

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan	:	Case No. 12-426-EL-SSO
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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 the Waiver of Certain Commission Rules	:	Case No. 12-429-EL-WVR
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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 THE DAYTON POWER AND LIGHT COMPANY  
TO IMPLEMENT PREVIOUSLY AUTHORIZED RATES**

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In view of the June 20, 2016 reversal by the Supreme Court of Ohio of this Commission's September 4, 2013 Opinion and Order, The Dayton Power and Light Company ("DP&L") moves to implement rates ("2013 Rates") that are consistent with the rates that were in effect before the Commission's September 4, 2013 Opinion and Order.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF MOTION OF THE DAYTON POWER  
AND LIGHT COMPANY TO IMPLEMENT PREVIOUSLY AUTHORIZED RATES**

This case is before the Commission upon a remand from the Supreme Court of Ohio. The decision by the Supreme Court of Ohio in the In re Application of Dayton Power & Light Co. case reversed in total the Commission's decision approving DP&L's ESP in Case No. 12-426-EL-SSO, et al. In re Application of Dayton Power & Light Co., Case No. 2014-1505, Slip Op. No. 2016-Ohio-3490 (Sup. Ct. Ohio June 20, 2016), ¶ 1. That Supreme Court decision thus reversed the Commission's decision approving all aspects of DP&L's 12-426-EL-SSO ESP.

When the Supreme Court reverses a Commission decision:

"the statutes [of Title 49] make clear [1] that public utilities are required to charge the rates and fees stated in the schedules filed with the commission pursuant to the commission's orders; [2] that the schedule remains in effect until replaced by a further order of the commission; [3] that this court's reversal and remand of an order of the commission does not change or replace the schedule as a matter of law, but is a mandate to the commission to issue a new order which replaces the reversed order; and [4] that a rate schedule filed with the commission remains in effect until the commission executes this court's mandate by an appropriate order."

Cleveland Elec. Illuminating Co. v. Pub. Util. Comm., 46 Ohio St.2d 105, 116-17, 346 N.E.2d 778 (1976) (emphasis added). The Supreme Court also explained that its "task is not to set rates; it is only to assure that the rates are not unlawful and unreasonable, and that the rate-making process itself is lawfully carried out." Cleveland Elec., 46 Ohio St.2d at 108.

Pursuant to Ohio Rev. Code § 4928.143(C)(2), concurrent with this filing, DP&L has filed a motion to withdraw its application in this matter. Section 4928.143(C)(2)(b) provides:

"(b) If the utility terminates an application pursuant to division (C)(2)(a) of this section or if the commission disapproves an application under division (C)(1) of this section, the commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent offer is authorized pursuant to this section or section 4928.142 of the Revised Code, respectively." (Emphasis added.)

The Commission must therefore implement rates that are consistent with DP&L's 2013 Rates.

The Commission would be required to implement rates that are consistent with DP&L's 2013 Rates even if DP&L did not withdraw its Application in this matter. Specifically, Section 4928.141(A) states: "Only a standard service offer authorized in accordance with section 4928.142 or 4928.143 of the Revised Code, shall serve as the utility's standard service offer for the purpose of compliance with this section." Similarly, Section 4905.32 states: "No public utility shall charge, demand, exact, receive, or collect a different rate, rental, toll, or charge for any service rendered, or to be rendered, than that applicable to such service as specified in its schedule filed with the public utilities commission which is in effect at the time." As the Supreme Court of Ohio reversed in total the Commission's September 4, 2013 Opinion and Order in this case, those sections establish that the Commission must implement the immediately-prior SSO that the Commission authorized for DP&L, which was from DP&L's first ESP case. Rates that are consistent with DP&L's 2013 Rates therefore must be put back into effect until Commission approval of a new SSO.

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## **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Motion of The Dayton Power and Light Company to Implement Previously Authorized Rates has been served via electronic mail upon the following counsel of record, this 27th day of July, 2016:

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Summary: Motion Motion of The Dayton Power and Light Company to Implement Previously Authorized Rates electronically filed by Mr. Charles J. Faruki on behalf of The Dayton Power and Light Company