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. 08-1094-EL-SSO
In the Matter of the Application of The Dayton Power and light Company for Approval of Revised Tariffs.	)))	Case No. 08-1095-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 Section 4905.13.	))))	Case No. 08-1096-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for Approval of its Amended Corporate Separation Plan.	))))	Case No. 08-1097-EL-UNC

COMMENTS OF
OHIO PARTNERS FOR AFFORDABLE ENERGY AND
THE EDGEMONT NEIGHBORHOOD COALITION

Ohio Partners for Affordable Energy ("OPAE") and the Edgemont Neighborhood Coalition ("Edgemont"), advocates for low-income residential customers of The Dayton Power and Light Company ("DP&L"), hereby submit to the Public Utilities Commission of Ohio ("Commission") these comments in the above-captioned dockets pursuant to the attorney examiner's August 3, 2016 Entry. On July 27, 2016, DP&L filed a motion to withdraw its applications in Case Nos. 12-426-EL-SSO, et al., its current Electric Security Plan ("2012 ESP"). At the same time, DP&L filed another motion to implement the ESP approved by the Commission in its Opinion and Order of June 24, 2009 in these 2008

proceedings ("2008 ESP"). On August 11, 2016, in Case Nos. 12-426-EL-SSO, et al., OPAE and Edgemont filed a memorandum contra the two motions of DP&L to withdraw the 2012 ESP and implement tariffs consistent with the 2008 ESP. OPAE and Edgemont will comment herein on DP&L's unlawful request to implement tariffs consistent with the 2008 ESP.

DP&L seeks to withdraw its current 2012 ESP and implement the rates approved by the Commission on June 24, 2009 in Case Nos. 08-1094-EL-SSO, et al. According to DP&L, Ohio Revised Code ("R.C.") Section 4928.143(C)(2)(a) allows this maneuver. DP&L is wrong.

R.C. 4928.143(C)(2)(a) provides that if the Commission modifies and approves an ESP application, the utility may withdraw the application, thereby terminating it. However, the modification on which DP&L relies to invoke this statute to withdraw from its current 2012 ESP has not been made by the Commission, but has been mandated by the Supreme Court of Ohio.

The Supreme Court of Ohio found that the Commission's decision in the 2012 ESP applications allowing the equivalent of transition charges must be reversed on the authority of *In re Application of Columbus S. Power Co*., 2016-Ohio-1608. Supreme Court Case No. 2014-1505, Judgment Entry, June 20, 2016. In *Columbus S. Power Co.*, the Court found that the Commission had erred in focusing solely on whether the utility had expressly sought to receive transition revenues rather than looking at the nature of the costs recovered. The Court found that R.C. 4928.38 bars the "receipt of transition revenues or any equivalent revenues by an electric utility." Based on the record, the Court found

that that the utility was receiving the equivalent of transition revenue and that the Commission erred when it found otherwise. *Columbus S. Power*, Slip Opinion No. 2016-Ohio-1608 at 9. The Court reiterated its finding in the DP&L case, Supreme Court Case No. 2014-1505.

If the Commission were to allow tariffs consistent with the 2008 ESP to replace the current 2012 ESP tariffs, this would render futile an appeal to the Supreme Court of a Commission decision approving an ESP, because if the appeal were successful and the Court remanded the decision back to the Commission for the correction of errors, as in the 2012 ESP cases, the utility could simply move the Commission to withdraw the ESP application and negate the Court's mandate to correct the errors. This would allow the Commission to issue an order negating the mandate of the Supreme Court of Ohio. No statute gives the Commission the authority to negate a mandate of the Supreme Court of Ohio. There is a statutory right to appeal a Commission decision, and the Commission cannot act in a manner that would effectively deny that right. R.C. 4903.13.

The Court has reversed the Commission's September 4, 2013 Opinion and Order in Case Nos. 12-426-EL-SSO, et al., partially so that transition revenues must not be received. To comply with the Court's order, the Commission needs only to eliminate current charges to customers that are the equivalent of transition revenues. There is no need to implement tariffs consistent with these 2008 ESP cases.

When transition revenues are eliminated from the 2012 ESP tariffs now in effect, DP&L's customers will pay less per month. The result of the Court's ruling is a rate decrease for DP&L's customers. If the Commission were to allow DP&L to implement tariffs consistent with the 2008 ESP tariffs, this would result in a rate increase instead of the Court's mandate to decrease the existing 2012 ESP rates. DP&L's attempt to implement even higher rates after the Court's ruling in the appeal of the 2012 ESP cases to reduce rates disregards the Court's mandate. The Commission cannot enable this unlawful maneuver. The Commission must now reduce DP&L's current 2012 ESP rates in order to comply with the Court's ruling.

If the Commission were to issue an order allowing DP&L to terminate the 2012 ESP and to implement tariffs consistent with the 2008 ESP, the Commission would violate R.C. 4928.143(C)(2)(b) which states that if the utility terminates an ESP application, 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 until a subsequent offer is authorized. The tariffs consistent with the 2008 ESP are not DP&L's most recent standard service offer. The 2008 ESP tariffs are not in effect and cannot be "continued".

The 2012 ESP that DP&L now seeks to withdraw has already been in effect for 32 months, with only 4 months to go. R.C. 4928.143(C)(2)(b) makes sense if the Commission-modified and approved ESP applications were withdrawn after they had been modified and approved by the Commission but

before they had gone into effect. It makes no sense to continue SSO rates that are not in effect and have not been in effect for almost three years.

Finally, the 2008 ESP rates are not lawful under the Supreme Court's 2016 decision. The Supreme Court of Ohio has ordered that transition revenues are unlawful and must be eliminated. Similar transition revenues were included in the Rate Stabilization Charge in the 2008 ESP rates, which were stipulated. The elimination of transition revenues has now been mandated by the Supreme Court of Ohio, and the Commission must follow the Court's mandate. The Court has ordered that rates be reduced to reflect the removal of transition revenues.

The term of the 2008 ESP expired on December 31, 2012, along with the agreement of the stipulating parties. OPAE and Edgemont were both parties to the Stipulation filed on February 24, 2009 and ending December 31, 2012. A Commission order in 2016 reinstating the 2008 tariffs would be subject to applications for rehearing and appeal to the Court. On rehearing, the issue would be the extent to which transition revenues were reflected in the 2008 tariffs. DP&L's attempt to increase rates by going back to the 2008 ESP tariffs, which include transition revenues, is now unlawful and must be rejected.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments will be served via electronic transmission by the Commission's Docketing Division upon the subscribed parties this 12th day of August, 2016.

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Summary: Comments electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy and Edgemont Neighborhood Coalition