

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton Power and Light Company to Increase its Rates for Electric Distribution Service))))	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 The Dayton Power and Light Company for Approval of Revised Tariffs)))	Case No. 15-1832-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan)))	Case No. 16-395-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs)))	Case No. 16-396-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. 16-397-EL-AAM

**INDUSTRIAL ENERGY USERS-OHIO'S MEMORANDUM CONTRA MOTION
OF THE DAYTON POWER AND LIGHT COMPANY FOR CASE MANAGEMENT
ORDER TO ESTABLISH DEADLINES AND TO COORDINATE CASES**

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On April 15, 2016, The Dayton Power and Light Company (“DP&L”) filed a motion (“DP&L Motion”) with the Public Utilities Commission of Ohio (“Commission”) requesting that its proposed procedural schedule be adopted in the above-captioned matters, the *Distribution Rate Case*¹ and the *Electric Security Plan (“ESP”) Case*.² The procedural

¹ Case Nos. 15-1830-EL-AIR, *et al.*

² Case Nos. 16-395-EL-SSO, *et al.*

schedule DP&L proposes is essentially a request to consolidate the two cases; establishing identical discovery cutoff dates, scheduling what amounts to a continuous six-week hearing, and requiring simultaneous briefing of the cases. Because consolidation of the cases is not proper or reasonable, DP&L's Motion should be denied.

Under R.C. 4901.13, the Commission has discretion in the manner in which it conducts its hearings. *Duff v. Public Utilities Commission of Ohio*, 56 Ohio St.2d 367 (1978); *Toledo Coalition for Safe Energy v. Public Utilities Commission of Ohio*, 69 Ohio St.2d 559 (1982). Consolidation may be appropriate when common issues of law and fact are presented,³ but the *Distribution Rate Case* and *ESP Case* are not cases that justify consolidation.

First, the issues in the *Distribution Rate Case* are distinct from those at issue in the *ESP Case*. In the *Distribution Rate Case*, the Commission will determine the appropriate amount of distribution plant in service that is used and useful as of the date certain, the test year expenses to provide distribution services, and the test year revenue requirement. In the *ESP Case*, the Commission must establish a plan to ensure that there is a default standard service offer ("SSO") for customers who have not elected to receive competitive retail electric services ("CRES") from a CRES provider. Further, DP&L has also requested a variety of riders in the *ESP Case*, none of which necessitate resolution with the *Distribution Rate Case*.⁴ While there are some common witnesses in the cases, the only witness to present testimony related to a single issue that is somewhat

³ Civil Rule 42(A)(1) provides:

If actions before the court involve a common question of law or fact, the court may: (a) join for hearing or trial any or all matters at issue in the actions; (b) consolidate the actions; or (c) issue any other orders to avoid unnecessary cost or delay.

⁴ DP&L has requested the Commission authorize several riders in the *Distribution Rate Case*, and alternatively in the *ESP Case* if the Commission does not authorize them in the former case; but, this request will not be affected by processing the *Distribution Rate Case* first.

common in the two cases is DP&L's rate of return witness. Even in that instance, however, DP&L's witness, Mr. Morin, testifies that a different and higher rate of return should be applied to calculate the stability rider proposed in the *ESP Case* than should be applied to the distribution assets to set the revenue requirement in the *Distribution Rate Case*.⁵ Thus, common issues of law and fact do not justify de facto consolidation.

Second, the Commission Staff ("Staff") and the parties gain nothing in the way of administrative efficiency if the Commission consolidates the discovery, hearing, and briefing schedules. Staff and parties are conducting their first reviews in a DP&L rate case in over 20 years. Because this review process concerns matters that are distinct from those presented in the *ESP Case*, combining the cases and expediting the review process through common deadlines will simply force an overlap in the reviews. It will not reduce the need to conduct those reviews or simplify the review and discovery processes. All that consolidation accomplishes is to make the review process more difficult for Staff and those parties that seek to protect their own economic interests before the Commission.

In regard to the process itself, the Commission should have as much regard for the interests of consumers as it has for DP&L. As DP&L recognizes, it needs ample time prior to a hearing to allow for depositions, ample time between depositions and the hearing to review the deposition transcripts and to prepare cross-examination for hearing, and ample time prior to the hearing to allow for settlement discussions.⁶ DP&L also claims that it is important that items are not scheduled simultaneously to allow counsel sufficient

⁵ *Compare ESP Case*, Direct Testimony of Roger A. Morin at 5 (Feb. 22, 2016) (summarizing his recommendation of a 10.5% return on equity ("ROE") in the *Distribution Rate Case*) *with id.* at 6 (recommending an ROE of 10.7% under DP&L's Reliable Electricity Rider proposal).

⁶ DP&L Motion at 3-4.

time, both prior to and during the hearing, to discuss with their clients issues that may arise.⁷ All of these rationales apply equally to Staff and intervenors, and none of these rationales supports the consolidated and compressed procedural schedule proposed by DP&L.

Third, there is no reason to expedite the *ESP* Case to accommodate DP&L as the current ESP term runs to the end of May 2017.⁸ Further, the Commission has previously expressed its concern that DP&L fully exhaust other revenue opportunities, including a rate case, before the Commission would consider any additional revenue increases through an ESP.⁹

Finally, on April 28, 2016, DP&L filed supplemental testimony in the *ESP* Case for witnesses Jackson and Malinak. In the supplemental testimony requesting additional nonbypassable revenue, DP&L witness Jackson admits that his original testimony contained errors, which he was updating in his supplemental testimony. Mr. Jackson does not explain how the errors occurred or were identified, and whether the errors or similar errors persist elsewhere in his original testimony. Mr. Malinak's supplemental testimony also indicates that the assumptions in his original testimony contained errors resulting in an unrealistic financial analysis.¹⁰ Concluding that these assumptions in his initial testimony "are problematic," he offers a new alternative financial analysis¹¹ that he

⁷ *Id.*

⁸ *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case Nos. 12-426-EL-SSO, *et al.*, Entry Nunc Pro Tunc at 2 (Sep. 6, 2013) ("*DP&L ESP II Case*").

⁹ *DP&L ESP II Case*, Opinion and Order at 27 (Sep. 4, 2013).

¹⁰ See *ESP Case*, Supplemental Testimony of R. Jeffrey Malinak at 1-3 (Apr. 28, 2016).

¹¹ Mr. Malinak describes his alternative financial analysis as "using different assumptions about the debt reduction patterns of DPL Inc. and DP&L/DP&L-TD, and the equity contributions from DPL Inc. to DP&L/DP&L-TD." *Id.* at 1. Mr. Malinak acknowledges that these different assumptions effect several portions of his initial analysis. See *id.* at 8 (the change in assumptions requires changes to the "income statement, balance sheet and statement of cash flows" contained in his initial analysis).

describes as “more realistic” than the analysis contained in his initial testimony.¹² Given the errors that DP&L acknowledges permeate its original testimony, the updated projections, and Mr. Malinak’s new alternative financial analysis, Staff and other parties must be provided sufficient time to analyze the supplemental testimony and conduct additional discovery.

Accordingly, Industrial Energy Users-Ohio (“IEU-Ohio”) recommends that the Commission reject the procedural schedule proposed by DP&L. Instead, IEU-Ohio recommends that the Commission set a procedural schedule in the *Distribution Rate Case* once the Staff Report is issued and process that case initially and independently from the *ESP Case*. The *ESP Case* should be scheduled separately and in recognition that the term of the current ESP runs through May 2017.

Respectfully submitted,

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¹² *Id.* at 2-3.

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Industrial Energy Users-Ohio's Memorandum Contra Motion of The Dayton Power and Light Company for Case Management Order to Establish Deadlines and to Coordinate Cases* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio to the following parties of record this 2nd day of May 2016, via electronic transmission.

/s/ Matthew R. Pritchard

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Summary: Memorandum --IEU-Ohio's Memo Contra Motion of The Dayton Power and Light Company for Case Management Order to Establish Deadlines and to Coordinate Cases electronically filed by Mr. Matthew R. Pritchard on behalf of Industrial Energy Users-Ohio