

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
THE DAYTON POWER AND LIGHT COMPANY
TO ESTABLISH A STANDARD SERVICE OFFER
IN THE FORM OF AN 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.

CASE NO. 16-397-EL-AAM

ENTRY

Entered in the Journal on October 19, 2017

{¶ 1} The Dayton Power and Light Company (DP&L or the Company) is a public utility as defined under R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission. On February 22, 2016, DP&L filed an application for a standard service offer pursuant to R.C. 4928.141. DP&L's application is for an electric security plan (ESP) in accordance with R.C. 4928.143. Additionally, DP&L filed accompanying applications for approval of revised tariffs and for approval of certain accounting authority.

{¶ 2} By Entry on April 11, 2016, the attorney examiner scheduled a technical conference for May 5, 2016. By subsequent Entry, on August 16, 2016, the attorney examiner scheduled a local public hearing for September 27, 2016, as well as an evidentiary hearing that was eventually continued several times.

{¶ 3} Thereafter, on October 11, 2016, DP&L filed an amended application for an ESP.

{¶ 4} On January 30, 2017, a stipulation and recommendation was filed by DP&L and some of the parties. Subsequently, on March 14, 2017, an amended stipulation and

recommendation was filed by DP&L and some of the parties, including additional parties that were not part of the first stipulation.

{¶ 5} A hearing was held, as scheduled, on April 3, 2017, and continued, intermittently, for eight days. Initial briefs were filed by the parties, including Murray Energy Corporation (Murray), on May 5, 2017. Reply briefs were filed on May 15, 2017.

{¶ 6} On May 15, 2017, and May 16, 2017, Sierra Club filed motions to strike portions of Murray's initial brief and reply brief, respectively. Thereafter, on May 23, 2017, Murray filed a memorandum contra the motions to strike.

{¶ 7} In its motions, Sierra Club argues that Murray's briefs rely on two documents that were not admitted into the record. First, Sierra Club submits that Murray's reliance on DP&L's original February 22, 2016 application is improper. According to Sierra Club, statements made in DP&L's original application were withdrawn by the Company and superseded by its amended application filed on October 11, 2016. Because those statements were not submitted into evidence, Sierra Club claims it did not have the opportunity cross-examine a witness or submit evidence in response. Sierra Club further argues that the statements from the February 22, 2016 application are inadmissible hearsay because they were never subjected to cross-examination. Additionally, Sierra Club maintains it is prejudiced by Murray's submission of an April 27, 2017 securities filing regarding the sale of DP&L generation assets. Sierra Club asserts the document discusses events that took place after the hearing concluded and that Sierra Club was not provided the opportunity to refute the information in the document or cross-examine any sponsoring witness. Accordingly, Sierra Club requests that the Commission strike the parts of Murray's briefs that rely on those documents.

{¶ 8} In reply, Murray states that DP&L's February 22, 2016 application was never withdrawn and remains a part of the record. According to Murray, DP&L filed a notice to

withdraw only the Reliable Electricity Rider and related testimony on September 13, 2016. Murray maintains that the rest of DP&L's original application remains a part of the record.

{¶ 9} The attorney examiner finds that the motions to strike should be denied. However, statements made in briefs that are not supported by the record will be afforded the appropriate weight by the Commission.

{¶ 10} It is, therefore,

{¶ 11} ORDERED, That the motions to strike filed by Sierra Club be denied. It is, further,

{¶ 12} ORDERED, That a copy of this Entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Nicholas Walstra

By: Nicholas Walstra
Attorney Examiner

jrj/vrm

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in

Case No(s). 16-0395-EL-SSO, 16-0396-EL-ATA, 16-0397-EL-AAM

Summary: Attorney Examiner Entry denying motions to strike filed by Sierra Club; electronically filed by Vesta R Miller on behalf of Nicholas Walstra, Attorney Examiner, Public Utilities Commission of Ohio