BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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| In the Matter of the Application of<br>The Dayton Power and Light Company<br>To Modify its Fuel Rider | )<br>)<br>) | Case No. 12-2881-EL-FAC |

# THE DAYTON POWER AND LIGHT COMPANY'S MEMORANDUM IN OPPOSITION TO APPLICATION FOR REHEARING BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

The Dayton Power and Light Company ("DP&L" or the "Company"), pursuant to Ohio Administrative Code ("OAC") 4901-1-35(B), hereby submits its Memorandum Contra to the Application for Rehearing filed on September 19, 2014, by the Office of the Ohio Consumers' Counsel ("OCC") in this proceeding. OCC seeks rehearing of the Opinion and Order issued by the Public Utilities Commission of Ohio ("PUCO" or "Commission") on August 20, 2014 ("Opinion").

## I. Introduction and Summary

The Commission correctly applied the law, fully and fairly evaluated the record evidence, and made findings that are supported by substantial evidence.

OCC seeks rehearing based on various specifications of alleged error set forth in its Application and further explained in its Memorandum in Support. None of OCC's arguments has merit. Where OCC argues the law, it has misapplied or misunderstood settled law that the Commission applied correctly. Where OCC argues the facts, it has over-stated and misrepresented evidence that it alleges is in support of its position, while ignoring or disregarding probative evidence that is to the contrary.

In its legal analysis, the Commission assigned the burden of proof in this case to the Company and, contrary to arguments made by OCC, the burden of proof remained with DP&L throughout. Opinion at 6. The Commission also correctly followed more than 25 years of precedent that began with *In re Syracuse Home Utils. Co.*, Case No. 86-12-GA-GCR, Opinion and Order (Dec. 30, 1986) ("Syracuse"), in requiring that anyone challenging the prudence of one of DP&L's fuel procurement decisions must produce sufficient evidence to place the question of prudence at issue and overcome a rebuttable presumption that the decisions were prudent. *Id.* Once the issue of prudence was placed in issue, DP&L had the duty to produce evidence sufficient to outweigh the evidence produced by the challenger in order to meet its burden of proof. Not only has the Commission applied this approach for more than 25 years, it has re-examined it in the context of recent Ohio Supreme Court precedent and found that this approach is consistent with guidance provided by the Ohio Supreme Court and does not have the effect of shifting the burden of proof away from the regulated entity.[1]

The Commission then applied this correct legal approach to the facts of the case and with citations to record evidence found that Company's decisions were prudent with respect to each of the factual disputes discussed below, *i.e.*, that the Company met its burden of proof. Opinion at 6-7.

The Commission correctly ruled that the Company's decision was prudent not to exercise an option in 2010 for 2012 deliveries under a high-sulfur coal contract because the option price was "out-of-the-money." That is, that the option was higher priced than the market price for the same quality of coal for the same future delivery period. Opinion at 6. OCC's assertions that the

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[1] *See In the Matter of the Review of the Alternative Energy Rider Contained in the Tariffs of the Ohio Edison Company, et al.*, Case No. 11-5201-EL-RDR, Opinion at 20-21 (Aug. 7, 2013) [subsequent history omitted], citing and explaining conformance with *In Re Duke Energy Ohio, Inc.*, 131 Ohio St.3d 487, 967 N.E.2d 201 (2012).

option was "in-the-money" are contrary to the record evidence and OCC is actually citing to a portion of the Audit Report that is discussing an entirely different option. *See* Memorandum at 9-10, n. 31 and 13-14 and n. 51, each citing to Audit Report 4-12 which was describing a different option under a different contract. OCC's argument also appears to be based on an incorrect view that testimonial evidence is not really evidence. OCC claims that "no analysis" was done and only "after-the-fact" analysis was performed. Memorandum at 10, 14, 18-19. The sworn testimony of David J. Crusey is to the contrary:

> "At the end of October when DP&L made the decision to not exercise the option, we reviewed what the market prices were including the well-respected ICAP United report . . . After adjusting the price for Btus, that [market] price is equivalent to $52.07/ton. Thus, the market price was $1.43/ton lower than the option strike price in the contract."

Co. Ex. 1 (Crusey) at 32-33.

The Commission also correctly rejected attempts by the OCC to rewrite prior settlements and create and apply new alternative ratemaking structures. Opinion at 8. The OCC raises no new arguments with respect to Optimization 2012-A, but challenges it on the grounds that the Commission previously considered, *i.e.*, that the transactions giving rise to the gain occurred December 30, 2009, after the Commission had approved DP&L's Fuel Rider, but one business day prior to its effective date. Opinion at 7. The facts are that both the contract that was terminated and the replacement contract entered into in December 2009 were for deliveries of coal in 2012. Co. Ex. 3 (Cooper) at 14. In this regard, this transaction is no different than four of the optimizations that were authorized in the 2011 settlement of the 2010 audit period – each of those four optimizations, including the single largest optimization that was at issue in 2010, involved transactions where both the sold coal and the replacement contract occurred prior to the January 1, 2010, effective date of the Fuel Rider but involved coal deliveries that were to occur during the time the Fuel Rider was in effect. *See* Staff Ex. 3 at 4-4 (Exs. 4-2 and 4-3) Audit Report for the 2010 period).

With respect to Optimizations 2012-H and 2012-I, the Commission was also correct in rejecting the arguments that OCC is now recycling on rehearing. The Commission correctly found that these optimizations were consistent with the Fuel Rider and prior stipulations. Opinion at 10. The Commission correctly found that the prior Stipulations did not impose a requirement that the sale transaction take place within a specified number of days prior to or after the replacement contract. *Id*. The Commission noted the Company's evidence that these transactions were part of a single coordinated optimization plan. Opinion at 9. The evidence also shows that the Stipulation in 2011 for the 2010 period permitted optimization treatment of transactions that were similarly separated in time. *See* Staff Ex. 3 at 4-4, Transaction Dates (Audit Report for 2010 period).

The OCC also offers no new arguments (Memorandum at 20-21) that would justify a change in the Commission's finding that purchases of low sulfur coal made in 2010 for 2012 deliveries were prudent because, based on what was known at the time, the Company's reasonable expectations and projections in 2010 were that it would have a permanent ongoing need for low sulfur coal. Opinion at 6-7.

On rehearing, the Commission should reject each of OCC's positions and affirm the Opinion.

## II. The Commission Correctly Applied the Law with Respect to Burdens of Proof and Production.

The Commission correctly held that "while DP&L bears the burden of proof in this proceeding, the Commission will initially presume that DP&L's management decisions were prudent. . . . However, the presumption that a utility's decisions were prudent is rebuttable, and evidence produced by Staff or OCC in this proceeding may overcome that presumption." Opinion at 6, citing Syracuse, *supra*.

OCC objects to this approach. Initially, OCC notes that the principles set forth in Syracuse were based on a paper that was discussing the prudence of utility investment decisions and is thus "not analogous" to the facts in this fuel case where a statute assigns the burden of proof to the utility. Memorandum at 11. But Syracuse was a gas cost recovery case, analogous in every respect to an electric fuel case. Its significance to this proceeding is that in Syracuse the Commission made clear that these principles would apply to gas cost recovery cases and, since then, for more than 35 years, the Commission has consistently applied these principles in both electric and gas cases.[2] The Ohio Supreme Court has favorably cited the Syracuse case for the related proposition that prudence is to be determined using a retrospective look based on what was known at the time.[3]

OCC next misapplies a recent case involving Duke Energy Ohio.[4] OCC starts with the correct observation that the Ohio Supreme Court found that Duke Energy had the burden of proof and rejected arguments that the utility had made that the other parties did not conclusively prove that Duke's claimed expenses were unreasonable or imprudent. But OCC missteps when it argues that the Supreme Court has rejected the Commission's approach in this DP&L case by

[2] *See, e.g., In the Matter of the Regulation of the Purchased Gas Adjustment Clauses Contained within the Rate Schedules of Northeast Ohio Natural Gas Corporation, et al.*, Case Nos. 12-209-GA-GCR, *et al*., (Nov. 13, 2013); *In the Matter of the Review of the Alternative Energy Rider Contained in the Tariffs of the Ohio Edison Company, et al.*, Case No. 11-5201-EL-RDR, *supra*; *In the Matter of the Application of The Cleveland Electric Illuminating Company for Authority to Amend and to Increase Certain of Its Filed Schedules Fixing Rates and Charges for Electric Service, et al.*, Case Nos. 88-170-EL-AIR; 85-521-EL-COI (Phase II); 87-1777-EL-COI, 1989 Ohio PUC LEXIS 83, 107-08; 99 P.U.R.4th 407 (January 31, 1989).

[3] *City of Cincinnati v. Publ. Utils. Comm'n*., 67 Ohio St.3d 523, 528, 620 N.E.2d 826, 830 (1993).

[4] *In Re Duke Energy Ohio, Inc.*, 131 Ohio St.3rd 487, 967 N.E.2d 201 (2012).

shifting the burden of proof to OCC and requiring OCC to prove a negative. Memorandum at 12. The Commission did nothing of the kind in this case. The Opinion is clear that it left the burden of proof with DP&L. Opinion at 6. The Ohio Supreme Court in Duke Energy Ohio and previous cases did not and has not rejected the Commission's long-standing precedent requiring that parties meet a burden of production to put prudence at issue and did not and has not found that this approach is the equivalent to shifting the burden of proof away from the utility.

OCC chose not to sponsor a witness or present any direct evidence. Its evidentiary presentation was limited to a handful of documents that it sought to admit through cross-examination and a few paragraphs from the Audit Reports. The fact that the Commission was not persuaded by the arguments made by OCC and the evidence pointed to by OCC in its briefs is not a function of a shifting of a burden of proof or a demand that OCC prove a negative. It is a function instead of the overwhelming weight of the probative evidence presented by DP&L in this case that the decisions made by DP&L were prudent. In every aspect, the Commission's approach was lawful with respect to assigning the burden of proof, considering the evidence produced by other parties, and weighing that evidence against the evidence presented by the Company.

Ultimately, OCC's position devolves to a claim that the Commission imposed an unreasonably high burden on Staff and the OCC and "found that [they] did not successfully rebut that presumption [of prudence]." Memorandum at 15. But the Commission never made such a finding. If the Commission had found that Staff and OCC had not met the burden to produce some evidence to rebut the presumption of prudence, then the inquiry into prudence would have been over without any need to discuss the Company's evidence. The Opinion explicitly recognized that the Company's decisions had been challenged, discusses the evidence and argument made by Staff and OCC, and then weighed that evidence against the evidence presented by the Company. Opinion at 5-7. The Commission found that the evidence presented by the Company was persuasive with respect to the two decisions challenged on prudence grounds. Id. at 6-7. Those findings should be affirmed on rehearing with an explicit statement that the Company met its burden of proof.

## III. The Commission Correctly Found that DP&L Met Its Burden of Proof with Respect to the Decision Not to Exercise an Out-of-the-Money Option.

OCC misrepresents the record in asserting that the 2010 option for 2012 deliveries of high sulfur coal was "in-the-money." OCC Memorandum at 9-10 and 13-14. The 2010 option for 2012 deliveries was at issue with respect to all or portions of Optimizations 2012-B, -C, -D, -I. OCC cites to page 4-12 of the Audit Report as record evidence that the "Auditors concluded that DP&L acted imprudently when it failed to exercise an 'in the money' option to purchase high-sulfur coal in October 2010 for delivery in 2012." But that portion of the Audit Report is describing an entirely different option under an entirely different contract where DP&L flexed down the quantities taken, purchased replacement coal at a lower price and sought optimization gain treatment under Optimization J.[5]

At no point in this proceeding was there any evidence that showed that the 2010 option was "in-the-money." In the initial 2011 Audit Report for the 2010 period, the Auditor made only the weak observation that after making adjustments the option price was "very close" to the market price. 2011 Audit Report at 3-29; Ex. 3 at 3-29 herein. That 2011 Audit report did not

[5] OCC is also factually wrong about that contract – it too was out-of-the-money and no one in the case, including the Auditor, had disputed that DP&L's decision to flex down those volumes and purchase replacement coal at a lower price. The Commission rejected optimization treatment for Optimization 2012-J on grounds that were unrelated to prudence. Opinion at 9. DP&L elected not to request rehearing with respect to the Commission's ruling on Optimization 2012-J or the similar transactions forming Optimization 2012-K.

identify or quantify those adjustments or show the actual computations made. The same Auditor had the opportunity to supplement that statement and show the actual calculations in the 2013 Audit report issued for the 2012 period, but did not do so. For its part, OCC did not sponsor a witness to further elaborate on this statement or to support any set of calculations or evidence.

In contrast, the Company submitted through sworn testimony and exhibits, including documentary evidence of market prices based on nationally recognized published market indices, the form of analysis that it did in 2010 to establish that the option price was not close but was actually far out of the money relative to market prices.

Mr. Crusey testified that: "At the end of October when DP&L made the decision to not exercise the option, we reviewed what the market prices were including the well-respected ICAP United report . . . After adjusting the price for Btus, that [market] price is equivalent to $52.07/ton. Thus, the market price was $1.43/ton lower than the option strike price in the contract." Co. Ex. 1 (Crusey) at 32-33. Mr. Crusey further testified that this was "not close" and that, at 750,000 tons, the option strike price was approximately $1.1 million "out-of-the-money." Co. Ex. 1 (Crusey) at 34.

OCC also asserts that the Company's analysis was incomplete or inadequate because not all the adjustments were made that should have been made to make the comparison between market price and the option price. Memorandum at 18-19. The Staff Auditor identified transportation and sulfur content as two additional adjustments that could have been made to compare the option price to market price. Tr. 351-52 (Auditor Medine). The Commission correctly found that there was no persuasive evidence that demonstrated that such adjustments would have closed the gap to make the option price "in-the-money." Opinion at 6. That finding is supported by the weight of evidence: on one side there is a complete absence of any evidence presented by Staff or OCC to quantify the effects of such adjustments, and, on the other side, is a substantial amount of unrebutted and detailed record evidence presented by the Company that both adjustments would have had effects ranging from near zero to a maximum combined adjustment of $0.69 per ton, far too small to close the $1.43/ton gap between market price and the option price. *See* DP&L Reply Brief at 7-13 and record citations therein.

OCC also dismisses Mr. Crusey's testimony and experience as inadequate because "Mr. Crusey offered no record of any analysis DP&L actually conducted in 2010 to support his contention." *Id.* It appears that the OCC believes that the only form that probative evidence can take is a document with an appropriate date on it that presents a full analysis of the decision. That view is tantamount to saying that sworn testimony is not really evidence. OCC's position has no support in law. Sworn testimonial evidence, unrebutted and from a credible witness, is probative evidence that DP&L performed a sufficiently detailed analysis to justify its decision and performed that analysis prior to making its decision not to exercise the option.

## IV. The Company Met Its Burden of Proof with Respect to the Decision to Procure Some Additional Tons in 2010 of Low Sulfur Coal for 2012 Deliveries.

The Commission correctly found that the record evidence supports the conclusion that the decision in 2010 to purchase some additional tons of low sulfur coal for delivery in 2012 was prudent because the Company reasonably believed, based on what was known in 2010, that it would have an ongoing, permanent need for low sulfur coal. Opinion at 6-7.

OCC seeks rehearing based in part on the Company's evidentiary presentation that the Company was making capital expenditures upwards of $65 million from 2008 through 2012 in order to increase the percentage of high-sulfur coal that could be burned in its Killen and Stuart stations. Memorandum at 20. This was investment beyond the initial amounts in excess of $900 million spent between 2004 and 2008 to install scrubbers and related equipment at Killen and Stuart Stations. Co. Ex. 1 (Crusey) at 10-11.

OCC takes the view that in light of these capital expenditures, it is "logical to surmise that the percentage of high-sulfur coal burn would have increased in 2012 beyond the conservative levels forecasted in 2010." Memorandum at 20. The portion of the record evidence that OCC does not cite is that portion where Mr. Crusey describes the lengthy and uncertain process, backed up by expert outside consultants who were skeptical of the ability to move to 100% high sulfur coal even as late as 2011. Mr. Crusey testified that at each step of the process, new capital projects would be tested and the slagging and corrosive effects of high sulfur coal use on boiler and other equipment would be analyzed. Co. Ex. 1 (Crusey) at 20.

The Opinion's finding is further buttressed by projections made in 2010 that Stuart Station would need 2.5 million tons or more of low sulfur coal in 2012. *Id.*, Ex. DJC-9. "Well into 2011, it appeared that 95% ILB [high-sulfur Illinois Basin} coal in one unit and a 50/50 ratio for the other three units might be our best achievable outcome at Stuart." *Id.* at 20. Achieving 100% high-sulfur coal was a goal that was never guaranteed. Of note in this regard, in the 2011 Audit Report for the 2010 audit period, the Staff Auditor opined that DP&L's estimates of high sulfur coal use "could be higher *if DP&L is successful* in its efforts at Stuart." Staff Ex. 3 at 3-29, n. 36 (emphasis supplied). This uncertainty is also apparent in the study prepared September 2010, in which the engineering firm of Black & Veatch identified multiple concerns that might preclude the use of 100% high sulfur coal even if suggested additional capital projects were undertaken. Co. Ex. 1 (Crusey) at 14 and Ex. DJC-6 at 17-19.

Because of the uncertainty as to how successful any of the future planned projects would be, it was "not logical to surmise" (*i.e.* speculate) as OCC does that the Company would need less low sulfur coal in 2012 than it was projecting in 2010 to need in 2012.

OCC also complains that relative to projected needs of high and low sulfur coal, a higher percentage (85%) of low sulfur coal was put under contract in 2010 for 2012 than for high sulfur coal (44%). Memorandum at 20. But the 85% figure itself shows that OCC cannot claim that DP&L bought more than it projected would be needed and OCC does not take note of the record evidence that showed that DP&L purchases remained consistent with its risk management guidelines for forward purchases to hedge against price and volumetric risks. *See* DP&L Initial Brief at 26-27 and record citations therein. The Company and the Auditor also had consensus on these key points -- the Auditor agreed that coal prices are volatile and that it is "leading industry practice" to buy forward using portfolio approach to mitigate that risk. Staff Ex. 1 at 1-15 (Major Management Finding 10); Co. Ex. 2 (Heller) at 13-18. And, of note, NYMEX prices (low sulfur coal) are more volatile than high sulfur Illinois Basin coal prices. Tr. 201-02 (Heller). DP&L outside expert witness James Heller further explained why a higher percentage of low sulfur coal in the forward portfolio would be appropriate, testifying that in hedging forward positions against price uncertainties, the hedge product to use would be the [low-sulfur] coal that has the more volatile price fluctuations. Tr. 203-04.

OCC's other alleged grounds for a finding of imprudence are reiterations of allegations made in its Initial and Reply Briefs. Memorandum at 20-21. The Commission correctly found that there was no requirement for DP&L to have an RFP to solicit bids for alternative sources of higher sulfur coal. Opinion at 6. The Commission also has already considered OCC previously advanced and unsubstantiated and speculative assertions that the decision was part of a scheme to generate additional revenue for the Company. Opinion at 5. That theory falls apart in light of record evidence identifying various decisions that reduced the number of transactions for which optimization gain treatment was claimed.[6]

V. The Commission Correctly Rejected Proposals to Rewrite Prior Stipulations to Disallow Optimizations that Complied with Rules Established in the Prior Stipulations.

The Commission found that with respect to Optimizations 2012-A, 2012-H, and 2012-I, the Company's proposed treatment of optimization gains was consistent with prior stipulations and should be approved. Opinion at 8-9.

OCC seeks rehearing with respect to all three of these optimizations.

For Optimization 2012-A, OCC takes the position that this is not really an optimization because the sale of the then existing contract and the replacement contract were entered into in December 30, 2009, one business day prior to the January 1, 2010 date that the Fuel Rider became effective. Memorandum at 5-7.[7] But OCC's argument does not adequately address the fact that the existing contract and the replacement contract were for 2012 deliveries and, thus, the economic effects of this transaction took place in 2012 after the Fuel Rider was in effect. Co. Ex. 3 (Cooper) at 14. OCC also fails to recognize the inconsistency in its position given Mr. Cooper's testimony that 100% of the gain recognized from the sale of the then-existing contract was credited to the Fuel Rider. *Id.* If OCC's position were to be logically extended, DP&L

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[6] *See* DP&L Reply Brief at 16-19 and record evidence cited therein, including decisions not to contract for additional supplies of low sulfur coal for Killen Station after 2009, the sale of 485,000 tons of low sulfur coal already in the portfolio that was not optimized, and low-sulfur coal sales that were optimized against lower priced low-sulfur replacement coal that was still needed rather than optimizing against high-sulfur coal, which would have yielded larger optimization gains.

[7] These transactions, therefore, did take place after the Commission approved the implementation of the Company's Fuel Rider in an Order issued on December 16, 2009.

should have been able to retain 100% of that gain – after all, the entire transaction, according to OCC, took place before the Fuel Rider became effective.

The Commission correctly recognized that the 2011 Stipulation [8] reserved for future litigation claims raised on the grounds of imprudence or erroneous calculations of the optimization proceeds, but excluded the right to challenge optimizations on grounds that an alternative ratemaking treatment would have been even more favorable for ratepayers. Opinion at 8. The Commission found that OCC's challenges to Optimization 2012-A fell into this latter category. That finding is supported by the record. First, as noted above, OCC's position in this case is for an alternative rate treatment where the gains from transactions taking place prior to the start of the Fuel Rider are brought forward into the future period when the Fuel Rider is in effect, but bringing forward optimization treatment is denied. Second, the record evidence shows that there were four different Optimizations where all the transactions occurred prior to 2010 involving delivery dates in 2010 that were reviewed as part of the 2010 audit and approved by Stipulation in that proceeding. Ex. 3 at 4-4 (Exs. 4-2, 2-3)(Audit Report for 2010 period), Optimizations 2010-A, -B, -C, and –D.

Optimizations 2012-H and 2012-I are optimization transactions involving coal destined for Killen Station and Stuart Station, respectively. In both instances, DP&L implemented a single coordinated plan to replace its then-remaining portfolio of low sulfur coal with high sulfur coal over a period of several months so as to not drive down the price of the low sulfur coal it was selling and to match replacement coal purchases with the actual amounts needed based on projected sales of power from Killen and Stuart stations. Co. Ex.3 (Cooper) at 20-21 and 23.

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[8] The audit of the 2011 period resulted in the 2011 Stipulation. The Stipulation itself was executed in 2012. The Company's Initial and Reply Briefs referred to this as the 2012 Stipulation.

The Commission properly found that the prior Stipulations contained no restriction that specified that the sell and purchase portions of an optimization transaction had to be done within a specified period of time. Opinion at 10. The Commission further found that arguments to deny optimization gain treatment were challenges not permitted under the 2011 Stipulation. *Id*. at 9-10.

OCC seeks rehearing on the Commission's ruling regarding Optimizations 2012-H and 2012-I based on the same arguments raised in its earlier Briefs that were rejected by the Commission. In OCC's view, if a sale occurs and the replacement coal is procured in smaller pieces over the course of several months, it is "evident that the initial coal was sold without having a replacement coal lined up." Memorandum at 8. OCC's argument fails to recognize that the Company had a coordinated plan to sell its low sulfur coal and replace that coal with higher sulfur coal on an "as needed" basis. The "lining up" of replacement coal would occur when projected power sales from Stuart and Killen Station showed that replacement coal was going to be needed. Co. Ex. 3 (Cooper) at 19-20.

Contrary to OCC's assertion that this plan resulted in higher costs to customers, the end-result of this plan was a net reduction in costs to customers. As summarized in Staff Ex. 1 at 6-87, Ex. 6-50 (Audit Report for the 2012 period), Optimizations 2012-H and 2012-I resulted in optimization gains of $0.97 and $0.34 per MMBtu, respectively, with a reduction to customer costs of $0.24 and $0.09 per MMBtu, respectively.

Additionally, OCC fails to address the fact that Optimization 2010-A in the initial audit also involved sale and purchase transactions that were even more widely separated in time. Co. Ex. 3 (Cooper) at 23. Yet the Stipulation for the 2010 period permitted optimization treatment for Optimization 2010-A and, as noted in the Opinion, there were no rules established in that or any other Stipulation that required a close relationship in time between the transactions. Opinion at 10. OCC's argument was correctly characterized by the Commission and rejected as an attempt to challenge optimization treatment on grounds that an alternative approach could have resulted in a more favorable treatment of ratepayers.

## VI. Conclusion

For the foregoing reasons, the Commission should deny OCC's request for rehearing and affirm its Opinion and Order of August 20, 2014.

Respectfully submitted,
On behalf of THE DAYTON POWER AND LIGHT COMPANY

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Date: September 29, 2014

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been served either electronically or via first class mail, postage prepaid, this 29th day of September, 2014 upon counsel to the parties of record.

ss: *Randall V. Griffin*
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The Dayton Power and Light Company