

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
The Dayton Power and Light Company for a)	
Finding that Peak Demand Reduction)	Case No. 09-1987-EL-EEC
Benchmark has Been Met or In the)	
Alternative, Application to Amend Demand)	
Reduction Benchmark.)	

**APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY
FOR A FINDING THAT DP&L'S PEAK DEMAND REDUCTION BENCHMARK
HAS BEEN MET OR, IN THE ALTERNATIVE, APPLICATION TO AMEND
DP&L'S PEAK DEMAND REDUCTION BENCHMARK**

The Dayton Power and Light Company ("DP&L" or "the Company") respectfully requests a finding and order by the Commission that DP&L has met its 2009 yearly peak demand reduction statutory benchmarks as mandated by section 4928.66(A)(1)(b) of the Ohio Revised Code. DP&L submits that it has met its statutory benchmarks in three ways, and asks for an order expressly finding that each of the three factors resulting in the peak demand reduction are independently sufficient to satisfy DP&L's 2009 peak demand reduction requirements. First, DP&L's 2009 peak demand was more than 1% below its baseline level, therefore DP&L has met its 2009 benchmark. Second, 160 MW of retail load located within DP&L's footprint is participating in PJM's Demand Response program. Third, DP&L has two pending applications for approval of special arrangements under which customers have formally committed their PJM demand response program participation of almost 35 MW to DP&L. Based on this activity within the Company's service territory, DP&L has more than met its peak demand reduction benchmark, which was 32 MW.

In the alternative, should the Commission deny DP&L's request for the findings above, DP&L respectfully requests, pursuant to R.C. §4928.66(A)(2)(b) and O.A.C. §4901:1-39-05(I), that the Commission amend DP&L's annual 2009 demand reduction benchmark to zero due to the economic and regulatory reasons described below. .

If the finding of compliance is denied, this amendment is appropriate and necessary because regulatory and economic reasons beyond DP&L's reasonable control have rendered DP&L unable to implement programs capable of reasonably achieving DP&L's 2009 benchmarks. In support of this Application DP&L states as follows:

1. DP&L is a public utility and electric light company as defined by sections 4905.02 and 4905.03(A)(4) of the Ohio Revised Code respectively, and an electric distribution utility as defined by R.C. §4928.01(A)(6).

2. R.C. §4928.66(A)(1)(b) provides, in part, as follows: "Beginning in 2009, an electric distribution utility shall implement peak demand reduction programs designed to achieve a one per cent reduction in peak demand in 2009 and an additional seventy-five hundredths of one per cent reduction each year through 2018."

3. Section 4901:1-39-05(I) of the Ohio Administrative Code provides, as follows:

If an electric utility determines that it is unable to meet a benchmark due to regulatory, economic, or technological reasons beyond its reasonable control, the electric utility may file an application to amend its benchmarks. To the extent that forecasted peak demand and peak prices do not materialize for economic reasons, the electric utility may be granted a waiver of its benchmark for the difference between actual performance and expected performance of demand response programs.

4. DP&L has implemented several energy efficiency programs designed to reduce customer kWh consumption, which also have the effect of lowering the overall

peak demand within DP&L's control area. Coupled with that, as described below, DP&L has experienced an actual reduction of more than 1% in its demand. Therefore, having designed programs to achieve peak demand reductions, DP&L should be deemed to have satisfied its statutory peak demand reduction obligation for 2009, notwithstanding the actual cause of the peak demand reduction.

ECONOMIC DOWNTURN

5. DP&L's three year average adjusted baseline for purposes of calculating DP&L's peak demand reduction benchmark pursuant to R.C. §4928.66(A)(2)(a) is 3,224 MW. A 1% reduction in peak demand for 2009 would be 32 MW, meaning DP&L's peak demand benchmark target for 2009 is 3,192 MW.

6. DP&L's actual 2009 peak demand was 2,780 MW. While there is an impact from the programs DP&L has implemented to achieve peak demand reductions, DP&L's statutory peak demand reduction target was met. Although much of this demand reduction can be attributed to the downturn in the economy in the summer of 2009, the fact remains that DP&L's 2009 peak demand was more than 1% lower than its baseline demand.

7. As a result, DP&L has satisfied its 2009 peak demand reduction statutory requirement of a 1% reduction in peak demand, and DP&L hereby requests an express finding to this effect by the Commission.

PJM DEMAND RESPONSE ACTIVITY

8. DP&L has applied to the Commission for approval of two special contracts under which customers have committed approximately 35 MW of PJM demand response participation to DP&L. Assuming those contracts are approved, and assuming

DP&L's calculations of its demand reduction savings from energy efficiency programs would be approved as filed, DP&L has met the 1% peak demand target of 32 MW.

9. DP&L has also met its 2009 peak demand reduction benchmarks as a result of general customer participation in PJM demand response programs within DP&L's service territory. O.A.C. §4901:1-39-05(E)(2)(a) provides, as follows

For demand response programs, an electric utility may count demand reductions towards satisfying some or all of the peak-demand reduction benchmarks by demonstrating that either the electric utility has reduced its actual peak demand, or has the capability to reduce its peak demand and such capability is created under either of the following circumstances:

A peak-demand reduction program meets the requirements to be counted as a capacity resource under the tariff of a regional transmission organization approved by the Federal Energy Regulatory Commission.

10. Approximately 160 customer accounts within DP&L's service territory have entered into contracts under which they have agreed to curtail load upon 2 hours notice from PJM. Depending on the PJM program in which the customer is enrolled, this obligation will be triggered by PJM during high-priced conditions (economic curtailments) or due to shortfalls in supply (emergency curtailments). High prices or emergencies can arise irrespective of whether load in the Dayton zone is at a peak or if PJM load as a whole is at a peak. Thus, PJM's demand response programs are designed to achieve reductions in peak demand, but do not mandate that an unnecessary curtailment occur during the specific hours that PJM load peaks or the load within Dayton's zone peaks. PJM does require, however, that each customer demonstrate that it has the actual capability to reduce demand in the amount to which it is committed to curtail under its contract. The customers must perform this "test curtailment" by reducing demand and usage for one hour between June 1 and September 30 on any non-

holiday, weekday between the hours of 12 Noon and 8PM. When PJM establishes the peak load obligation for the Dayton Zone, and DP&L plans for how it will meet that obligation, both generation capacity that is available and the demand response within the Dayton Zone are taken into consideration. Thus, DP&L's obligation to purchase capacity to meet its peak load obligation is reduced by the amount of demand response enrolled in these PJM programs, which has the same economic effect that actually reducing load at DP&L's peak would have.

11. The Federal Energy Regulatory Commission ("FERC") has approved of PJM's tariff implementing its demand response programs. As such, O.A.C. 4901:1-39-05(E)(2) permits DP&L to count demand reductions gained through the PJM demand response program towards satisfying some or all of its peak demand reduction benchmarks.

12. PJM posted on its website a report dated December 19, 2009 that shows 2009 PJM demand response active participants by electric distribution company. The report shows that 160 Dayton Power and Light customer accounts participated with a total load 160 MW.¹

13. These PJM demand response peak demand curtailment commitments that are within DP&L's service territory result in the capability to reduce peak demand by 5%, far in excess of the targeted 1% reduction for the 2009 period. Consequently, DP&L should also be deemed to have met its statutory peak demand reduction targets as a result of the PJM demand response activity within its service territory.

¹ <http://www.pjm.com/markets-and-operations/demand-response/~media/markets-ops/dsr/pjm-load-response-program-registrations-by-state-zone-and-edc.ashx>.

14. Further, to the extent issuing the requested findings requires a waiver of any of the Commission's rules found in O.A.C. §§4901:1-39-01 through 4901:1-39-06, DP&L respectfully requests a waiver of those rules pursuant to O.A.C. §4901:1-39-02, which provides: "[t]he commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown."

ALTERNATIVE APPLICATION TO AMEND BENCHMARKS AND REQUEST FOR WAIVER

Economic Reasons

15. Alternatively, if the Commission does not grant DP&L's application and issue the findings and order described above, DP&L respectfully requests, pursuant to R.C. §4928.66(A)(2)(b) that the Commission amend DP&L's statutory peak demand reduction benchmarks to zero. If the finding of compliance requested in the previous section of this application is denied, this amendment is appropriate and necessary because regulatory and economic reasons beyond DP&L's reasonable control have rendered DP&L unable to implement programs capable of reasonably achieving DP&L's 2009 benchmark.

16. As further support for this request to amend the benchmarks, DP&L's peak demand was more than 1% below DP&L's adjusted three-year baseline level primarily as a result of reduced load resulting from challenging economic conditions throughout the region and within the DP&L service territory. Among recent significant closures, DP&L's service territory faced the shuttering of major employers such as the General Motors automobile manufacturing plant in Moraine, Ohio, the closure of the DHL hub in Wilmington, Ohio, and the planned relocation of the NCR World

Headquarters to Georgia. These closures, in turn, negatively affected the many businesses in the area that serve these major employers. The end result of these closures, and others, has been a significant negative impact on local economic conditions and a resulting substantial loss of load.

17. The severe economic downturn represents an economic reason beyond DP&L's reasonable control which renders it impossible for DP&L to implement programs allowing it to meet its 2009 statutory peak demand reductions. If DP&L is not permitted to count the actual reductions in peak load and PJM demand response, then the Company will be required to implement demand response programs that result in over-achieving the SB 221 targets. This will further exacerbate the economic conditions faced by all of our customers. For example, in these uncertain economic times, manufacturers are unwilling to commit to any program requiring a mandatory reduction in load because those customers want to maintain flexibility in their own operations to maximize their ability to remain profitable. A forced shut-down of operations at a time when manufacturers need to produce, for example, could be devastating in a depressed, highly competitive marketplace. While SB 221 energy efficiency and demand reduction targets were laudable goals when they were established in 2008, during different economic conditions, those goals need to be achieved reasonably, with the consideration for customers that are already feeling the effects of the currently difficult economic conditions.

Regulatory Reasons

18. DP&L also requests that its 2009 peak demand reduction benchmarks be amended due to regulatory reasons beyond its reasonable control which prevented DP&L from being able to implement programs allowing it to achieve the statutory targets.

19. On May 1, 2008, the Governor signed into law Amended Substitute Senate Bill Number 221 (S.B. 221), the provisions of which became effective on July 31, 2008.

20. On August 20, 2008, the Commission opened a docket in Case No. 08-888-EL-ORD, in which it solicited comments on proposed “Green Rules” designed to implement the provisions of S.B. 221. This started a particularly complex and lengthy rule-making proceeding which, due to the importance of the subject matter, spanned 16 months, and yielded four versions of the proposed rules, numerous applications for rehearing, and multiple transmittals to and from JCARR, with rules only recently being finalized. While stakeholder participation is an important component of the regulatory process, no party could have foreseen the extent of the spirited debate these rules have generated. It was certainly out of DP&L’s reasonable control.

21. Regulatory uncertainty relating to approval of special contracts has made it challenging to design a comprehensive and effective portfolio of programs sufficient to meet 2009 targets. DP&L has a pending application in Case Nos. 09-702-EL-AEC and 09-1700-EL-EEC, *In the Matter of the Joint Application of The Dayton Power and Light Company and Airgas, Inc. for Approval of a Reasonable Arrangement to Incorporate Customer Participation in PJM’s Demand Response Programs into DP&L’s Demand Reduction Program*. In this case, DP&L joined in an application with one of its

customers seeking, among other things, an explicit finding that the PJM demand response curtailment obligation of Airgas being committed for integration into DP&L's demand reduction programs will count towards DP&L's yearly statutory demand reduction targets. Such a finding will provide more clarity to both DP&L and its customers as to when and how customer demand response will count toward DP&L meeting its statutory peak demand reduction target. If this Application is granted, DP&L expects many more similarly situated industrial customers to seek similar arrangements with DP&L, all of which will assist DP&L in meeting its peak demand reduction targets, but the delayed resolution has prevented additional customer participation. The application was filed August 7, 2009 and remains pending.

22. The delay and uncertainty has made it challenging for DP&L to design a comprehensive and effective portfolio of programs sufficient to meet the 2009 targets. It is unclear to DP&L if retail customer participation in PJM Demand Response programs count toward DP&L's peak demand reduction targets because the customer is located within DP&L service territory, or if each individual customer must commit this demand reduction results to DP&L via mercantile opt out special arrangements.

23. To be clear, by drawing attention to these regulatory challenges, DP&L does not mean to imply the due process being afforded the stakeholders in these various proceedings is unnecessary or inappropriate. To the contrary, DP&L appreciates the opportunity to be so actively involved in the development of rules and standards which are critical to DP&L's compliance with the statutory mandates set forth in the provisions of S.B. 221. DP&L only highlights the very lengthy, complex and in certain cases actively litigated proceedings to demonstrate that there have been significant regulatory

reasons underlying DP&L's inability to implement programs allowing it to reasonably achieve its 2009 statutory peak demand reduction benchmarks pursuant to R.C. 4928.66(A)(1)(b).

24. The multiple ongoing proceedings and layers of complexity involved in developing, implementing, administering, and participating in peak demand reduction programs, coupled with the uncertainty of when and how outstanding issues will be resolved, has made it impossible for DP&L to implement programs allowing it to reasonably achieve its peak demand reduction benchmark. These regulatory difficulties are beyond DP&L's reasonable control, warranting an amendment to DP&L's 2009 peak demand reduction benchmarks to zero.


CONCLUSION

25. For the reasons stated above, good cause exists for approval of the relief requested by DP&L in this application. Consequently, DP&L respectfully request an Order from the Commission which:

- a) Explicitly finds that DP&L has met its 2009 peak demand reduction benchmarks required by R.C. §4928.66(A)(1)(b) because there has been a greater than 1% reduction in DP&L's peak demand; and
- b) Explicitly finds that DP&L has met its 2009 peak demand reduction benchmarks required by R.C. §4928.66(A)(1)(b) as a result of customer participation in PJM's Demand Response programs within DP&L's service territory; or

- c) In the alternative, a finding, pursuant to R.C. §4928.66(A)(2)(b) and O.A.C. §4901:1-39-05(I), which amends DP&L's statutory peak demand reduction benchmarks to zero; and
- d) Grants waivers of those provisions contained in O.A.C. Chapter 4901:1-39 necessary to support the findings and order requested herein.

Respectfully submitted,



Judi L. Sobecki (0067186)
Randall V. Griffin (0080499)
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, OH 45432
Telephone: (937) 259-7171
Facsimile: (937) 259-7178
Email: judi.sobecki@dplinc.com
randall.griffin@dplinc.com

Attorneys for The Dayton Power and Light
Company

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/23/2009 10:43:09 AM

in

Case No(s). 09-1987-EL-EEC

Summary: Application of The Dayton Power and Light Company for a finding that DP&L's peak demand reduction benchmark has been met or in the alternative, application to amend DP&L's peak demand reduction benchmark electronically filed by Mrs. Irda Hoxha Hinders on behalf of The Dayton Power and Light Company