

**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. 12-426-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company For Approval of Revised Tariffs)))	Case No. 12-427-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company For Approval of Certain Accounting Authority)))	Case No. 12-428-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company For the Waiver of Certain Commission Rules)))	Case No. 12-429-EL-WVR
In the Matter of the Application of The Dayton Power and Light Company to Establish Tariff Riders)))	Case No. 12-672-EL-RDR

**MEMORANDUM CONTRA
BY THE RETAIL ENERGY SUPPLY ASSOCIATION**

October 31, 2013

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I. Introduction

On September 4, 2013, the Public Utilities Commission of Ohio (“Commission”) issued a decision in these proceedings, approving a modified Electric Security Plan (“ESP”) for The Dayton Power and Light Company (“DP&L”). On September 6, 2013, the Commission issued an Entry *Nunc Pro Tunc*, correcting several of the dates of the modified ESP. On October 4, 2013, nine of the parties involved in these proceedings filed applications for rehearing. On October 23, 2013, the Commission issued a ruling in which it denied two assignments of error, and granted the remaining assignments of error for further consideration. Pursuant to the modified schedule for filing memoranda contra (the Attorney Examiner granted an extension of

time to October 31, 2013),¹ the Retail Energy Supply Association (“RESA”)² hereby submits its Memorandum Contra to address: (1) objections to the Commission’s decision to require certain competitive enhancements and the mechanism for recovery of those costs, and (2) the claim that the Transmission Cost Recovery Rider – Nonbypassable (“TCRR-N”) is unlawful and could cause shopping customers to be double-billed for transmission service.

II. Competitive Enhancements

A. DP&L’s Fourth Assignment of Error

In its fourth assignment of error, DP&L objects to the Commission’s decision to require other competitive enhancements and changes to its billing system, arguing that there is no evidence to support those mandated changes.³ In particular, DP&L contends there is no evidence of the costs or benefits, there is no rule that requires the various enhancements, and additional enhancements should be decided in a rule-making proceeding.⁴

DP&L ignores substantial, probative and reliable evidence in the record from several witnesses. First, RESA witness Stephen E. Bennett⁵ testified that multiple additional enhancements are needed beyond the six enhancements planned by DP&L, specifically to allow

¹ By Entry issued October 8, 2013, the Attorney Examiner allowed the parties to file memoranda contra the applications for rehearing beyond the 10 days set forth in Rule 4901-1-35(B), Ohio Administrative Code.

² RESA is a broad and diverse group of 21 retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented, outcome than a regulated utility structure. Several of RESA’s members are certified as competitive retail electric service (“CRES”) providers, and have been active in Ohio’s retail electric and natural gas markets for many years. RESA members provide competitive service to residential, commercial, industrial, and governmental customers in Ohio. In particular, some of RESA’s members currently provide CRES to retail customers in DP&L’s service territory. RESA’s membership includes: AEP Energy LLC, Champion Energy Services, LLC; ConEdison Solutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions, LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd.; and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization, but may not represent the views of any particular member of RESA.

³ DP&L Application for Rehearing at 11-12.

⁴ *Id.*

⁵ Mr. Bennett has been involved in the competitive wholesale and retail energy industry for numerous years and has extensive experience with regulatory policy and legislative advocacy. RESA Ex. 6 at 1.

access to the minimum basic customer data, which is fundamental to a competitive marketplace.⁶

Additionally, he testified that standardized web and Electronic Data Interchange (“EDI”) data sharing is becoming the norm in many competitive retail jurisdictions, and explained how such standardization allows suppliers to enter the competitive market and participate, making the market more efficient and more robust.⁷ In particular, Mr. Bennett testified:

The more standardization there is across the industry, the more efficiency there is, that means efficiency in the CRES provider systems, that means efficiency in the utility’s interaction with the CRES providers, and efficiency in the customers receiving pricing and timely enrollment.⁸

Moreover, Mr. Bennett explained that the specific data points and EDI standards and changes RESA proposed for DP&L “are critical to the market and fundamental.”⁹ This evidence, alone, provides an ample basis upon which the Commission could require DP&L to “adopt an EDI process, standard, or interface, as well as any other competitive retail enhancement, * * * adopted by every other [electric distribution utility (“EDU”)] in Ohio.” In other words, Mr. Bennett’s testimony establishes an evidentiary basis for the Commission’s policy decision to eliminate barriers and facilitate competition in DP&L’s service territory, consistent with the State Electric Policy (set forth in Section 4928.02, Ohio Revised Code).

Second, Constellation witness David I. Fein¹⁰ also stated that additional enhancements beyond the six competitive enhancements proposed by DP&L would better enable a sustainable and more robust marketplace in DP&L’s service territory.¹¹ Mr. Fein listed multiple EDI and data enhancements that would provide CRES providers the ability to better serve customers and

⁶ RESA Ex. 6 at 5-8; Tr. Vol. IX at 2467, 2480.

⁷ RESA Ex. 6 at 4-5, 7.

⁸ Tr. Vol. IX at 2462. *See, also*, Tr. Vol. IX at 2480.

⁹ Tr. Vol. IX at 2467, 2480.

¹⁰ Mr. Fein also has extensive experience with the energy industry, in multiple facets – policy and regulations -- at state and federal levels. Mr. Fein testified on behalf of two entities who are actively involved in every segment of the energy marketplace in multiple U.S. locations, including Ohio. Constellation Ex. 1 at 1-3; Tr. Vol. V at 1196.

¹¹ Constellation Ex. 1 at 45.

to better manage their businesses.¹² Moreover, Mr. Fein explained the importance of data and information, and the impact of delayed information,¹³ stating:

[T]he recommendations that seek greater data and information [are] designed to allow suppliers better information to better predict a customer's usage, which, in turn, is going to allow them to present a more competitive price.

* * *

[W]e believe that, you know, consumers are the ultimate beneficiaries. It certainly makes our ability to do business easier, which is a good thing, and it will help stimulate greater competition in the marketplace.¹⁴

Third, FirstEnergy Solutions Corp. witness Sharon Noewer testified that barriers to competition in DP&L's territory should be eliminated.¹⁵

Fourth, the testimony from DP&L witness Dona Seger-Lawson demonstrates that DP&L's current billing system was implemented in 1995, and upgraded to implement choice in 2001.¹⁶ The record reflects only one billing system change has occurred since 2001 -- DP&L implemented bill-ready billing in 2012.¹⁷ Finally, Ms. Seger-Lawson stated that DP&L's billing system will have to be improved to implement the enhancements it proposed.¹⁸

Taken together, there is ample probative evidence (including the benefits of the various enhancements) upon which the Commission could require other competitive enhancements and changes to DP&L's billing system. Moreover, it must be pointed out that electric choice has existed in Ohio for many years, but the competitive marketplace in DP&L's territory has less than robust shopping¹⁹ and only 11 active CRES suppliers.²⁰ The Commission properly considered the evidence

¹² *Id.* at 46-52.

¹³ *Id.* at 47.

¹⁴ Tr. Vol. V at 1220.

¹⁵ FES Exhibit 17 at 5, 19-20.

¹⁶ Tr. Vol. V at 1373-1374, 1377.

¹⁷ *Id.* at 1290.

¹⁸ *Id.* at 1398.

¹⁹ As of August 30, 2012, shopping levels were: (1) residential sales = 24.7%, (2) non-residential sales = 84%, and (3) total system sales = 61.7%. DP&L Ex. 2 at 6.

²⁰ See, <http://www.puco.ohio.gov/puc/index.cfm/apples-to-apples/dpl-electric-apples-to-apples-chart/>, wherein a

in the record and concluded that changes and enhancements are needed in DP&L's service territory. Moreover, the Commission correctly noted that "the testimony indicates that DP&L's billing system needs to be modernized to facilitate competition in this state."²¹

Finally, the Commission was not required to have a rule in place before requiring the various enhancements. Likewise, the Commission did not have to defer a ruling on the enhancements to a state-wide rule-making proceeding. The Commission took a competition-enabling approach on this issue and has the authority under its general supervisory authority and the State Electric Policy (Section 4928.02, Ohio Revised Code) to order the competitive enhancements. This fourth DP&L assignment of error should be rejected.

B. Ohio Consumers' Counsel's Thirteenth Assignment of Error

The Ohio Consumers' Counsel ("OCC") argues that the Commission erred in allowing DP&L to defer the costs of the competitive enhancement for recovery in a future distribution rate case.²² The Commission was presented with several different proposals for cost recovery of the competitive enhancements, including:

- DP&L proposed to recover the costs from all customers and RESA concurred.²³
- OCC proposed to have the CRES providers pay for all competitive enhancements.²⁴
- Staff proposed to split the costs between customers, CRES providers and DP&L shareholders.²⁵

RESA argued in its Initial Brief²⁶ in these proceedings that the proposed cost-recovery methodologies of OCC and the Staff are not workable for numerous reasons. Both cost-recovery

count of the active suppliers reflects that only 11 CRES suppliers are actively offering CRES in DP&L's service territory as of May 2013.

²¹ Opinion and Order at 28.

²² OCC Application for Rehearing at 46-49.

²³ DP&L Ex. 10 (Rabb Direct) at 8-10; DP&L Ex. 9 (Segger-Lawson Direct) at 14; Tr. Vol. IX at 2446.

²⁴ OCC Ex. 18 (Hagans Direct) at 2, 6.

²⁵ Staff Ex. 7 (Donlon Direct) at 4, 6-9.

²⁶ RESA Initial Brief at 30-34

proposals have serious flaws. RESA will not repeat those arguments here, but notes that since the brief filing, nothing has changed to negate those arguments.

The record also reflects that the Commission faced the question of cost-recovery for a billing system upgrade for DP&L in the past, and the costs of that upgrade were recovered from all customers.²⁷ The Commission did not error in deciding here to also recover the costs of the competitive enhancements from all DP&L customers.

OCC further argues that the Commission cannot defer the recovery of the costs because it did not first find “exigent circumstances” and a good reason. Assuming that both such findings must be made as OCC has argued, OCC nonetheless ignores the import of the Commission’s decision in this area. The Commission ruled that the competitive enhancements “may not be delayed,” which is stating that immediate action is necessary.²⁸ Additionally, the Commission stated that the competitive enhancements are being required because they “will eliminate barriers and facilitate competition in DP&L’s service territory,” which very clearly sets forth a good (and fundamental) reason for the competitive enhancements. The Commission had the discretion to order the recovery of costs of the competitive enhancements as it did. The Commission did not abuse that discretion and OCC’s arguments should be rejected.

OCC also urges the Commission to expressly state that, before any collection of costs from customers is allowed, DP&L must demonstrate that the deferred costs are reasonable, appropriately incurred, clearly and directly related to the circumstances for which they were authorized, and in excess of expense amounts already included in DP&L’s rates at the time of

²⁷ Tr. Vol. VII at 1727-1728.

²⁸ This ruling was made at the same time that the Commission ruled on several other aspects of the ESP, which involved immediate action. For example, the first competitive bid process auction will take place by November 1, 2013, and the ESP itself will commence on January 1, 2014.

approval.²⁹ RESA does not oppose such direction being provided to DP&L.

III. Transmission Cost Recovery Rider

The Commission accepted DP&L's proposal to split the Transmission Cost Recovery Rider ("TCRR") into two parts – (1) the TCRR-Bypassable composed of market-based elements and (2) the TRCC-N composed of nonmarket-based elements.³⁰ In its fourth assignment of error, the Industrial Energy Users – Ohio ("IEU") contends that the TCRR-N rider is unlawful because the TCRR-N could potentially cause shopping customers to be double-billed for transmission service.³¹ Also, IEU states that the TCRR-N violates Rule 4901:1-36-04(B), Ohio Administrative Code, which says the transmission cost rider shall be avoidable by all customers. Finally, IEU states that the TCRR-N may collect costs of serving standard service offer ("SSO") customers from both shopping and non-shopping customers.³²

IEU's first two arguments against the TCRR-N are the same as raised before, and should be rejected again. As RESA explained in its Initial Brief,³³ and as the Commission found,³⁴ moving the recovery of nonmarket-based elements of transmission charges to the TCRR-N will allow for more accurate recovery of transmission costs because they are not actually market-based costs and they should be non-bypassable. Additionally, with regard to the first argument of multiple billings, this is simply speculation on IEU's part, as a change in regulation such as this will trigger contractual provisions that require CRES contract amendments for changes in law. The Commission has approved such transmission rider splits for the FirstEnergy EDUs and

²⁹ OCC Application for Rehearing at 49.

³⁰ Opinion and Order at 36.

³¹ IEU Application for Rehearing 62-70. In the same assignment of error, IEU also alleges that the TCRR True-Up Rider is unlawful. RESA has elected not to respond to that aspect of IEU's fourth assignment of error.

³² *Id.*

³³ RESA Initial Brief at 15-16.

³⁴ Opinion and Order at 36.

Duke Energy Ohio Inc.³⁵ There is no evidence in the record of double-billing or confusion caused by having a split transmission charge. In an abundance of caution, the Commission could require DP&L to notify all CRES providers doing business in the DP&L service area of the regulatory change and the need to exclude the nonmarket-based elements of the transmission charges, once those are direct-billed. The Commission recently did exactly that in the case of concerns for double-billing of the balancing fee in Columbia Gas of Ohio, Inc.’s territory.³⁶ However, the Commission should realize that such direction would be a second notice to CRES providers because DP&L already has provided information to CRES providers.³⁷

Since the Commission approved the TCRR-N as DP&L had proposed it, below are each of the nonmarket-based PJM charges that will be included in the TCRR-N, as listed in the company’s testimony:

- Network Integration Transmission Services (“NITS”)
- RTEP
- PJM Scheduling, System Control and Dispatch Service
- Transmission Owner Scheduling, System Control, and Dispatch Service
- Reactive Supply and Voltage Control
- Black Start Service
- NERC and RFC
- Expansion Cost Recovery
- Load Response Charge Allocation

³⁵For FirstEnergy, the Commission approved such a transmission cost split in *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order at 11, 58. For Duke, the Commission approval occurred in *In the Matter of the Application of Duke Energy Ohio Inc. for Approval of the Establishment of Rider BTR and Associated Tariff Approval*, Case No. 11-2641-EL-RDR, Opinion and Order at 7, 17.

³⁶*In the Matter of the Application to Modify, in Accordance with Section 4929.08, Revised Code, the Exemption Granted to Columbia Gas of Ohio, Inc., in Case No. 08-1344-GA-EXM*, Case No. 12-2637-GA-EXM, Opinion and Order at 46 (January 9, 2013).

³⁷On October 22, 2013, DP&L sent a notice to all current CRES providers registered in its service territory and to those with pending registration packets, explaining that CRES providers will no longer be financially responsible for certain specified transmission-related charges beginning January 1, 2014, for the retail load they serve within DP&L’s service territory. DP&L also explained how the usage will be pro-rated in January because the TCRR-N will be billed on a bills-rendered basis. Furthermore, each CRES provider was notified that it would need to execute a Declaration of Authority in order for PJM to bill DP&L directly for the TCRR-N items.

- Generation Deactivation
- Michigan-Ontario Interface Phase Angle Regulators
- Firm Point-To-Point credits to customers in the AEP zone
- Non-Firm Point-To-Point credits
- Incremental Capacity Transfer Rights credits
- Any new non-market-based costs billed by FERC or PJM (specific Commission approval will be sought)³⁸

³⁸ DP&L Ex. 11 (Hale Direct) at 4. In DP&L's October 22 notice to CRES providers, DP&L provided a more descriptive list of the TCRR-N items – presenting them by bill line number and name:

Billing Line Number	Billing Line Item
1100	Network Integration Transmission Service
1108	Transmission Enhancement Charge
1242	Day-ahead Load Response Charge Allocation
1243	Real-time Load Response Charge Allocation
1301	PJM Scheduling – System Control and Dispatch Service – Control Area Administration
1303	PJM Scheduling – System Control and Dispatch Service – Market Support
1304	PJM Scheduling – System Control and Dispatch Service – Regulation Market Administration
1305	PJM Scheduling – System Control and Dispatch Service – Capacity Resource/Obligation Mgmt.
1306	PJM Scheduling – System Control and Dispatch Service – Advanced Second Control Center
1307	PJM Scheduling – System Control and Dispatch Service – Market Support Offset
1308	PJM Scheduling – System Control and Dispatch Service Refund – Control Area Administration
1310	PJM Scheduling – System Control and Dispatch Service Refund – Market Support
1311	PJM Scheduling – System Control and Dispatch Service Refund – Regulation Market Administrat.
1312	PJM Scheduling – System Control and Dispatch Service Refund – Capacity Resource/Obligation Mgmt.
1313	PJM Settlement, Inc.
1314	Market Monitoring Unit (MMU) Funding
1315	FERC Annual Recovery
1316	Organization of PJM States, Inc. (OPSI) Funding
1317	North American Electric Reliability Corporation (NERC)
1318	Reliability First Corporation (RFC)
1306	PJM Scheduling – System Control and Dispatch Service – Advanced Second Control Center
1320	Transmission Owner Scheduling, System Control, and Dispatch Service
1330	Reactive Supply and Voltage Control from Generation and Other Sources Service
1380	Black Start Service
1440	Load Reconciliation for PJM Scheduling, System Control and Dispatch Service
1441	Load Reconciliation for PJM Scheduling, System Control and Dispatch Service Refund
1442	Load Reconciliation for Schedule 9-6 – Advanced Second Control Center
1444	Load Reconciliation for Market Monitoring Unit (MMU) Funding
1445	Load Reconciliation for FERC Annual Recovery
1446	Load Reconciliation for Organization of PJM States, Inc. (OPSI) Funding
1447	Load Reconciliation for North American Electric Reliability Corporation (NERC)
1448	Load Reconciliation for Reliability First Corporation (RFC)
1450	Load Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service
1320	Transmission Owner Scheduling, System Control, and Dispatch Service
1730	Expansion Cost Recovery
1911	Michigan-Ontario Interface Phase Angle Regulators
1930	Generation Deactivation
1932	Generation Deactivation Refund

To address its double-billing concerns, IEU suggested that the Commission “direct DP&L to guarantee that shopping customers will not be double-billed for the nonmarket-based transmission costs and establish an audit process to ensure this result.”³⁹ Neither of these suggestions is necessary. Prior experience has not demonstrated a need for such a “guarantee” or even an audit.

IEU’s second argument (that the TCRR-N violates Rule 4901:1-36-04(B), Ohio Administrative Code) ignores the fact that DP&L requested a waiver from that administrative rule and that the Commission’s approval of the split (and creation of the TCRR-N) effectively granted that waiver request.

Third, IEU states that the TCRR-N may collect costs of serving SSO customers (namely, bypassable costs) from both shopping and non-shopping customers. The items in the above lists illustrates that the items to be included in the TCRR-N are appropriately nonbypassable, and are appropriately collected from all customers. IEU ignores the fact that, for instance, NITS costs are currently paid by all customers – SSO customers are charged the NITS costs by DP&L, while shopping customers are paying NITS costs in the CRES providers’ rates.⁴⁰ The creation of the TCRR-N for recovery of NITS and the other nonmarket-based transmission elements is an appropriate recovery approach. The TCRR-N does not collect costs of serving SSO customers from both shopping and non-shopping customers.

For all of these reasons, IEU’s fourth assignment of error should be rejected.

2130	Firm Point-to-Point Transmission Service
2140	Non-Firm Point-to-Point Transmission Service
2640	Incremental Capacity Transfer Rights

³⁹ IEU Application for Rehearing at 65.

⁴⁰ DP&L Ex. 11 (Hale Direct) at 3, 4.

IV. Other

In these proceedings, the Commission stated that the issue of whether purchase of receivables programs should be ordered is better addressed in the Commission's pending Ohio Retail Market Investigation (Case No. 12-3151-EL-COI).⁴¹ RESA elected not to file an application for rehearing in these proceedings and is not seeking rehearing on that issue. RESA notes that it looks forward to presenting further information to the Commission in the Market Investigation docket regarding purchase of receivables programs and to the implementation of such programs in Ohio.

V. Conclusion

For the foregoing reasons, DP&L's fourth assignment of error should be denied. Also, OCC's thirteenth assignment of error and IEU's fourth assignment of error should be denied to the extent set forth herein.

Respectfully submitted,



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⁴¹ Opinion and Order at 39.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 31st day of October 2013 by electronic mail upon the persons listed below.



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Summary: Memorandum Memorandum Contra electronically filed by M HOWARD
PETRICOFF on behalf of Retail Energy Supply Association