

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The)
Dayton Power and Light Company to) Case No. 12-426-EL-SSO
Establish a Standard Service Offer in the)
Form of an Electric Security Plan.)

In the Matter of the Application of The)
Dayton Power and Light Company for) Case No. 12-427-EL-ATA
Approval of Revised Tariffs.)

In the Matter of the Application of The)
Dayton Power and Light Company for) Case No. 12-428-EL-AAM
Approval of Certain Accounting Authority.)

In the Matter of the Application of The)
Dayton Power and Light Company for) Case No. 12-429-EL-WVR
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.)

FIFTH 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. On April 28, 2014, IEU-Ohio, DP&L, OCC, and DP&L filed memoranda contra the second applications for rehearing.
- (8) Thereafter, on May 7, 2014, the Commission issued a Third Entry on Rehearing granting rehearing for further consideration of the matters specified in the applications for rehearing, and, on June 4, 2014, the Commission issued its Fourth Entry on Rehearing. In its Fourth Entry on Rehearing, the Commission denied the applications for rehearing filed by OCC, IEU-Ohio, and OEG, and granted, in part, and denied, in part, the application for rehearing filed by DP&L.
- (9) On July 1, 2014, OCC filed a third application for rehearing. Subsequently, on July 11, 2014, DP&L filed a memorandum contra the third application for rehearing filed by OCC.

- (10) The Commission has now reviewed and considered the assignments of error raised in OCC's third application 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 OCC's third application for rehearing below.
- (11) In its first and only assignment of error, OCC argues that the Commission unreasonably and unlawfully erred in granting rehearing in DP&L's second application for rehearing because DP&L's second application for rehearing was defective. OCC argues that the Supreme Court has ruled that setting forth specific grounds for rehearing is a jurisdictional prerequisite for review and that an issue is waived by not setting it forth in its application for rehearing. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 114 Ohio St.3d 340, 349, 2007-Ohio-4276. OCC claims that the Commission followed this precedent in two recent cases involving water utilities. *In re Aqua Ohio, Inc.*, Case No. 08-1125-WW-UNC, Entry on Rehearing (October 14, 2009) (*Aqua Ohio*) at 5; *In re Ohio American Water Co.*, Case No. 09-391-WS-AIR, Entry on Rehearing (June 23, 2010) (*Ohio American Water*) at 2. OCC alleges that DP&L's second application for rehearing did not include the words "unlawful" and "unreasonable," and that an application for rehearing that does not allege that a Commission Order is unlawful or unreasonable does not comply with R.C. 4903.10 or Ohio Adm.Code 4901-1-35. Further, OCC alleges that DP&L's memorandum in support of its application for rehearing cannot cure the application's failure to comply with R.C. 4903.10 and Ohio Adm.Code 4901-1-35.

DP&L asserts in its memorandum contra that its application for rehearing complied with the specificity requirement of R.C. 4903.10 and Ohio Adm.Code 4901-1-35 by identifying the specific matters on which it sought rehearing. DP&L argues that the cases cited by OCC are distinguishable from the present case or do not support OCC's position. Additionally, DP&L argues that, pursuant to R.C. 4903.10(B), the Commission had the authority to modify or abrogate its Second Entry on Rehearing if it was of the opinion that the Second Entry on Rehearing was in any respect unjust or unwarranted. Finally, DP&L points out that OCC already

raised this assignment of error in its memorandum contra to DP&L's application for rehearing, and that by granting DP&L's application for rehearing the Commission has already denied OCC's arguments. Accordingly, DP&L requests that the Commission deny rehearing on DP&L's present application for rehearing.

- (12) The Commission finds that rehearing on the assignment of error raised by OCC should be denied. R.C. 4903.10 requires that an application for rehearing "shall be in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." DP&L's second application for rehearing stated it was seeking rehearing on two specifically enumerated grounds. The grounds upon which DP&L sought rehearing and the relief requested were clearly set forth with specificity and detail. The Commission notes that DP&L did not use the exact words "unreasonable" or "unlawful" in its application for rehearing. However, we find that, when the application for rehearing has specifically set forth, in detail, the grounds upon which rehearing is sought and the relief requested, the absence of the words "unreasonable" or "unlawful" alone does not violate either R.C. 4903.10 or Ohio Adm.Code 4901-1-35. Therefore, we find that DP&L complied with the plain language of R.C. 4903.10 and Ohio Adm.Code 4901-1-35.

Additionally, we note that this case is distinguishable from the cases cited by OCC in its third application for rehearing. In *Ohio American Water*, the application for rehearing filed by Ohio American Water did not enumerate or provide detailed grounds on which Ohio American sought rehearing. *Ohio American Water* at 2. Likewise, in *Aqua Ohio*, Aqua Ohio filed an application for rehearing without specifying or detailing the grounds on which it was requesting rehearing in the actual application for rehearing; instead, the grounds for rehearing were included in the memorandum in support of the application for rehearing, which the Commission found was insufficient to substantially comply with the R.C. 4903.10 and Ohio Adm.Code 4901-1-35. *Aqua Ohio* at 5. However, in the present case, DP&L stated the specific, detailed grounds for rehearing in its second application for rehearing as well as the accompanying memorandum in support. Accordingly,

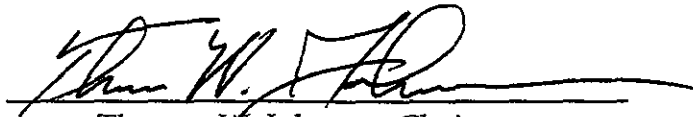
we find that DP&L satisfied the requirements under R.C. 4903.10 and Ohio Adm.Code 4901-1-35.

It is, therefore,

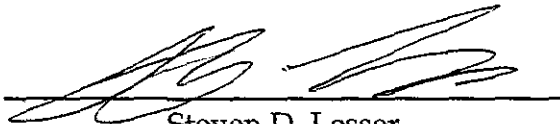
ORDERED, That the application for rehearing filed by OCC be denied, as set forth above. It is, further,

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

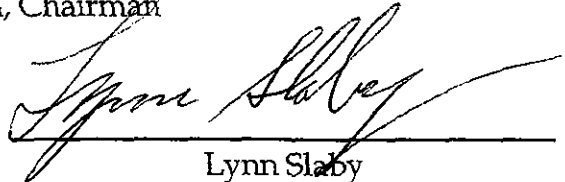
THE PUBLIC UTILITIES COMMISSION OF OHIO



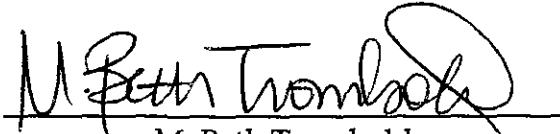
Thomas W. Johnson, Chairman



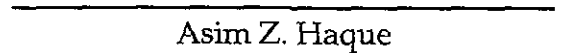
Steven D. Lesser



Lynn Slaby



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Asim Z. Haque

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Entered in the Journal

JUL 23 2014



Barcy F. McNeal
Secretary