BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of	)	
The Dayton Power and Light Company	)	Case No. 10-826-EL-ATA
To Establish a Market-Based Generation	)	
Tariff.	)	

COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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I. INTRODUCTION

On June 30, 2010, the Dayton Power and Light Company ("DP&L") filed its Application to Establish a Market-Based Generation Tariff ("Application"). In the Application, DP&L requests approval by the Public Utilities Commission of Ohio ("PUCO" or "Commission") of a proposed Market-Based Generation Tariff to be effective January 1, 2011 pursuant to the February 24, 2009 Stipulation and Recommendation ("Stipulation") in PUCO Case No. 08-1094-EL-SSO, involving DP&L's electric security plan ("ESP"). The Stipulation was adopted by the Commission without modification in its June 24, 2009 Opinion and Order in the same case.

The Office of the Ohio Consumers' Counsel ("OCC"), through its review of the Application and DP&L's discovery responses, has identified various consumer concerns with the Application, which OCC submits for the Commission's consideration through these Comments. In particular, OCC notes that the Market-Based Generation Tariff (No. G29) proposed in DP&L's Application is contrary to the Stipulation and the Order adopting it, R.C. 4928.20(J), and state policy.

II. COMMENTS

A. DP&L's Proposed Market-Based Generation Tariff is Contrary to the Parties' Stipulation, and the Order adopting it, in PUCO Case No. 08-1094-EL-SSO.

The Market-Based Generation Tariff proposed by DP&L in its Application would be applicable to customers who were served by a government aggregation program, who elect not to pay the Rate Stabilization Charge ("RSC"), and who return to DP&L's competitive retail electric service. Under the Application, DP&L seeks authority to require those customers to return to service at the Market-Based Generation rate "or the otherwise applicable Standard Offer rates [i.e., Standard Service Offer, or "SSO"] (including Generation, Transmission, PJM RPM and all associated riders), *whichever is greater*."[1] Such a proposal is contrary to Paragraph 3 of the Stipulation, which states:

> In 2011 and 2012, governmental aggregation customers who elect not to pay the RSS will return to DP&L *at a market-based rate*. DP&L will develop and file for approval of a market-based rate calculated consistent with Section 4928.20(J), revised code, by July 1, 2010.[2]

Paragraph 3 of the Stipulation does not provide that DP&L may charge its customers the *higher* of either the SSO or the Market-Based Generation rate. In addition, no other provision in the Stipulation provides DP&L with that option. Under the Stipulation, the clear intent of the Parties was that such governmental aggregation customers should return to DP&L service at "a market-based rate." Further, the Commission approved this specific language in its Order approving the Stipulation without modification. Thus, DP&L's proposal is contrary to the intent of the Stipulation

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[1] Emphasis added. As noted on page 2 of the Application, either of these charges will be in addition to the distribution rates and riders required for each customer group.

[2] *In the Matter of the Application of the Dayton Power and Light Company for Approval of Its Electric Security Plan*. October 10, 2008 Application; February 24, 2009 Stipulation and Recommendation at 4 (emphasis added).

and the Commission's Order and should not be approved by the Commission in this proceeding as filed. Rather, the PUCO should order a market-based generation rate that complies with the Stipulation and ESP Order and Ohio law.

B. DP&L's Proposed Market-Based Generation Tariff Violates R.C. 4928.20(J).

In addition to violating the Stipulation, the proposed tariff violates R.C. 4928.20(J), which states, in pertinent part:

> On behalf of the customers that are part of a governmental aggregation under this section * * * Any such consumer that returns to the utility for competitive retail electric service **shall pay the market price of power** incurred by the utility to serve that consumer plus any amount attributable to the utility's cost of compliance with the alternative energy resource provisions of section 4928.64 of the Revised Code to serve the consumer. Such market price shall include, but not be limited to, capacity and energy charges; all charges associated with the provision of that power supply through the regional transmission organization, including, but not limited to, transmission, ancillary services, congestion, and settlement and administrative charges associated with the provision of that power supply through the regional transmission organization, including, but not limited to, transmission, ancillary services, congestion, and settlement and administrative charges; and all other costs incurred by the utility that are associated with the procurement, provision, and administration of that power supply, as such costs may be approved by the commission. (Emphasis added.)

For good reason, Paragraph 3 of the Stipulation expressly states that governmental aggregation customers that return to service with DP&L shall pay a "market-based rate calculated consistent with Section 4928.20(J)[,]" and does not state, "or the otherwise applicable Standard Offer rates (including Generation, Transmission, PJM RPM and all associated riders), whichever is greater." But now, DP&L seeks approval of a rate that violates both R.C. 4928.20(J), the Stipulation, and the Commission Order. Therefore, the

Commission should not approve DP&L's proposal as filed, but should institute a market-based generation rate.

C. DP&L Failed to Demonstrate That Its Proposed Risk Premium Charge Results in Reasonably Priced Electric Service.

Under DP&L's Application, it is unclear how DP&L arrived at the 20% Risk Premium that DP&L intends to add to the Energy Charge, Capacity Charge, and Transmission charges included in the Market-Based Generation Tariff. As reflected in R.C. 4928.02(A), state policy dictates that the Commission must "[e]nsure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service." DP&L has not provided justification for its proposed Risk Premium charge. Thus, DP&L has failed its burden[3] to demonstrate that the Risk Premium Charge will result in reasonably priced retail electric service for consumers.

D. DP&L's Profit Related to Its Program Administration Charge Is Excessive and Contrary to R.C. 4928.02(A).

Notwithstanding any profit DP&L may realize from the 20% Risk Premium discussed above, DP&L indicates in its response to OCC discovery that DP&L included another approximately 40% profit margin in the calculation of its Program Administration Charge.[4] This double-dip profit-taking constitutes an excessive and unreasonable charge, which is contrary to the state policy of providing electric service at

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[3] As explained above, this proceeding stems from the Stipulation of the parties in PUCO Case No. 08-1094-EL-SSO, an electric security plan ("ESP") case governed by R.C. 4928.143. R.C. 4928.143(C)(1) provides "[t]he burden of proof in the proceeding shall be on the electric distribution utility." Thus, DP&L has the burden of proof to show that rates stemming from an ESP are, *inter alia*, consistent with state policy as reflected in R.C. 4928.02. DP&L has failed to meet its burden of proof to show that its proposed Risk Premium charge (and the Program Administration Charge addressed in the next section) result in reasonably priced retail electric service under R.C. 4928.02(A).

[4] See OCC INT-4 and Workpaper 1, attached as Exhibit 1.

a reasonable retail rate, as set forth in R.C. 4928.02(A). Therefore, DP&L failed in its burden[5] to prove that its proposal complies with state policy.

III. CONCLUSION

As demonstrated above, DP&L's proposed Market-Based Generation Tariff as proposed in the Application is contrary to both the Stipulation, the Order adopting the Stipulation, and law. In addition, DP&L has failed its burden to justify its Risk Premium Charge and Program Administration Charge. Accordingly, DP&L's Application should not be approved as filed and the PUCO should order a market-based generation rate that complies with the Stipulation and ESP Order and Ohio law.

Respectfully submitted,

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[5] *See* footnote 3.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Comments have been served upon Counsel for Dayton Power & Light Company via electronic transmission and upon Counsel for OPAE via regular U.S. Mail, postage prepaid, this 30th day of December 2010.

/s/ Jody M. Kyler_______________
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