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
In the Matter of Application of The Dayton Power and Light Company for Approval of its Electric Security Plan.	)	Case No. 12-426-EL-SSO
In the Matter of Application of The Dayton Power and Light Company for Approval of Revised Tariffs.	)	Case No. 12-427-EL-ATA
In the Matter of Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority.	)	Case No. 12-428-EL-AAM
In the Matter of Application of The Dayton Power and Light Company for Waiver of Certain Commission Rules.	)	Case No. 12-429-EL-WVR
In the Matter of Application of The Dayton Power and Light Company to Establish Tariff Riders.	)	Case No. 12-672-EL-RDR

APPLICATIONS FOR REHEARING OF OHIO PARTNERS FOR AFFORDABLE ENERGY AND THE EDGEMONT NEIGHBORHOOD COALITION

Pursuant to Ohio Revised Code ("R.C.") Section 4903.10, Ohio Partners for Affordable Energy and the Edgemont Neighborhood Coalition, 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 applications for rehearing from the Commission's August 26, 2016 Finding and Order in Case Nos. 12-426-EL-SSO, et al., granting DP&L's motion to withdraw its electric security plan originally filed in 2012 ("2012 ESP") and granting DP&L's motion in its ESP originally filed in 2008, Case Nos. 08-1094-EL-SSO, et al., ("2008 ESP"), to implement certain provisions, terms and conditions of its 2008 ESP. The Commission's August 26, 2016 Findings and Orders in these cases are unlawful and unreasonable on the following grounds.

1. **The Commission acted unlawfully outside the scope of its authority to negate the Supreme Court of Ohio's June 20, 2016 Judgment Entry reversing part of the Commission's decision in Case Nos. 12-426-EL-SSO, et al., and mandating that the Commission correct the Commission's errors.**

2. **The provisions, terms, and conditions of the 2008 ESP were approved by the Commission pursuant to a Stipulation and Recommendation; given that the provisions, terms, and conditions set forth in the Stipulation expired on December 31, 2012, it was unjust and unreasonable for the Commission to select certain**

provisions, terms, and conditions of the 2008 ESP to be filed as DP&L's 2016 tariffs.

3. **The 2008 ESP includes a Rate Stabilization Charge that requires DP&L's ratepayers to provide DP&L with the equivalent of transition revenues; therefore, the Commission acted unlawfully by once again failing to recognize the equivalent of transition revenues in an ESP charge and forcing DP&L customers to provide DP&L with transition revenues in contradiction to the mandate of the Supreme Court of Ohio.**

The Commission must grant these Applications for Rehearing for the reasons set forth in the attached memorandum in support.

Respectfully submitted,

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In the Matter of Application of The Dayton Power and Light Company for Waiver of Certain Commission Rules.	)))	Case No. 12-429-EL-WVR
In the Matter of Application of The Dayton Power and Light Company to Establish Tariff Riders.	)))	Case No. 12-672-EL-RDR

MEMORANDUM IN SUPPORT OF THE APPLICATIONS FOR REHEARING OF OHIO PARTNERS FOR AFFORDABLE ENERGY AND THE EDGEMONT NEIGHBORHOOD COALITION

1. **The Commission acted unlawfully outside the scope of its authority to negate the Supreme Court of Ohio's June 20, 2016 Judgment Entry reversing part of the Commission's decision in Case Nos. 12-426-EL-SSO, et al., and mandating that the Commission correct the Commission's errors.**

Revised Code ("R.C.") 4928.143(C)(2)(b) states that if the utility terminates an application or if the Commission disapproves an 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 Commission's Finding and Order accepts DP&L's argument based on a 1976 Supreme Court of Ohio procedural finding that a reversal by the Court of a Commission order anticipates that the Commission would modify its order. From there, the Commission interprets R.C. Section 4928.143(C)(2)(a) as giving the Commission "no choice but to grant DP&L's motion and accept the withdrawal " of its 2012 ESP application. Finding and Order at 5. Given that the General Assembly, in enacting R.C. Section 4928.143(C)(2)(a), would have stated that this statute gives the Commission the power to over-ride Supreme Court of Ohio mandates, if the statute did so, it is obvious that the statute did not do so. It is beyond the Commission's authority to use the statute to over-ride the mandate of the Court. The Commission had a choice to issue a lawful order, but refused to do so.

The Commission should have found that DP&L accepted the Commission's modifications in the Commission's September 4, 2013 Opinion and Order approving the 2012 ESP in Case Nos. 12-426-EL-SSO, et al., implemented the 2012 ESP, and collected the charges for over two and a half years. The Commission made no further modifications after its September 4, 2013 Opinion and Order approving the 2012 ESP. Therefore, there was no basis under R.C. Section 4928.143(C)(2)(a) to allow DP&L to withdraw its 2012 ESP after DP&L had accepted the Commission's modifications and after the 2012 ESP had already been in effect for almost three years.

The modification on which the Commission relies to invoke R.C. Section 4928.143(C)(2)(a) has been mandated by the Supreme Court of Ohio. There is no right under the statute to withdraw and terminate an ESP application whose order has been reversed by the Court and remanded to the Commission to correct the Commission's errors. The Commission should have rejected DP&L's argument based on the 1976 case that the Commission would issue a new order to comply with the Court's mandate, modify the 2012 ESP, and give DP&L the right to withdraw. DP&L's argument is absurd on its face when the Commission's modification has been ordered by the Court so that the Commission's modification negates the Court's order.

The Supreme Court of Ohio found that the Commission's decision in 2012 ESP allowing DP&L the equivalent of transition revenues 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 recovering 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; Judgment Entry (June 20, 2016).

The Commission's August 16, 2016 Findings and Orders negate the mandate of the Supreme Court ordering the Commission to correct a specific error in the Commission order approving the 2012 ESP. The appeal to the Court was successful; the Court reversed the Commission and remanded the Commission's order back to the Commission for the correction of the error. The Commission has now found that, since it must modify its order approving the ESP, the utility can simply move the Commission to withdraw the ESP and negate the Court's mandate to correct the Commission's errors. There is no right to terminate and withdraw an ESP application that must be changed due to a mandate of the Court. The statute does not refer to action by the Court. 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 Commission must follow the mandate of the Court to correct the Commission's error in the 2012 ESP application.

In addition to the Commission's lack of authority to negate mandates of the Supreme Court of Ohio**,** the Commission has accepted DP&L's argument that the entire 2012 ESP may be withdrawn. The Court did not reverse the entire Commission order. The Court found that transition revenues must not be provided by ratepayers, so that DP&L must only eliminate current charges to customers that are the equivalent of transition revenues. The Court did not address the entirety of the 2012 ESP. As the Commission well knows, the only issues on appeal to the Court are the issues raised by the parties in their applications for rehearing before the Commission and in their allegations of error in their appeal to the Court. The entirety of the 2012 ESP was never at issue before the Court. The Commission had no basis to allow the withdrawal of the entire 2012 ESP as a result of the Supreme Court's order. The Commission's sole role upon the Court's reversal was to correct the errors in the Commission's decision as mandated by the Court.

2. The provisions, terms, and conditions of the 2008 ESP were approved by the Commission pursuant to a Stipulation and Recommendation; given that the provisions, terms, and conditions set forth in the Stipulation expired on December 31, 2012, it was unjust and unreasonable for the Commission to select certain provisions, terms, and conditions of the 2008 ESP to be filed as DP&L's 2016 tariffs.

The effect of the Commission's Finding and Order in Case Nos. 08-1094-EL-SSO, et al., is to allow DP&L to implement certain provisions of DP&L's 2008 ESP, which the Commission adopted in its Opinion and Order of June 24, 2009 in Case Nos. 08-1094-EL-SSO, et al., pursuant to a Stipulation and Recommendation filed on February 24, 2009.

R.C. 4928.143(C)(2)(b) states that if the utility terminates an application or if the Commission disapproves an 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. However, the provisions, terms, and conditions of DP&L's standard service offer set in Case Nos. 08-1094-EL-SSO, et al., were not in effect and therefore could not be "continued". In fact, as the Stipulation and Recommendation approved by the Commission in the 2008 cases on June 24, 2009 clearly states, the term of the 2008 ESP expired on December 31, 2012. Case Nos. 08-1094-EL-SSO, et al., Opinion and Order at 5.

The Commission's August 26, 2016 Finding and Order in Case Nos. 08-1094-EL-SSO ignores the fact that the term of the 2008 ESP expired on December 31, 2012. However, the Commission did recognize that it is impossible in 2016 for DP&L to continue all the provisions, terms, and conditions of the standard service offer approved by the Commission in its June 24, 2009 Opinion and Order approving the Stipulation and Recommendation in Case Nos. 08-1094-EL-SSO, et al. Given the impossibility, the Commission chose provisions of the 2008 ESP and provisions of the 2012 ESP that would be in effect.

The 2012 ESP that the Commission's August 26, 2016 Finding and Order in Case Nos. 12-426-EL-SSO, et al., allowed DP&L to withdraw was in effect for 32 months. R.C. 4928.143(C)(2)(b) makes sense only if the Commission modified and approved an ESP application that was withdrawn after it had been modified by the Commission but before it had gone into effect. Then the existing standard service

offer could be continued because it was still in effect. But DP&L accepted the Commission's September 4, 2013 Opinion and Order in Case Nos. 12-426-EL-SSO, et al., and put the 2012 ESP into effect. It makes no sense that an ESP application may be withdrawn so as to "continue" a standard service offer that is not in effect.

3. The 2008 ESP includes a Rate Stabilization Charge that requires DP&L's ratepayers to provide DP&L with the equivalent of transition revenues; therefore, the Commission acted unlawfully by once again failing to recognize the equivalent of transition revenues and forcing DP&L customers to provide DP&L with transition revenues in contradiction to the mandate of the Supreme Court of Ohio.

The Commission's August 26, 2016 Finding and Order in Case Nos. 08-1094-EL-SSO, et al., provides DP&L once again, and this time in defiance of the Supreme Court of Ohio, with transition revenues. While the Commission claims that the Rate Stabilization Charge ("RSC") is a charge that allows DP&L to fulfill its Provider of Last Resort ("POLR") obligations even though POLR services are now being provided by the competitive bidding process, the Commission dismisses its own obligation, now mandated by the Court, to look at the nature of the costs recovered and to eliminate the equivalent of transition revenues. Finding and Order, 08 ESP at 9. There is ample evidence that the 2008 ESP included essentially the same transition revenue charges that the Supreme Court of Ohio has now found to be unlawful. DP&L describes the RSC as a mechanism that is intended to compensate DP&L for providing stabilized rates for customers, a description that is similar to the description of the unlawful Service Stability Charge ("SSR"). DP&L Notice of Filing Proposed Tariffs, P.U.C.O. No. 17, Fourth Revised Sheet No. G25, Page 1 of 2; DP&L Notice of Filing Proposed Tariffs, P.U.C.O. No. 17, Third Revised Sheet No.

G29, Page 1 of 1. The Supreme Court of Ohio has ordered that transition charges must be eliminated from the ESP. The 2008 ESP contains the RSC, which is essentially the same charge as the SSR charge providing for transition revenues, which the Court found unlawful. In allowing the RSC, the Commission has unlawfully allowed DP&L to receive the equivalent of transition revenues from DP&L's ratepayers. The Commission's Finding and Order lacks sound reasoning and record support. Therefore, it cannot be upheld. *Columbus S. Power,supra,* at 14-15.

The Commission's August 26, 2016, Finding and Order in Case Nos. 08-1094-EL-SSO, et al., demonstrates the Commission's selective judgment to favor DP&L. The Commission states at 10 of the August 26, 2016 Finding and Order in Case Nos. 08-1094-EL-SSO, et al., that the Commission determined in the 2008 ESP cases that the RSC is a provision, term, or condition of the 2008 ESP and that no party to the 2008 cases appealed this ruling in the 2008 ESP. The Commission states that it is now too late for any party to the 2008 cases to appeal the 2008 ESP's inclusion of transition revenues, which the Commission has now re-instated. However, given that the Commission's August 26, 2016 Findings and Orders have re-instated the unlawful RSC, these Findings and Orders may now be appealed to the Court.

The elimination of transition charges from ESPs has been mandated by the Supreme Court of Ohio, and the Commission must follow the Court's mandate. The Court has ordered the removal of transition charges from ESPs. The Commission must recognize that it allowed DP&L to collect transition

revenues through the RSC in its 2008 ESP, that the Supreme Court of Ohio has now found that such charges are unlawful, and that if the Commission continues to defy the orders of the Court, further Court action will be necessary.

Wherefore, the Commission should grant these applications for rehearing and deny the motion of DP&L to withdraw and terminate the 2012 ESP and deny the motion of DP&L to continue the provisions, terms, and conditions of the 2008 ESP.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Application for Rehearing will be served on this 23rd day of September 2016 by the Commission's e-filing system to these parties who have electronically subscribed to these cases.

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Summary: Application for Rehearing and Memorandum in Support electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy and Edgemont Neighborhood Coalition