that there are three main points regarding the potential transfer of its generation assets to an affiliate. First, DP&L does not know whether a third party will be willing to purchase the assets. Second, the reason that DP&L might be able to transfer the assets as part of a third party sale as early as 2014, but cannot transfer to an affiliate so early, is because a third party might be willing to purchase the assets at a price that would enable DP&L to offset costs of releasing generation assets from the Company's mortgage and enable the Company to restructure its debt. Third, the statements made by DP&L's witnesses at hearing were true then as they are now; DP&L cannot transfer its generation assets *to an affiliate* before 2017.

IEU-Ohio argues in its memorandum contra the application for rehearing that the Commission's decision to order DP&L to divest its generation assets was not unlawful and that a miscommunication is insufficient grounds for granting rehearing. Further, IEU-Ohio asserts that even if the Commission's decision resulted from a miscommunication, DP&L has not demonstrated that the miscommunication led to an unreasonable result. Similarly, OCC argues that the Commission's decision was both lawful and reasonable, and that divestment of DP&L's generation assets is long overdue.

(12) The Commission finds that rehearing on DP&L's second assignment of error should be granted. The Commission notes that market conditions are inherently unpredictable and subject to significant fluctuations over time. We intend to provide DP&L with the flexibility to transfer its generation assets to an affiliate or to a third-party while retaining our oversight over the divestiture as provided by R.C. 4928.17(E). At the hearing in this case, DP&L witnesses testified that there are terms and conditions in certain bonds that significantly impede upon its ability to transfer its generation assets to an affiliate before September 1, 2016, and, due to adverse market conditions, DP&L will not have sufficient cash flow to refinance the bonds before 2017. DP&L Ex. 16A at 2-4; Tr. Vol. I at 260-262. Tr. Vol. III at 800-805; Tr. Vol. V at 1148-1150; Tr. Vol. XI at 2897. Therefore, a modified deadline of January 1, 2017, for the asset divestiture should alleviate any existing obstacles regarding the terms and conditions in DP&L's bonds and its ability to refinance such bonds. Further, a deadline of January 1, 2017, should allow DP&L to obtain terms and conditions to divest its generation assets while ensuring that the assets are divested during the period of this electric security plan. The Commission will review the specific terms and conditions of any proposed generation asset divestiture in DP&L's generation asset divestiture proceeding. *In re The Dayton Power and Light Co.,* Case No. 13-2420-EL-UNC. Accordingly, the Commission will modify our decision in

the Second Entry on Rehearing and direct DP&L to divest its generation assets no later than January 1, 2017.

(13) IEU-Ohio asserts in its first assignment of error that the Commission failed to identify the findings of fact for its decision that there are qualitative, nonquantifiable benefits of the ESP that make it more favorable in the aggregate than the expected results that would otherwise apply under R.C. 4928.142.

DP&L argues in its memorandum contra the application for rehearing that the Commission should reject IEU-Ohio's argument because the Commission denied rehearing on this assignment of error in its Second Entry on Rehearing and the Commission has already identified the non-quantifiable benefits of the ESP. Additionally, DP&L asserts that the Commission cannot quantify a non-quantifiable benefit. DP&L also notes that R.C. 4928.143(C)(1) requires that the Commission consider whether the ESP is more favorable in the aggregate, which means the Commission must consider more than just price in determining whether an ESP should be modified.

(14) The Commission finds that rehearing on IEU-Ohio's first assignment of error should be denied as procedurally improper. In its application for rehearing filed on October 4, 2013, IEU-Ohio sought rehearing on the Commission's determination that the qualitative benefits of the ESP outweighed the quantitative analysis. The Commission thoroughly addressed IEU-Ohio's arguments and denied rehearing on this assignment of error in the Second Entry on Rehearing. Second Entry on Rehearing at 28-29. In its April 17, 2014, application for rehearing, IEU-Ohio simply recasts, with slight alterations, its arguments raised in its prior application for rehearing. R.C. 4903.10 does not allow parties to have "two bites at the apple" or to file rehearing upon rehearing of the same issue. *In re Ohio Power Company and Ormet Primary Aluminum Corporation,* Case Nos. 96-999-EL-AEC et al., Second Entry on Rehearing (Sept. 13, 2006) at 3-4. IEU-Ohio simply seeks rehearing of the same issue which was raised in its prior application for rehearing and denied by the Commission.

The Commission notes, however, that, even if the arguments raised by IEU-Ohio and were not procedurally improper, IEU-Ohio has not demonstrated that the Commission has violated R.C. 4903.09. The Supreme Court of Ohio has held that three things must be shown by a party to establish a violation of R.C. 4903.09: first, that the Commission initially failed to explain a material matter; second, that the party brought that failure to the Commission's attention through an application for rehearing; and third, that the Commission still failed to explain itself. *In re Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶71. The Commission fully explained that the qualitative benefits of the ESP outweighed the quantitative analysis in our Order issued on September 4, 2013. Order at 50-52. The Commission further explained our determination in the Second Entry on Rehearing. Second Entry on Rehearing at 28-29. IEU-Ohio has not met either the first prong or the third prong of the Court's test for a violation of R.C. 4903.09.

(15) OEG, IEU-Ohio, and OCC each argue that it is unreasonable for DP&L to collect the SSR after divestiture occurs. OEG argues as its sole assignment of error that DP&L does not need to continue collecting SSR revenues from customers in order to remain financially viable after its generation business is transferred to another entity because DP&L will become solely a transmission and distribution utility that is already receiving sufficient revenue. Further, OEG contends that the Commission contemplated in the Order that SSR and SSR-E revenues were only to ensure that DP&L could provide adequate, reliable, and safe retail electric service until it divests its generation assets. Order at 51. OEG argues that the Commission was correct to find that the SSR should only apply until DP&L's generation assets are divested. Since the Commission has recognized that DP&L may be capable of divesting its generation assets sooner, and since the Commission subsequently ordered DP&L to divest the assets sooner, OEG asserts that the Commission should not permit DP&L to collect SSR revenues beyond when it divests its generation assets.

Similarly, IEU-Ohio claims, in its third assignment of error, that the Second Entry on Rehearing was unreasonable because it fails to terminate the authorization of the SSR no later than January 1, 2016, the deadline the Commission imposed by which DP&L's generation assets must be transferred. Moreover, in its fourth assignment of error, IEU-Ohio alleges that that the Second Entry on Rehearing was unreasonable because it fails to terminate the authorization of the SSR-E due to the Commission's order that DP&L transfer generation assets by January 1, 2016. IEU-Ohio and OEG argue that the alleged threat to DP&L's financial integrity resulted from the reduced revenue DP&L was realizing from its competitive generation resources. According to IEU-Ohio and OEG, after DP&L divests its competitive generation resources, the threat to DP&L's financial integrity will be removed and the SSR and SSR-E will no longer be needed.

OCC asserts that the Commission's Second Entry on Rehearing violates R.C. 4903.09 because the Commission failed to present findings of fact and the reasons prompting its decision to permit DP&L to charge customers the SSR and SSR-E after the Company divests its generation assets. OCC contends that the Commission's decision to require DP&L to divest its generation assets by January 1, 2016, removed any justification for charging the SSR, or SSR-E, after divestiture. Therefore, OCC argues that the Commission erred in not ending the SSR and SSR-E with divestiture, and failed to set forth the Commission's reasons for not ending or terminating the SSR and SSR-E.

DP&L argues in its memo contra the applications for rehearing that the Commission should restore the original generation asset divestiture date to May 31, 2017. However, DP&L asserts that if the Commission does not restore the original generation asset divestiture date, then the Commission should deny rehearing and not accelerate termination or elimination of the SSR or SSR-E. DP&L contends that without the SSR or SSR-E, it would earn unreasonably low returns on equity (ROE). Even if it divests its generation assets, DP&L contends that divestiture will not eliminate the threats to DP&L's financial integrity. Specifically, DP&L argues that it will need the SSR and SSR-E to pay remaining debt that may exist from the transfer or sale of the generation assets. DP&L also argues that continuing the SSR and SSR-E after the deadline for DP&L to transfer its generation assets is consistent with Commission precedent.

(16) The Commission finds that rehearing on the assignments of error raised by OEG, IEU-Ohio, and OCC should be denied. In light of our decision above to modify our ruling in the Second Entry on Rehearing and to establish January 1, 2017, as the deadline for DP&L to divest its generation assets, the assignments of error raised by IEU-Ohio, OEG, and OCC are moot.

However, the Commission also notes that arguments raised by OEG, IEU-Ohio and OCC rest on the false premise that the SSR and SSR-E are generation-related charges intended to maintain the financial integrity of DP&L's generation business. As the Commission has previously noted, the SSR and SSR-E are financial integrity charges intended to maintain the financial integrity of the entire company, not just the generation business. Order at 21-22; Second Entry on Rehearing at 3. Therefore, when DP&L does, in fact, divest the generation assets, it does not necessarily follow that the SSR or the SSR-E must end. Instead, the structure of the SSR-E, and the conditions regarding its possible implementation, will ensure that, if the generation assets have been divested, DP&L must demonstrate a continuing need for a stability rider. If DP&L cannot demonstrate a need for the stability rider, the SSR-E will not be implemented. The Commission further notes that our treatment of the SSR and the SSR-E is consistent with the treatment of stability riders approved for other electric utilities. Both AEP Ohio and Duke were permitted to continue to recover stability riders authorized under R.C. 4928.143(B)(2)(d) after divestiture of their generation assets. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-346-EL-SSO, et al., Entry on Rehearing (January 30, 2013) at 26-27; *In re Duke Energy Ohio, Inc.*, Case No. 11-3549-EL-SSO, et al., Opinion and Order (November 22, 2011) at 13, 21.

(17) IEU-Ohio claims in its second assignment of error, and OCC claims in its third assignment of error that the Order and the

Second Entry on Rehearing are unlawful because they authorize transition revenue or equivalent revenue in violation of R.C. 4928.38. IEU-Ohio asserts that DP&L has confirmed that the SSR and SSR-E are mechanisms that will provide DP&L transition revenue, or its equivalent, because in DP&L's Supplemental Application in Case No. 13-2420-EL-UNC, DP&L indicated that the SSR will be needed by the distribution and transmission utility to pay any remaining debt that may not transfer with the generation assets. *In re The Dayton Power and Light Co.*, Case No. 13-2420-EL-UNC, Supplemental Application (February 25, 2014) at 2.

Similarly, OCC argues that the Commission is precluded from authorizing DP&L to collect additional transition revenues or any equivalent revenues pursuant to R.C. 4928.38. OCC concedes that the Commission has already addressed that the SSR and SSR-E are not transition charges or their equivalent, but OCC contends that the Commission presented a new rationale in its Second Entry on Rehearing. OCC avers that in the Second Entry on Rehearing the Commission found that the SSR and SSR-E were not cost-based charges. However, OCC contends that the SSR and SSR-E are cost-based charges that produce revenues that allow DP&L to maintain its financial integrity by enabling it to pay calculated costs, as well as its cost of capital.

DP&L argues in its memorandum contra the applications for rehearing that the Commission has already denied rehearing on this assignment of error. DP&L asserts that the SSR and SSR-E are not cost-based charges and that R.C. 4928.143(B)(2)(d) is the later-enacted statute.

(18) The Commission notes that we fully explained in the Order that the SSR is not a transition charge and that authorizing the SSR is not the equivalent of authorizing transition revenue. Order at 19-22. IEU-Ohio and OCC sought rehearing of this determination in their applications for rehearing filed on October 4, 2013. The Commission denied rehearing, once again finding that the SSR does not meet the statutory definition of a transition charge contained in R.C. 4928.39. Second Entry on Rehearing at 5-6. IEU-Ohio and OCC now seek rehearing on the same issue for which

the Commission has already denied rehearing. As we noted above, R.C. 4903.10 does not allow parties to file rehearing upon rehearing of the same issue. *In re Ohio Power Co. and Ormet Primary Aluminum Corp.*, Case Nos. 96-999-EL-AEC et al., Second Entry on Rehearing (Sept. 13, 2006) at 3-4. Therefore, the Commission finds that rehearing on the assignments of error raised by IEU-Ohio and OCC should be denied as procedurally improper.

(19) IEU-Ohio, in its fifth assignment of error, and OCC, in its second assignment of error, assert that the Commission's Second Entry on Rehearing is unreasonable because it failed to reduce the amount of the SSR-E, even though the term of the SSR-E was reduced. IEU-Ohio and OCC argue that the five month SSR-E cap was derived from the monthly SSR amount, which was approximately $9.167 million. Since the Commission decreased the term of the SSR-E from five months to four months, they argue the Commission should decrease the SSR-E cap from $45.8 million to $36.66 million.

(20) The Commission finds that rehearing on the assignment of error raised by IEU-Ohio and OCC should be denied. Because the SSR-E is a financial integrity charge rather than a generation-related charge, the Commission established the date for the SSR-E to end prior to the end of the ESP solely in order to ensure that DP&L would not continue to collect the SSR-E in the event a new SSO was not established at the end of the ESP term. The Commission did not intend on reducing the cap on the SSR-E. The amount of the SSR-E is not contingent upon the period of collection, as IEU-Ohio and OCC mistakenly infer. The amount of the SSR-E is based upon the term of the ESP. The ESP will be in effect for 41 months, the final five months of which were used to determine the prorated amount for the cap on the SSR-E.

Further, the Commission notes that the $45.8 million merely represents a cap on the SSR-E. DP&L will need to demonstrate the financial need for SSR-E to be authorized by the Commission so that the Company may be able to continue to provide stable and reliable retail electric service. DP&L must also satisfy the additional conditions for the SSR-E established by the Commission. Moreover, we note that, if DP&L files an application to recover an SSR-E amount, IEU-Ohio, OCC and other intervenors will have a full and fair opportunity to present their arguments on the proper amount to be authorized at that time. Accordingly, rehearing on IEU-Ohio's assignment of error is denied.

It is, therefore,

ORDERED, That the applications for rehearing filed by OCC, IEU-Ohio, and OEG, be denied, as set forth above. It is, further,

ORDERED, That the application for rehearing filed by DP&L be granted in part and denied in part, as set forth above. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Thomas W. Johnson, Chairman

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