

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
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In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code §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 the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan	:	Case No. 16-0395-EL-SSO
	:	
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs	:	Case No. 16-0396-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 § 4905.13	:	Case No. 16-0397-EL-AAM
	:	

**THE DAYTON AND POWER AND LIGHT COMPANY'S
NOTICE OF WITHDRAWAL OF ITS APPLICATION IN
CASE NO. 16-395-EL-SSO PURSUANT TO R.C. 4928.143(C)(2)(a)**

Pursuant to R.C. 4928.143(C)(2)(a), The Dayton Power and Light Company ("DP&L") exercises its statutory right to withdraw its Application in Case No. 16-395-EL-SSO ("ESP III"). Further, pursuant to R.C. 4928.143(C)(2)(b), DP&L exercises its statutory right to

implement its ESP from Case No. 08-1094-EL-SSO ("ESP I"), including the Rate Stabilization Charge ("RSC") approved in that case.

I. CASE NO 16-395-EL-SSO – WITHDRAWAL OF DP&L'S ESP III APPLICATION

Section 4928.143(C)(2)(a) provides:

"If the commission modifies and approves an application under division (C)(1) of this section, the electric distribution utility may withdraw the application, thereby terminating it, and may file a new standard service offer under this section or a standard service offer under section 4928.142 of the Revised Code."

(Emphasis added.)

DP&L filed its initial Application in Case No. 16-395-EL-SSO on February 22, 2016, and its Amended Application on October 11, 2016 (together, the "Application"). The Amended Application requested a Distribution Modernization Rider ("DMR"). Oct. 11, 2016 Amended Application, ¶¶ 2-7 (Case No. 16-395-EL-SSO). On March 14, 2017, DP&L, the Commission's Staff, and a diverse group of knowledgeable and capable parties filed an Amended Stipulation and Recommendation ("Stipulation"), which included a DMR. Stipulation, § II.2. The Commission modified and approved the Stipulation on October 20, 2017, and further "modified and approved" the Stipulation on November 21, 2019. Nov. 21, 2019 Supplemental Opinion & Order, ¶ 134 (Case No. 16-395-EL-SSO). The latter modification ordered DP&L to remove the DMR from its tariffs. *Id.* ¶ 110.

Thus, pursuant to R.C. 4928.143(C)(2)(a), DP&L withdraws its ESP III Application.

II. CASE NO. 08-1094-EL-SSO – IMPLEMENTATION OF DP&L'S PREVIOUS
ESP

Pursuant to R.C. 4928.143(C)(2)(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.) *Accord:* Aug. 26, 2016 Finding and Order, ¶ 14 (Case No. 12-426-EL-SSO)

("The Commission finds that, pursuant to R.C. 4928.143(C)(2)(a), we have no choice but to . . . accept the withdrawal of ESP II.").

The word "shall" is mandatory. The Commission must, therefore, issue a new Order continuing the provisions, terms, and conditions of DP&L's standard service offer that was in effect when the Commission approved the Stipulation in Case No. 16-395-EL-SSO, *i.e.*, the provisions, terms and conditions in effect in ESP I pursuant to the August 26, 2016 Finding and Order issued in *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, et al.*, Case No. 08-1094-EL-SSO, *et al.* The Commission has no discretion to implement other rates.

Indeed, the Commission previously has approved DP&L's withdrawal of its second ESP plan ("ESP II") and reversion to ESP I, including the implementation of the RSC. Aug. 26, 2016 Finding and Order, ¶ 23 (Case No. 08-1094-EL-SSO); Dec. 14, 2016 Third Entry on Rehearing, ¶¶ 31-35 (Case No. 08-1094-EL-SSO).

Further, the Supreme Court of Ohio has twice held that the RSC is lawful.

Constellation New Energy v. Pub. Util. Comm., 104 Ohio St. 530, 2004-Ohio-6797, ¶¶ 39-40;

Ohio Consumers' Counsel v. Pub. Util. Comm., 114 Ohio St.3d 340,2007-Ohio-4276, ¶¶ 17-26.

In addition, no party sought rehearing from the Commission's June 24, 2009 Opinion and Order in Case No. 08-1094-EL-SSO that implemented the RSC as a term of DP&L's first ESP.

R.C. 4903.10.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing The Dayton Power and Light Company's Notice of Withdrawal of Its Application in Case No. 16-395-EL-SSO Pursuant to R.C. 4928.143(C)(2)(a) has been served via electronic mail upon the following counsel of record, this 25th day of November, 2019:

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Summary: Notice The Dayton Power Light Company's Notice of Withdrawal of Its Application in Case No. 16-395-EL-SSO Pursuant to R.C. 4928.143(C)(2)(a) electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company