

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for an Increase in its Electric Distribution Rates	:	Case No. 15-1830-EL-AIR
	:	
In the Matter of the Application of The Dayton Power and Light Company for Accounting Authority	:	Case No. 15-1831-EL-AAM
	:	
In the Matter of the Application of Dayton Power and Light Company for Approval of Revised Tariffs	:	Case No. 15-1832-EL-ATA
	:	
and		
In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan	:	Case No. 16-0395-EL-SSO
	:	
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs	:	Case No. 16-0396-EL-ATA
	:	
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code § 4905.13	:	Case No. 16-0397-EL-AAM
	:	

**MOTION OF APPLICANT THE DAYTON POWER AND LIGHT COMPANY
FOR CASE MANAGEMENT ORDER TO ESTABLISH
DEADLINES AND TO COORDINATE CASES**

Applicant The Dayton Power and Light Company ("DP&L") has filed both a distribution rate case and an Electric Security Plan case. To set deadlines and coordinate the

schedules in these two large cases, DP&L moves for an order (1) adopting its proposed schedule, attached as Exhibit 1; and (2) that (a) provides that the ESP case be tried first, and the distribution rate case be tried immediately thereafter, with post-hearing briefing occurring after the completion of both cases; (b) requires Intervenor to file their direct testimony in the ESP case four weeks before the ESP hearing starts; and (c) sets a discovery deadline for Intervenor to complete written discovery at least five weeks before the first hearing starts.

Respectfully submitted,

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As to Distribution Rate Case,
Nos. 15-1830-EL-AIR, 15-1831-EL-AAM,
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**MEMORANDUM IN SUPPORT OF MOTION OF APPLICANT
THE DAYTON POWER AND LIGHT COMPANY FOR CASE MANAGEMENT
ORDER TO ESTABLISH DEADLINES AND TO COORDINATE CASES**

With two large cases pending, 2016 will present significant challenges for the Staff of the Commission, DP&L, and the Intervenor in DP&L's cases. DP&L is filing this motion to facilitate coordination of the cases now, so that the Commission, the Intervenor and DP&L can work together to address the inevitable scheduling, discovery and logistical difficulties. DP&L's plan allows all parties to have ample notice and an opportunity for discovery and the filing of testimony before the two hearings in 2016. Absent early coordination, DP&L will not be able to put new rates in place on January 1, 2017, which will be necessary to maintain the financial integrity of DP&L and to ensure the ongoing reliability of generation service in this state.

The Commission should grant this motion for the following separate and independent reasons:

1. **Coordination of Case Schedules:** In addition to the distribution rate case, DP&L filed an ESP case in late February, which is also a large case. As shown by the Company's proof in the distribution rate case, DP&L needs rate relief to maintain its financial integrity, and DP&L needs the rates to go into effect on January 1, 2017. As shown by the Company's proof in the ESP case, the Commission should approve a Reliable Electricity Rider to ensure that reliable and reasonably-priced generation is available in Ohio, and the rider also needs to go into effect by January 1, 2017. The purpose of this motion is to ask the Commission to set deadlines to coordinate those cases.

Specifically, the best course is to try the ESP case first and to try the distribution rate case immediately after the hearing in the ESP case is completed. DP&L asks that all testimony be filed in both cases and that all discovery be completed in both cases before the hearing in the distribution rate case starts. So that the parties do not have to engage in briefing the ESP case while the distribution rate case is being tried, post-hearing briefing in both cases would start after the hearing in the distribution rate case was concluded. (The transcript for the ESP hearing would become available during the distribution rate case hearing.)

DP&L's proposed schedule (attached as Exhibit 1) is reasonable, for several reasons:

First, as the record will show in both cases, DP&L needs new rates from the cases to go into effect no later than January 1, 2017. DP&L asks the Commission to conduct the hearings in both cases to allow a decision in both cases before the end of 2016. It would be difficult or impossible for the Commission to decide both cases before the end of 2016 if there were a substantial delay between the two hearings.

Second, it would be very difficult for the parties to be filing testimony and conducting depositions in one case while another case is pending. To the extent possible, that work should be completed before the hearing in the ESP case begins.

Third, DP&L's request will not increase the workload for the Intervenors -- they will simply need to conduct discovery and prepare their testimony earlier than they might otherwise.

2. **Intervenor Testimony Deadline:** The Commission has sometimes required Intervenor testimony to be filed only two weeks before a hearing. Although that schedule may be reasonable for smaller cases, it creates significant logistical problems in larger cases in which numerous pieces of utility and intervenor testimony are filed.

A utility cannot meaningfully conduct depositions of intervenor witnesses until after the intervenor testimony is filed. In the past, DP&L has sent interrogatories asking Intervenor testimony to identify their witnesses and the topics of their testimony, but the answers that DP&L has consistently received are that a final decision will not be made until the deadline to submit testimony. When a large number of intervenor witness testimony is filed only two weeks before the hearing, counsel for the utility needs to conduct a large number of depositions in a short two-week time span. Further, the intervenor testimony frequently raises complex issues, which makes preparing for and conducting the depositions in a two-week span very difficult.

For example, in DP&L's most recent ESP case, Intervenor testimony filed 26 pieces of testimony only two weeks before the hearing. Counsel for DP&L deposed those witnesses in the two weeks before the hearing, or after the hearing began. Such a compressed schedule is unreasonable and prejudicial to DP&L, as it made it substantially more difficult for counsel for DP&L to meet with their client and witnesses.

A deadline to file Intervenor testimony in the ESP case four weeks before the hearing is reasonable because:

1. It would allow for a more orderly deposition schedule.
2. It would allow a reasonable time for utility counsel to obtain and review deposition transcripts, and prepare cross-examination questions.

3. Utility counsel should have a meaningful opportunity to meet with their client in the weeks immediately preceding hearing and during the hearing, which is very difficult if counsel is required to take numerous depositions in a two-week period and to prepare cross-examination questions during evenings and weekends.
4. The compressed time necessary to prepare for and conduct those depositions makes it difficult for DP&L's counsel to engage in pre-trial settlement discussions. The rush to complete discovery and the time necessary to do so prejudices the settlement process.
5. Intervenors would not be prejudiced by that deadline, as they will need to file their testimony earlier, but will have plenty of notice.

The Commission should thus require Intervenors to file their direct testimony in the ESP case at least four weeks before the distribution rate case hearing.

3. **Discovery Deadline:** The Commission should also establish a deadline, at least five weeks before the ESP case hearing for Intervenors to complete discovery in both cases. Responding to discovery requests is always very time consuming and burdensome in large Commission cases, and the time close to hearing should be used to prepare for the hearing and to depose Intervenor witnesses, not to respond to written discovery requests. Intervenors would not be prejudiced by this request; they would simply need to serve their discovery requests earlier.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion of Applicant The Dayton Power and Light Company for Case Management Order to Establish Deadlines and to Coordinate Cases has been served via electronic mail upon the following counsel of record, this 15th day of April, 2016:

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**DP&L'S PROPOSAL FOR CASE SCHEDULE IN
DISTRIBUTION RATE CASE AND ELECTRIC SECURITY PLAN CASE**

Friday, July 1	Estimated Date of Staff Report (distribution rate case)
Friday, July 8	Written discovery cutoff (both cases)
Monday, July 18	Intervenor testimony due (ESP case)
Monday, August 1	Objections to Staff Report (distribution rate case) Intervenor Testimony due (distribution rate case)
Monday, August 15	Hearing 1 begins (ESP case)
Tuesday, September 6	Hearing 2 begins (distribution rate case)
Monday, October 17	Opening briefs (both cases)
Monday, October 31	Reply briefs (both cases)
January 1, 2017	Rates in effect (both cases)

These dates are estimated. DP&L estimated that the hearing for the distribution case would take three weeks, and opening briefs would be due three weeks after the hearing in the ESP case concludes.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/15/2016 10:27:41 AM

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Case No(s). 15-1830-EL-AIR, 15-1831-EL-AAM, 15-1832-EL-ATA, 16-0395-EL-SSO, 16-0396-EL-ATA, 1

Summary: Motion of Applicant The Dayton Power and Light Company for Case Management Order to Establish Deadlines and to Coordinate Cases electronically filed by Mr. Charles J. Faruki on behalf of The Dayton Power and Light Company