

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Market Rate Offer.	) ) )	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

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**MOTION OF INDUSTRIAL ENERGY USERS-OHIO AND  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL  
FOR AN ORDER VACATING THE AUTHORIZATION OF THE  
SERVICE STABILITY RIDER, REQUEST FOR EXPEDITED RULING,  
AND MEMORANDUM IN SUPPORT**

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SERVICE STABILITY RIDER AND REQUEST FOR EXPEDITED RULING**

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In order to protect customers from a charge deemed unlawful by the Ohio Supreme Court, Industrial Energy Users-Ohio (“IEU-Ohio”) and the Office of the Ohio Consumers’ Counsel (“OCC”) (collectively “Customer Parties”) request, pursuant to Rule 4901-1-12, Ohio Administrative Code (“O.A.C.”), that the Public Utilities Commission of Ohio (“Commission”) expeditiously move to enforce the decision of the Ohio Supreme Court reversing the Commission’s authorization of The Dayton Power and Light Company’s (“DP&L”) Service Stability Rider (“SSR”). *In re Application of Dayton Power & Light Co.*, Slip Opinion No. 2016-Ohio-3490. While this matter remains pending, DP&L continues

to unlawfully bill and collect SSR-related revenue of nearly \$10 million monthly. To prevent further unlawful billing and collection of the SSR, Customer Parties request that the Commission issue a ruling on this motion on an expedited basis such that the Commission orders DP&L to cease the billing and collection of the SSR before the beginning of the July 2016 billing cycle.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT**

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The Commission approved DP&L’s SSR as part of DP&L’s current electric security plan (“ESP”). The SSR was set at rates designed to collect \$110 million annually from DP&L’s customers over the period of January 1, 2014 through December 31, 2016. IEU-Ohio and the Office of the Ohio Consumers’ Counsel (“OCC”) sought rehearing of the Commission’s authorization of the SSR. When the Commission refused to reverse its authorization, IEU-Ohio and OCC filed appeals challenging the rider with the Supreme Court of Ohio.

While the appeal in this case was pending, the Supreme Court addressed the authorization of a similar rider for the Ohio Power Company (“AEP-Ohio”), the Retail Stability Rider (“RSR”). On April 21, 2016, the Court reversed the Commission’s

authorization of the RSR on the ground that it allowed AEP-Ohio to collect unlawful transition revenue or its equivalent. *In re Application of Columbus S. Power Co.*, Slip Opinion No. 2016-Ohio-1608 at ¶¶ 25, 38. In addition to reversing the Commission's authorization of the RSR, thereby eliminating AEP-Ohio's ability to collect future unlawful revenue under the rider, the Court directed the Commission to credit against an outstanding AEP-Ohio deferral the amounts previously collected under the RSR. *Id.* at ¶ 40.<sup>1</sup>

On June 20, 2016, the Court reversed the Commission's authorization of DP&L's SSR "on the authority of [*Columbus Southern*]." *In re Application of Dayton Power & Light Co.*, Slip Opinion No. 2016-Ohio-3490. Thus, just like AEP-Ohio's RSR, the Court determined that DP&L's SSR was an unlawful transition charge.

Because the Court expeditiously reversed the Commission's authorization of the SSR following oral argument, the Commission should likewise expeditiously issue an order vacating its authorization of the SSR and direct DP&L to cease the billing and collection of the SSR. Without Commission action, customers will continue to pay (at approximately \$10 million per month, and over a quarter billion dollars thus far) the unlawful SSR until the Commission orders otherwise. *See Cleveland Elec. Illuminating Co. v. Pub. Util. Comm.*, 46 Ohio St.2d 105 (1976). Furthermore, because the Court did not remand any issue to the Commission for further consideration, the Commission need not conduct further proceedings before it orders DP&L to cease billing and collecting the SSR. *Cf. In re Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788 at ¶¶ 30

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<sup>1</sup> The Commission should also address separate and apart from its ruling on this motion the approximately \$275 million already paid by DP&L's customers through the SSR. *See In re Application of Columbus S. Power Co.*, Slip Opinion No. 2016-Ohio-1608 at ¶ 40.

(additional proceedings held regarding the Commission's authorization of the POLR charge because the Court reversed and remanded the case for further proceedings); *Columbus Southern*, 2016-Ohio-1608 at ¶ 40 (additional findings ordered on remand to determine the appropriate credit against AEP-Ohio's outstanding deferral balance).

For the foregoing reasons, Customer Parties request that the Commission vacate its order authorizing the SSR and direct DP&L to modify the SSR tariffs to terminate the billing and collection of the SSR. To prevent DP&L's customers from being billed further unlawful transition revenue or its equivalent through the SSR, Customer Parties request an expedited ruling under Rule 4901-1-12(C), O.A.C., such that the Commission issues a decision on this motion requiring DP&L to modify its SSR tariffs before the beginning of the July 2016 billing cycle.<sup>2</sup>

Respectfully submitted,

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<sup>2</sup> To accommodate any request for reconsideration and the issuance of the Court's mandate, the Commission could alternatively order that the SSR be prospectively collected subject to refund until the Court's mandate is issued, at which time the Commission should direct that the SSR be eliminated.

## 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 *Motion of Industrial Energy Users-Ohio and the Office of the Ohio Consumers' Counsel for an Order Vacating the Authorization of the Service Stability Rider, Request for an Expedited Ruling, and Memorandum in Support* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio to the following parties of record this 21<sup>st</sup> day of June 2016, *via* electronic transmission.

/s/ Matthew R. Pritchard

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Summary: Motion of Industrial Energy Users-Ohio and the Office of the Ohio Consumers' Counsel for an Order Vacating the Authorization of the Service Stability Rider, Request for Expedited Ruling, and Memorandum In Support electronically filed by Mr. Matthew R. Pritchard on behalf of Industrial Energy Users-Ohio