

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
The Dayton Power and Light Company to)	Case No. 15-0361-EL-RDR
Update its Transmission Cost Recovery)	
Rider – Non-Bypassable)	

REPLY COMMENTS OF THE DAYTON POWER AND LIGHT COMPANY

I. INTRODUCTION

On April 27, 2015, potential intervener Industrial Energy Users – Ohio (“IEU”) filed comments in the above-captioned case recommending that the Commission should take the drastic measure of reversing its authorization of The Dayton Power and Light Company’s (DP&L) Transmission Cost Recovery Rider – Non-Bypassable (“TCRR-N”). Further, IEU argues that the Commission should deny DP&L’s request to include transmission owner Operating Reserves costs within the TCRR-N, and to transfer the Transmission Cost Recovery Rider – Bypassable (“TCRR-B”) under-recovery or over-recovery to the TCRR-N as of January 1, 2017, when the TCRR-B will be phased out.

As DP&L will demonstrate in its Reply Comments, IEU’s positions on these arguments are unfounded and misguided. For the reasons stated below, DP&L’s TCRR-N should remain in place, and DP&L respectfully requests the TCRR-N be modified as discussed below.

II. REPLY COMMENTS

A. IEU’s Argument Regarding FERC’s Alleged Federal Preemption is Untimely and has been Waived

IEU, for the first time, is now arguing that DP&L’s TCRR-N should be disallowed, in its entirety, because it is allegedly preempted by FERC’s jurisdictional authority.

The merit (or lack thereof) of IEU's federal preemption claim does not need to be addressed by the Commission because IEU has waived this argument. DP&L's establishment of its TCRR-N was a direct result of the Commission's Order in the underlying ESP Case, *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 underlying ESP Case, IEU directly opposed DP&L's proposed TCRR-N as unlawful and unreasonable.¹ The ESP Case involved a multi-week evidentiary hearing, including the testimony of forty-six (46) witnesses on behalf of DP&L, Commission Staff and various interveners, and extensive briefing by all parties.

However, IEU did not argue that DP&L's TCRR-N was preempted by FERC and/or federal law at any stage of the underlying ESP Case. IEU did not argue federal preemption of DP&L's TCRR-N during: (1) the primary briefing of the ESP Case; (2) in its First Application for Rehearing²; or (3) in its Second Application for Rehearing.³ The Commission issued its Fifth Entry on Rehearing on July 23, 2014, and no parties, including IEU, filed applications for rehearing of that Fifth Entry. IEU did not argue FERC's potential federal preemption of DP&L's TCRR-N in any of its affirmative or responsive pleadings before the Commission in the ESP Case.

However, IEU's failure to argue federal preemption in this instance is not because IEU was unaware of the argument. In fact, IEU made a very similar federal preemption argument in connection with a direct appeal to the Ohio Supreme Court regarding the Commission's authorization of DP&L's SSR in the ESP Case.⁴ IEU's federal preemption argument regarding DP&L's SSR derived from the same September 4, 2013 Commission Order

¹ See *ESP Case*, Sept. 4, 2013 Opinion and Order, page 36.

² See *IEU's First Application for Rehearing*, October 4, 2013.

³ See *IEU's Second Application for Rehearing*, April 17, 2014.

⁴ See *IEU's May 6, 2014 Complaint in Case No. 2014-0711*, pg. 10.

that authorized DP&L's TCRR-N. However, IEU made the conscious decision not to argue to the Ohio Supreme Court that DP&L's TCRR-N was also somehow preempted by federal law.⁵

Further, IEU submitted Comments to DP&L's May 1, 2014 Amended Application to Update its TCRR-N (Case No. 14-0358-EL-RDR) established in the ESP Case. IEU did not mention federal preemption anywhere in those Comments. Instead, the first mention IEU has made of alleged federal preemption of the Commission's authority to authorize DP&L's (or any EDU's)⁶ TCRR-N is in IEU's April 27, 2015 Comments.

The Commission issued its Fifth Entry on Rehearing on July 23, 2014, and no further applications for rehearing were filed. Accordingly, the July 23, 2014 Entry became final and appealable, and IEU had sixty (60) days to appeal that Entry (including its authorization of DP&L's TCRR-N) to the Ohio Supreme Court. O.R.C. 4903.11; Ohio Sup. Ct. Prac. R. 2.3(B)(1); *Senior Citizens Coalition v. Pub. Util. Comm.*, 40 Ohio St.3d 329, 333 (1988) (per curiam). IEU did not appeal this issue and, put simply, IEU has missed its opportunity to challenge the Commission's ability to authorize DP&L's TCRR-N. Accordingly, DP&L respectfully requests that the Commission reject IEU's comments.

B. IEU's Demand that the Commission Reverse its Authorization of DP&L's TCRR-N has a Ripple Effect on the Competitive Market Established Throughout Ohio

As footnoted above, the Commission has already approved the TCRR-N concept for all four Ohio EDUs. More importantly, three out of the four utilities have already successfully implemented this rider in their territories, some for a number of years. The fourth, AEP Ohio, will implement their TCRR-N on June 1, 2015.

⁵ IEU's Complaint for Mandamus/Writ of Prohibition was ultimately dismissed on Motion by DP&L, and DP&L vigorously challenged IEU's position of federal preemption related to the SSR in its Motion to Dismiss.

⁶ All four of the Ohio EDUs have had a construct similar to the TCRR-N approved by the Commission. See also *Case No. 10-388-EL-SSO* for FirstEnergy's Non-Market-Based Services Rider; *Case No. 11-2641-EL-RDR* for Duke's Base Transmission Rider; and *Case No. 13-2385-EL-SSO* for AEP Ohio's Base Transmission Cost Rider.

The authorization of a rider such as the TCRR-N is not a quick and painless one. In order to implement this rider, the EDUs notified CRES providers and auction supplier winners long in advance that non-market-based transmission-related services should not be included in their market-based products. Each EDU then had to work with PJM and every other supplier to ensure that PJM charges/credits for the appropriate non-market-based services would be transferred from supplier accounts to the EDU account. Multiple auctions were held to supply SSO load for future fixed terms, where the competitively bid prices did not reflect any non-market-based costs. Some auctions have bid SSO load out as far as May 31, 2018.

All of this work cannot simply be undone with the wave of a hand. IEU recognizes this, as it protests on page six of its Comments that CRES providers do not have time to reflect changes in their fixed price contracts by June 1, 2015. However, IEU fails to recognize the consequences of its own demands. The fact is that, through its Comments in this case, IEU is demanding that the Commission reverse the same decision in every utility territory in the state, drastically and hastily altering the landscape of the competitive market in Ohio.

Alternatively, on page 15 of its Comments, IEU petitions the Commission to direct DP&L to modify its TCRR-N tariff “to allow retail customers to directly secure transmission service from PJM.” However, including an opt-out provision on a TCRR-N is an administratively burdensome task, particularly if no customers are interested in utilizing this provision. Furthermore, as the Commission has approved a TCRR-N for all other EDUs in Ohio, a significant provision such as this should be addressed on a statewide basis to ensure that all customers are treated similarly.

For these reasons, DP&L respectfully requests that the Commission reject IEU’s Comments.

C. Operating Reserves Are Charged to Transmission Owners, Absent of Serving Any Load, in Certain Circumstances

Contrary to IEU's mischaracterizations, DP&L's claimed Operating Reserves charges do in fact exist. As stated in PJM Manual 28, Operating Agreement Accounting, on page 38, "Any Operating Reserve charges attributable to generators operated on behalf of transmission owners for local constraints, or on behalf of generation owners for special unit constraints, are directly assessed to the applicable requesting party." This concise statement confirms the existence of what IEU claims does not exist: an Operating Reserves charge that can be assessed directly to the transmission owner.

Specifically, there are situations when a local transmission constraint ultimately affects the generation that is dispatched in PJM. This can occur when the constraint impedes generation or requires certain generation to run to resolve reliability issues. In these cases, the transmission owner that caused the constraint must bear its portion of the cost of that generation that is incremental to market. This cost is billed to the transmission owner through the Operating Reserves charge. Therefore, this cost is truly a consequence of owning and operating transmission. One of IEU's arguments is that DP&L identified Operating Reserve as a market-based PJM line item in its ESP. However, this classification was made on DP&L's Appendix A, which was a sample Load-Serving Entity PJM bill. Any Operating Reserves charges to a Load-Serving Entity are truly market-based and should not be recovered in the TCRR-N. DP&L does not debate that point with IEU. However, the charges in question are completely unrelated to load that DP&L or any other provider is serving. As explained above, these charges are incurred solely by transmission owners. Therefore, customers are not at risk of being double-billed for these costs, as their generation suppliers are not receiving these transmission owner Operating Reserves charges.

IEU also objects that DP&L does not provide further detail or explanation in its Application regarding these costs or their magnitude. However, DP&L provided the basic facts about this charge in its application: 1) these Operating Reserves charges are incurred solely due to DP&L's status as a transmission owner; 2) they are RTO-related costs not otherwise being recovered; 3) and they are transmission-related costs that are applicable to all customers, regardless of supplier. Further, DP&L included in its application the magnitude of the charges incurred within the audit period.

For the foregoing reasons, DP&L respectfully requests that the Commission reject IEU's Comments.

D. DP&L Should Be Allowed to Transfer its TCRR-B deferral to the TCRR-N Once the TCRR-B Is Phased Out.

IEU offers that DP&L has twice been rejected in its request to transfer a portion of its TCRR-B deferral to the TCRR-N, but the Commission has not yet explained its reasoning. As stated in DP&L's application, the TCRR-B is no different than the other bypassable riders that were granted relief by having certain portions of their deferrals transferred to the TCRR-N. As there was no other logical basis to separate the TCRR-B from the other riders, DP&L can only assume that the Commission was concerned that the TCRR-B would cause large sums to be transferred to the TCRR-N. However, once DP&L is no longer serving SSO load in 2016, DP&L will no longer be subject to the volatile PJM market and will no longer be receiving unpredictable PJM charges. Any charges going forward are likely to be minor true-up charges from PJM. Additionally, DP&L adjusts the TCRR-B quarterly, thereby making the deferral as close to zero as of December 31, 2015 as possible. The balance may, in fact, be a credit to the TCRR-N. Therefore, this concern should no longer apply.

IEU also misunderstands the Commission's statement regarding the final TCRR true-up in DP&L's ESP Order. As IEU notes, DP&L was directed to "file a proposal at the end of the ESP term for appropriate collection of any uncollected TCRR balance, including whether the uncollected TCRR balance should be collected through a bypassable or non-bypassable TCRR true-up rider." IEU claims that the final true-up has already occurred. However, as the Commission had already approved the bifurcation of the TCRR into the TCRR-N and TCRR-B at that point in the Order, there would be no point in directing DP&L to file a proposal at the end of the prior ESP to address the final collection. The Commission's Order is a future directive for the end of the current ESP. DP&L is meeting the Commission's directive by making a reasonable proposal in this proceeding.

For the forgoing reasons, DP&L respectfully requests that the Commission reject IEU's Comments.

III. CONCLUSION

Each of IEU's comments in this case should be rejected. DP&L respectfully requests that its TCRR-N remain effective, that it include transmission owner Operating Reserves charges, and that DP&L be permitted to transfer the January 1, 2016 TCRR-B balance to the TCRR-N. All of these requests are reasonable, justified, and in furtherance of the Commission's directives to DP&L.

Respectfully Submitted,

/s/ Judi L. Sobecki

Judi L. Sobecki (0067186)
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

Co-Counsel for The Dayton Power and Light
Company

/s/ Jeremy M. Grayem

Jeremy M. Grayem (0072402)
Ice Miller LLP
250 West Street
Columbus, OH 43215
Telephone: (614) 462-2284
Facsimile: (614) 222-3440
Email: jeremy.grayem@icemiller.com

Co-Counsel for The Dayton Power and Light
Company

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by electronic mail this 15th day of May, 2015.

Kevin F. Moore
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
kevin.moore@occ.ohio.gov

Attorney for Office of the Ohio Consumers' Counsel

Frank P. Darr (Counsel of Record)
Matthew R. Pritchard
Samuel C. Randazzo
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215-4228
fdarr@mwncmh.com
mpritchard@mwncmh.com
sam@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

/s/ Jeremy M. Grayem

Jeremy M. Grayem

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Summary: Reply Reply Comments of The Dayton Power and Light Company electronically filed by Mr. Jeremy M. Grayem on behalf of Dayton Power & Light