

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

SECOND ENTRY ON REHEARING

Entered in the Journal on January 31, 2018

I. SUMMARY

{¶ 1} In this Second Entry on Rehearing, the Commission denies the application for rehearing filed by the Ohio Consumers' Counsel on January 5, 2018.

II. DISCUSSION

{¶ 2} The Dayton Power and Light Company (DP&L) 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.

{¶ 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 various parties. Subsequently, on March 14, 2017, an amended stipulation and recommendation was filed by DP&L and various parties, including additional parties that were not part of the first stipulation.

{¶ 5} On October 20, 2017, the Commission issued its Opinion and Order in this proceeding, modifying and approving the amended stipulation.

{¶ 6} On November 17, 2017, an application for rehearing was filed by The Ohio Environmental Council and the Environmental Defense Fund. Further, on November 20, 2017, applications for rehearing were filed by Murray Energy Corporation and Citizens to Protect DP&L Jobs, Ohio Consumers' Counsel (OCC), DP&L, Industrial Energy Users-Ohio (IEU-Ohio), Retail Energy Supply Association, IGS Energy, Inc., Ohio Manufacturers' Association Energy Group (OMAEG), and The Kroger Co. (Kroger).

{¶ 7} Subsequently, on December 4, 2017, memoranda contra the applications for rehearing were filed by IEU-Ohio, OCC, DP&L, OMAEG, and Kroger.

{¶ 8} On December 6, 2017, the Commission granted the applications for rehearing filed by the parties for further consideration of the matters specified in the applications for rehearing.

{¶ 9} R.C. 4903.10 states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days of the entry of the order upon the Commission's journal.

{¶ 10} On January 5, 2018, OCC filed an application for rehearing of the Commission's December 6, 2017 decision to grant rehearing. On January 16, 2018, DP&L filed a memorandum contra the application for rehearing.

{¶ 11} In its sole assignment of error, OCC claims that the Commission erred by granting rehearing to allow itself more time to issue a final appealable order. OCC contends that the Commission has failed to fulfill its duty to hear matters pending before it without unreasonable delay and with due regard to the rights and interests of all parties before the Commission. OCC claims that the Commission's Entry on Rehearing permits the Commission to evade a timely review of its order by the Ohio Supreme Court and precludes parties from exercising their rights to appeal Commission orders to the Ohio Supreme Court.

{¶ 12} In its memorandum contra, DP&L responds that, while R.C. 4903.10 requires the Commission to act on applications for rehearing within 30 days, the statute does not require a final decision within that time frame. DP&L contends that rehearing may be granted for various purposes and that granting an application for rehearing for further consideration is entirely consistent with the statutory framework.

{¶ 13} Moreover, DP&L argues that the Supreme Court of Ohio has expressly upheld this practice in *State ex rel. Consumers' Counsel v. Pub. Util. Comm.*, 102 Ohio St.3d 301, 2004-Ohio-2894, 809 N.E.2d 1146. DP&L quotes the Court's holding that:

R.C. 4903.10 did not expressly preclude the commission from considering the merits of the applications for rehearing. The commission acted within 30 days of the filing of the applications when it granted the applications on February 11 for the limited purpose of allowing additional time to consider them. Nothing in R.C. 4903.10 or precedent specifically prohibited the commission from so proceeding.

State ex rel. Consumers' Counsel at ¶ 19.

{¶ 14} DP&L also disputes OCC's claim that the Commission's intent is to thwart judicial review by granting time for further consideration. DP&L contends that multi-party complex litigation involving complicated statutory schemes is necessarily time consuming, citing one of the Commission's prior rulings on this identical issue: "To issue a decision without [a] thorough review * * * would be irresponsible and would be of no value to any of the parties * * * including the residential customers whom OCC is representing." *In re FirstEnergy*, Case No. 14-1297-EL-SSO, Seventh Entry on Rehearing (Feb. 1, 2017) at ¶ 13.

III. CONCLUSION

{¶ 15} The Commission finds that rehearing should be denied. In this matter, OCC continues to dispute the Commission's ability to grant rehearing for the purpose of further consideration of the matters specified in the applications for rehearing, notwithstanding a clear previous ruling by the Ohio Supreme Court on this issue. The Commission notes that OCC has filed applications for rehearing with identical assignments of error in several previous cases, and the Commission has rejected these identical assignments of error in each case. See, *In re Ohio Power Co.*, Case Nos. 14-1693-EL-RDR, et al., Application for Rehearing (Jan. 20, 2017) at 5, Fourth Entry on Rehearing (Feb. 8, 2017) ¶¶ 19-20, 22; *In re FirstEnergy*, Case No. 14-1297-EL-SSO, Application for Rehearing (Jan. 6, 2017) at 2, 4-8, Seventh Entry on Rehearing (Feb. 1, 2017) at ¶¶ 10-13; *In re Dayton Power and Light Co.*, Case Nos. 12-426-EL-SSO et al., Application for Rehearing (Nov. 14, 2016) at 2-3, 4-7, Seventh Entry on Rehearing (Dec. 14, 2016) at ¶¶ 35, 37; *In re Dayton Power and Light Co.*, Case Nos. 08-1094-EL-SSO et al., Application for Rehearing (Nov. 14, 2016) at 2, 4-7, Third Entry on Rehearing (Dec. 14, 2016) at ¶¶ 36, 38. As OCC's arguments in support of the assignment of error raised in this case are, literally, a word-for-word rehash of previous filings, we will not depart from our precedent here.

{¶ 16} As DP&L points out in its memorandum contra, the Ohio Supreme Court already has rejected claims raised by OCC that the Commission cannot grant rehearing

to allow additional time to consider the applications for rehearing. *State ex rel. Consumers' Counsel*, 102 Ohio St.3d 301, 2004-Ohio-2894, 809 N.E.2d 1146, ¶ 19. Moreover, the Commission notes that the approved ESP in this proceeding has raised complex issues as the ESP will determine how rates are determined for DP&L's customers for six years, the term of the approved ESP. Thus, following the issuance of the Opinion and Order in this case, the parties filed nine applications for rehearing containing 27 assignments of error. In order for the Commission to issue an entry on rehearing within 30 days of the filing of the applications, as OCC apparently envisions, the Commission would have been limited to a shallow, abbreviated review of these issues raised in the applications for rehearing. Neither the Commission nor the parties to this proceeding would benefit from such a limited review. The Commission also notes that the filing of rote applications for rehearing regarding our ability to grant rehearing for the further consideration of the matters raised on rehearing is counterproductive if a party is seeking an expeditious final appealable order. Such applications simply oblige the Commission, as in this case, to divert time and attention to rule on the rote application for rehearing.

{¶ 17} Finally, the Commission finds that OCC cannot demonstrate prejudice in this proceeding, as OCC has not availed itself of the opportunity to seek a stay of any provision of the Commission's Opinion and Order.

{¶ 18} Accordingly, the Commission finds that rehearing on the sole assignment of error raised by OCC in the application for rehearing filed on January 5, 2018, should be denied.

IV. ORDER

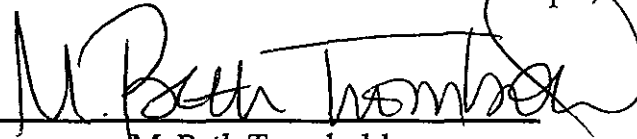
{¶ 19} It is, therefore,

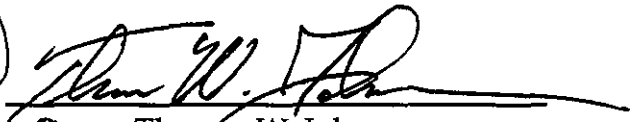
{¶ 20} ORDERED, That the application for rehearing filed by OCC on January 5, 2018, be denied. It is, further,


{¶ 21} ORDERED, That a copy of this Second Entry on Rehearing be served upon each party of record.

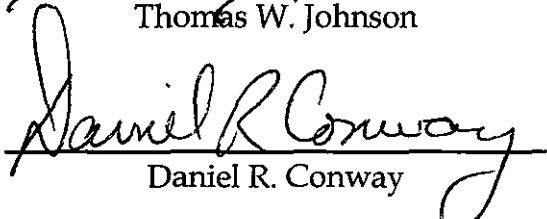
THE PUBLIC UTILITIES COMMISSION OF OHIO



Asim Z. Haque, Chairman

M. Beth Trombold

Thomas W. Johnson

Lawrence K. Friedeman

Daniel R. Conway

GAP/sc

Entered in the Journal

JAN 31 2018
_____Barcy F. McNeal
Secretary