

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of :
The Dayton Power and Light Company : Supreme Court Case No. 2014-1505
for Approval of Its Electric Security Plan. :

In the Matter of the Application of :
The Dayton Power and Light Company :
for Approval of Revised Tariffs. : Appeal from the Public Utilities
Commission of Ohio

In the Matter of the Application of :
The Dayton Power and Light Company : Public Utilities Commission of Ohio
for Approval of Certain Accounting : Case Nos. 12-426-EL-SSO,
Authority. : 12-427-EL-ATA,

In the Matter of the Application of : 12-428-EL-AAM,
The Dayton Power and Light Company : 12-429-EL-WVR, and
for Waiver of Certain Commission Rules. : 12-672-EL-RDR

In the Matter of the Application of :
The Dayton Power and Light Company :
to Establish Tariff Riders. :

Industrial Energy Users-Ohio, :
Appellant, :

v. :

Public Utilities Commission of Ohio, :
Appellee. :

**JOINT RESPONSE OF APPELLANTS INDUSTRIAL ENERGY USERS-OHIO AND
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL TO THE MOTION OF
CROSS-APPELLANT THE DAYTON POWER AND LIGHT COMPANY TO
ESTABLISH ORAL ARGUMENT SCHEDULE**

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In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.	: : :	Appeal from the Public Utilities Commission of Ohio
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority.	: : : :	Public Utilities Commission of Ohio Case Nos. 12-426-EL-SSO, 12-427-EL-ATA, 12-428-EL-AAM,
In the Matter of the Application of The Dayton Power and Light Company for Waiver of Certain Commission Rules.	: : :	12-429-EL-WVR, and 12-672-EL-RDR
In the Matter of the Application of The Dayton Power and Light Company to Establish Tariff Riders.	: : :	
Industrial Energy Users-Ohio, Appellant,	: : : : :	
v.	: : :	
Public Utilities Commission of Ohio, Appellee.	: : : : :	

**JOINT RESPONSE OF APPELLANTS INDUSTRIAL ENERGY USERS-OHIO AND
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL TO THE MOTION OF
CROSS-APPELLANT THE DAYTON POWER AND LIGHT COMPANY TO
ESTABLISH ORAL ARGUMENT SCHEDULE**

On August 3, 2015, the Dayton Power and Light Company (“DP&L”) filed its own motion requesting a scheduling order that would limit Industrial Energy Users-Ohio (“IEU-

Ohio”) and the Office of the Consumers’ Counsel (“OCC”) to a shared ten minutes and expand the time available to DP&L and the Public Utilities Commission of Ohio (“Commission”) to twenty minutes of the Court’s standard thirty-minute allotment of time for oral argument. Motion of Cross-Appellant the Dayton Power and Light Company to Establish Oral Argument Schedule at 1 (Aug. 3, 2015) (“DP&L Motion”). Because DP&L unreasonably seeks to restrict the time for Appellants’ oral argument of the important issues before the Court, DP&L’s motion should be denied.

In the case below, the Commission authorized an electric security plan (“ESP”) that includes a term that permits DP&L to collect from customers \$110 million annually through a nonbypassable charge for generation-related services. This Commission decision is being appealed by the OCC and IEU-Ohio. In addition to appealing the authorization of the nonbypassable rider, IEU-Ohio also asks the Court to review and reverse the Commission’s finding that the ESP is better than the market alternative. Additionally, OCC asks the Court to reverse the Commission’s use of an order nunc pro tunc to materially alter the terms of the ESP and to dismiss DP&L’s assignment of error because it was not properly preserved for review by this Court. The issues raised by each party have been fully briefed, but oral argument has not been scheduled.

Unless the Court decides otherwise, the Court’s rules provide that a non-capital case will be assigned thirty minutes for oral argument, each opposing party has fifteen minutes allotted for oral argument and in cases where there are multiple parties on a side, the parties share the time allotted to that side. S.Ct.Prac.R. 17.05(A). In practice, a cross-appellant in an appeal from a Commission order shares time with the Commission. Based on the Court’s rules and practice, IEU-Ohio and OCC would share fifteen minutes of the total thirty minutes allotted to the case,

and DP&L and the Commission would share the remaining fifteen minutes. The Court, however, may vary the time for oral argument upon motion or on its own order. S.Ct.Prac.R. 17.05(B).

The Court now has before it competing motions regarding the scope of an oral argument. On July 30, 2015, IEU-Ohio and OCC filed a motion requesting the Court to schedule an oral argument for an hour and to afford each party fifteen minutes for its oral argument. Joint Motion of Appellants Industrial Energy Users-Ohio and the Office of the Ohio Consumers' Counsel to Establish Oral Argument Schedule (July 30, 2015) ("Joint Motion"). In support of their motion, IEU-Ohio and OCC argued that each party should be afforded additional time to present the complicated and varied issues in their appeals to the Court and that the additional time would afford the Court sufficient time to have its questions answered.

On August 3, 2015, DP&L also seeks to alter the time set for oral argument, but it argues that the fifteen minutes usually provided to parties such as IEU-Ohio and OCC should be reduced to ten minutes because "several arguments raised by OCC and IEU overlap." DP&L Motion, Memorandum in Support of Motion of Cross Appellant Dayton Power and Light Company to Establish Oral Argument Schedule at 2.

Left unsaid in DP&L's argument are the additional issues presented by the appeals of IEU-Ohio and OCC that do not "overlap." In addition to its assignments of error challenging the stability rider, IEU-Ohio also argues that the Commission's application of the statutory test for approval of an ESP is unlawful. OCC further challenges the authority of the Commission to modify the ESP order without following statutory requirements for rehearing and DP&L's failure to properly preserve its claims of error. Thus, DP&L's assertion that there is an overlap of arguments of IEU-Ohio and OCC that justifies providing less time than would be available under

the Court's standard practice is an over-simplification that does not reflect accurately the complexity of the issues presented to the Court.

As a practical matter, moreover, the Court's recent experience suggests that the Court should build additional time into its hearing schedule for this case. In the recent oral argument in the appeal of the 2011 Commission order approving Ohio Power Company's ESP, for example, the Court permitted the oral argument to extend to nearly an hour although it scheduled the case for thirty minutes. *In the Matter of the Application of Columbus Southern Power Company for Authority to Establish A Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan. In The Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority, S.Ct. Case No. 2013-0521, Entry (Apr. 9, 2015).* The additional time afforded the Court the opportunity to ask the parties to explain more fully the positions they were advancing.

For these reasons, the Court should deny DP&L's motion to limit the time afforded IEU-Ohio and OCC for oral argument. Rather than unfairly limiting the time available to IEU-Ohio and OCC, the Court instead should consider expanding the time for oral argument, as suggested in the Joint Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Joint Response of Appellants Industrial Energy Users-Ohio and the Office of the Ohio Consumers' Counsel* was served upon the parties of record *via* electronic transmission this 13th day of August 2015.

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