

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

13
RECEIVED-DOCKETING DIV
2009 MAY -5 PM 4:55
PUCO

In the Matter of the Application of)
The Dayton Power and Light Company)
for Approval of its Transmission Cost)
Recovery Rider.)

Case No. 09-256-EL-UNC

COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

Samuel C. Randazzo (Counsel of Record)
Joseph M. Clark
Lisa G. McAlister
MCNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
jclark@mwncmh.com
sam@mwncmh.com
lmcAlister@mwncmh.com

May 5, 2009

Attorneys for Industrial Energy Users-Ohio

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business
Technician _____ Date Processed MAY 5 2009

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
The Dayton Power and Light Company)	
for Approval of its Transmission Cost)	Case No. 09-256-EL-UNC
Recovery Rider.)	

COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

I. Introduction

Pursuant to the April 6, 2009 Entry issued by the Public Utilities Commission of Ohio ("Commission" or "PUCO") in this proceeding, Industrial Energy Users-Ohio ("IEU-Ohio") hereby respectfully submits its comments on The Dayton Power and Light Company's ("DP&L" or "Company") March 27, 2009 request to establish a rider to recover what DP&L characterizes as transmission and transmission-related costs (hereinafter "Application").

DP&L asserts that its Application is made pursuant to Section 4928.05(A)(2), Revised Code, and Rules 4901:1-35(9)(f)¹ and 4901:1-36, Ohio Administrative Code. Section 4928.05(A)(2), Revised Code, was enacted as part of Amended Substitute Senate Bill 221 ("SB 221") and provides that:

Notwithstanding Chapters 4905. and 4909. of the Revised Code, commission authority under this chapter shall include the authority to provide for the recovery, through a reconcilable rider on an electric distribution utility's distribution rates, of all transmission and transmission-related costs, including ancillary and congestion costs, imposed on or charged to the utility by the federal energy regulatory commission or a

¹ IEU-Ohio believes this reference is a typographical error but cannot discern the correct reference.

regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission.

DP&L is requesting that the Commission grant DP&L the authority to recover a list of cost components through the TCRR including:

- Transmission Enhancement Charges (associated with PJM's Regional Transmission Expansion Plan, "RTEP")
- Alliance RTO Start-up Costs
- Reactive Supply and Voltage Control from Generation Sources
- Regulation
- Synchronized (Spinning) Reserves
- Operating Reserves
- RTO Start-up Cost Recovery
- Synchronous Condensing
- Locational Reliability Charges ("LRC")
- Capacity Resource Deficiency Charges/Credits
- RPM Auction Charges/Credits
- Generation Resource Rating Test Charges/Credits
- Peak Hour Period Availability Charges/Credits
- Black Start Service
- PJM Annual Membership Fee
- Transmission Owner Scheduling, System Control and Dispatch Service
- North American Electric Reliability Corporation ("NERC") Charges
- Reliability First Corporation ("RFC") Charges
- PJM Default Charges
- Transmission Congestion Charges/Credits
- Generation Loss Factor
- Transmission Losses Charges/Credits
- Firm Point-to-Point Transmission Service Credits
- Non-Firm Point-to-Point Transmission Service Charges/Credits
- Network Integration Transmission Service
- Financial Transmission Rights Auction Charges/Credits
- Auction Revenue Rights Credits
- Expansion Cost Recovery Charges ("ECRC")/Credits
- PJM Scheduling System Control and Dispatch Service (Admin Fee)
- PUCO Consultant Fees.

Although DP&L characterizes its Application as seeking to establish a rider to collect transmission and transmission-related costs charged to DP&L by PJM Interconnection, LLC ("PJM"), a closer review of the Application demonstrates that

DP&L has employed considerable artistic license in attempting to define cost components that it believes are transmission-related and, therefore, eligible for cost recovery through a rider mechanism as provided for within Section 4928.05(A)(2), Revised Code. In doing so, DP&L has produced a proposed result that is both unlawful and unreasonable.

Specifically, DP&L is seeking to improperly recover generation-related costs through the proposed Transmission Cost Recovery Rider ("TCRR"). Additionally, DP&L is seeking to improperly recover, by its own identification, at least three cost components that are not PJM-related charges (PUCO consultant fees, Alliance RTO start-up costs and the generation loss factor adjustment)² despite its assertion that the costs are outside of its control and are assessed to it by PJM.³ DP&L is also seeking to improperly recover through the TCRR costs that are not charged to it by PJM, but rather are costs that were recognized in DP&L's most recent rate case and thus, are already included in current rates. For these reasons and as discussed in more detail below, DP&L has not demonstrated that its Application is just and reasonable. Therefore, the Commission should either set DP&L's Application for hearing, or preferably, deny the Application as deficient.

II. Alliance RTO Start-Up Costs

DP&L witness Gregory S. Campbell testifies that all of the deferred costs DP&L is seeking to recover through the TCRR over a twenty-four (24) month period were authorized by the Commission in either Case No. 07-1287-EL-AAM or Case No.

² Application at 5.

³ Application at 2.

08-1209-EL-AAM. Mr. Campbell also testifies that the TCRR will recover the forecasted net retail jurisdictional RTO-related costs for the period of May 1, 2009 through April 30, 2010. As an initial matter, at least one of the cost components that DP&L is requesting to recover through the TCRR does not fall into either of the two buckets identified by Mr. Campbell. Specifically, DP&L is requesting the recovery of Alliance RTO start-up costs through the TCRR. The Commission must reject this aspect of DP&L's Application for numerous reasons or set the matter for hearing.

The Alliance RTO is old history, so one might naturally presume that any start-up costs that DP&L may have incurred associated with its participation in the Alliance RTO are from 2002 or earlier periods.⁴ However, DP&L's Application does little to unravel the mystery associated with the precise nature of these Alliance RTO costs. The Commission's orders in Case No. 07-1287-EL-AAM or Case No. 08-1209-EL-AAM, which Mr. Gregory relies upon as authorizing all of the deferrals that DP&L now seeks to recover through the TCRR, do not authorize DP&L to defer Alliance RTO start-up costs.⁵ Additionally, Schedule C-1a, which Mr. Gregory relies upon to identify the total

⁴ On April 25, 2002, the Federal Energy Regulatory Commission ("FERC") mercifully pulled the plug on the ill-fated Alliance RTO and directed the former Alliance Companies, including DP&L, to make a filing stating which other RTO they intended to join. *Alliance Companies, et al.*, 99 FERC ¶ 61,105 (2002).

⁵ Although the Commission's Order in Case No. 08-1209-EL-AAM authorized DP&L to defer certain categories of costs, the Commission reserved judgment on whether the various cost components DP&L identified would be appropriate to recover through a transmission cost recovery rider:

Appendix A of the Application lists the various components that appear on the invoices that DP&L receives from PJM, which DP&L has included in its deferral request and will ultimately seek to include in a permanent transmission cost recovery rider. The Commission finds that the list includes cost/credit categories not previously included in transmission-related cost recovery riders authorized for other electric utility companies in Ohio. As a result, the Commission will authorize DP&L to defer the costs/credits related to all of the PJM costs/credits requested; however, **the various categories will be further investigated and a determination will be made as to the reasonableness of including each of the costs/credits in a transmission cost recovery rider once DP&L files a permanent transmission rider application.**

deferred jurisdictional costs of \$25.2 million (as of April 30, 2009) which DP&L is seeking to recover through the TCRR, does not list any deferred Alliance RTO costs. However, Schedule C-1 lists Alliance RTO start-up costs as a forecasted expense that DP&L expects to incur during the period of May 2009 through April 2010. DP&L projects the total forecasted Alliance RTO start-up expenses as \$3,990,576.⁶ Given that FERC pulled the plug on the Alliance RTO in 2002, it should be obvious that DP&L will not incur Alliance RTO start-up costs as an actual expense during May 2009 through April 2010. The Commission should, therefore, reject this aspect of DP&L's Application or set the matter for hearing.

III. Generation-Related Costs

As discussed in the testimony of DP&L witness Sharon Schroder, DP&L is proposing to collect costs associated with PJM's reliability pricing model ("RPM") through the TCRR. This includes locational reliability charges ("LRC"), capacity resource deficiency charges and credits, RPM auction revenues, generation resource rating test charges and credits, and peak hour availability charges and credits.⁷ Ms. Schroder acknowledges that PJM's RPM-related charges are, in fact, costs associated with providing generation service.⁸ However, Ms. Schroder suggests that RPM costs are reliability-related and, therefore, should be treated similarly to charges

In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify its Accounting Procedures, Case No. 08-1209-EL-AAM, Finding and Order at 1-2 (February 19, 2009) (emphasis added).

⁶ Schedule C-1, page 2 of 2.

⁷ Direct Testimony of Sharon Schroder at 6.

⁸ *Id.* at 8.

for reactive power, regulation, operating reserves, black start service and losses.⁹ DP&L's request to recover PJM RPM-related charges through the TCRR must be denied for several reasons.

First, Ms. Schroder's recommendation fails to recognize that Section 4928.05(A)(2), Revised Code, specifically limits the types of costs that can be recovered through a transmission rider mechanism to only "transmission and transmission-related costs, including ancillary and congestion costs." The Commission's rules provide further guidance, and identify that a transmission rider cannot collect costs that the electric utility is recovering in any other schedule or rider.¹⁰

The Stipulation and Recommendation approved by the Commission that established DP&L's rate stabilization plan ("RSP") provides that DP&L will provide a market-based standard service offer ("SSO") to its customers, pursuant to Section 4928.14(A), Revised Code.¹¹ Section 4928.141(A), Revised Code, requires an SSO to include "all competitive retail electric services necessary to maintain essential electric service to consumers, **including a firm supply of electric generation service.**"¹² Thus, the rates that DP&L is collecting for generation service provide compensation for firm generation service, including any costs or credits that DP&L may experience as a result of being subject to PJM's RPM-related charges. The 2005 Stipulation and

⁹ *Id.*

¹⁰ Rule 4901:1-36-04(C), Ohio Administrative Code.

¹¹ *In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for The Dayton Power and Light Company*, Case No. 02-2779-EL-ATA, Stipulation and Recommendation at 12 (May 28, 2003).

¹² Section 4928.141(A), Revised Code (*emphasis added*). (formerly Section 4928.14(A), Revised Code, as amended into Section 4928.141(A), Revised Code, by SB 221).

Recommendation that extended DP&L's RSP through 2010 did not modify or affect DP&L's obligation to continue to provide an SSO, including all services necessary to maintain a firm supply of electric generation service, and be compensated for this service through its approved rates for generation service.¹³ Similarly, the Stipulation and Recommendation pending before the Commission addressing DP&L's electric security plan ("ESP") does not alter DP&L's obligation to continue to provide an SSO, including all services necessary to maintain a firm supply of electric generation service, and be compensated for this service through its approved rates for generation service.¹⁴ Thus, DP&L's proposal to recover PJM RPM-related costs through the TCRR does not comply with the Commission's rules, which prohibit the duplicative collection of costs through a transmission rider.

Ms. Schroder's testimony asserting her belief that RPM-related costs are reliability-related is also unpersuasive. Whether RPM-related costs are or are not reliability-related is irrelevant. Section 4928.05(A)(2), Revised Code, specifically limits the costs that may be collected through a rider mechanism to "transmission and transmission-related costs, including ancillary and congestion costs." Since RPM costs are for generation service, and are not transmission, transmission-related or ancillary or congestion costs, they are ineligible for recovery through a transmission rider.

Additionally, although Ms. Schroder attempts to analogize RPM-related costs as similar to the costs of regulation and reserves, she fails to recognize that because

¹³ See former Section 4928.14(A), Revised Code.

¹⁴ Section 4928.141(A), Revised Code.

FERC has classified these services as ancillary services, they meet the limited eligibility provided for in Section 4928.05(A)(2), Revised Code.

Finally, DP&L's proposal to collect generation-related RPM costs through the TCRR is inconsistent with Ohio Supreme Court decisions that interpret Section 4928.02(H), Revised Code, as prohibiting public utilities from using unbundled rates for noncompetitive services to collect revenues associated with competitive generation services.¹⁵ For all of these reasons, the Commission should either set this aspect of DP&L's Application for hearing, or find that the Application is deficient and fails to comply with the Commission's rules.

IV. NERC/RFC Charges

Ms. Schroder also recommends, again invoking claims that the associated costs are reliability-related, that the TCRR be allowed to recover costs that DP&L is billed by PJM for default charges and NERC/RFC charges.¹⁶ Any charges that PJM levied for members for defaults are not transmission, transmission-related or an ancillary or congestion cost. In fact, since the vast majority of PJM's revenues are associated with the operations of its energy markets, any costs associated with defaults are more strongly linked to generation functions. DP&L has failed to demonstrate that collecting default costs through its proposed TCRR is either lawful or reasonable. Accordingly,

¹⁵ *Elyria Foundry Co. v. Pub. Util. Comm.*, 114 Ohio St.3d 305, 2007-Ohio-4164, at ¶150.

¹⁶ Ms. Schroder does not describe the nature of the NERC/RFC charges in her testimony. However, in the direct testimony of Gregory S. Campbell, he briefly identifies that NERC charges are administrative costs that are associated with scheduling and dispatching the PJM system. He indicates RFC charges are also administrative costs that are associated with scheduling and dispatching the PJM system. IEU-Ohio is unaware of any rate schedule through which PJM explicitly invoices members for NERC and/or RFC charges. If DP&L is seeking to recover its membership dues in either NERC or RFC through the TCRR, this should also be disallowed by the Commission as such costs are not transmission-related.

the Commission should either set this aspect of DP&L's Application for hearing, or find the Application is deficient and does not comply with the Commission's rules.

V. Financial Transmission Rights ("FTRs") and Auction Revenue Rights ("ARRs")

Finally, in the testimony of David J. Crusey, he discusses and recommends that DP&L implement a 50/50 sharing mechanism under which all of the FTRs and ARRs be shared equally between retail customer and shareholders.¹⁷ According to Mr. Crusey, a sharing mechanism is appropriate because it would provide DP&L the proper incentive to enhance revenues and decrease the net congestion costs.

It is not clear from Mr. Crusey's testimony whether he is suggesting that DP&L be allowed to engage in speculative trading of FTRs/ARRs and split the risks and rewards of such trading between shareholders and retail customers. As a load-serving entity within PJM, DP&L receives an entitlement of ARRs associated with its historical use of the transmission system.¹⁸ In markets in which FERC has approved the use of locational marginal prices, FTRs and ARRs are available to provide financial hedges against the physical congestion to which market participants may be exposed. There is a finite quantity of FTRs/ARRs that are available, which is linked to the simultaneous transfer capability of the transmission grid.

As is the case with any limited resource, FERC has been required to adopt policies governing which market participants have priority rights to FTRs/ARRs. FERC's general policy, which has been implemented within PJM, is that the customers

¹⁷ Direct testimony of David J. Crusey at 5.

¹⁸ ARRs can be converted to FTRs through auctions conducted by PJM.

responsible for paying the embedded cost of the transmission system should have first priority to any congestion hedges the transmission grid is capable of physically supporting.¹⁹ In the case of DP&L, its retail customers bear responsibilities for the embedded costs of the transmission system. Therefore, retail customers are entitled to the financial benefits associated with whatever congestion hedges DP&L is allocated by PJM associated with its historical use of the transmission system. There is no basis for DP&L's suggestion that shareholders are entitled to or should be allocated some portion of FTR/ARR revenues. The shareholders are not assuming any responsibilities for the embedded costs of the transmission system.

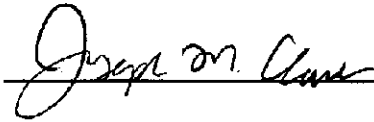
To the extent that Mr. Crusey's testimony is intended to address speculative trading opportunities that may exist as result of acquiring FTRs/ARRs that have no relationship to the physical congestion risk DP&L is exposed to as a load-serving entity, IEU-Ohio recommends that shareholders be allowed to retain 100% of the risks and rewards associated with such speculative trading, assuming that such shareholders will also assume funding responsibilities for these activities. However, to avoid cross subsidization issues, it may be useful for the Commission to direct that any such activities be undertaken through a non-regulated affiliated company.

VI. Conclusion

For the reasons set forth herein, IEU-Ohio respectfully requests that the Commission either deny DP&L's Application or set the matter for hearing.

¹⁹ "The Commission's policy is that market participants that request and support an expansion or upgrade in accordance with their transmission organization's prevailing rules for cost responsibility and allocation must be awarded a long-term firm transmission right for the incremental transfer capability created by the expansion or upgrade." *Long-Term Firm Transmission Rights in Organized Electricity Markets*, 116 FERC ¶ 61,077 at P 19 (2006) (Order No. 681). See also *California Independent System Operator Corporation*, 116 FERC ¶ 61,274 (2006).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph M. Clark", is positioned above a solid horizontal line.

Samuel C. Randazzo (Counsel of Record)

Joseph M. Clark

Lisa G. McAlister

McNees Wallace & Nurick LLC

21 East State Street, 17th Floor

Columbus, OH 43215-4228

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

sam@mwncmh.com


jclark@mwncmh.com

lmcalister@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Comments of Industrial Energy Users-Ohio* was served upon the following parties of record this 5th day of May, 2009, via first class mail, postage prepaid.


JOSEPH M. CLARK

Judi L. Sobecki
Randall V. Griffin
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, Ohio 45432

**ON BEHALF OF THE DAYTON POWER
AND LIGHT COMPANY**

Janine Migden-Ostrander
Consumers' Counsel
Jacqueline Lake Roberts, Counsel of Record
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485

**ON BEHALF OF THE OFFICE OF THE
OHIO CONSUMERS' COUNSEL**