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. 16-395-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.	))))	Case No. 16-396-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code § 4905.13.	)))	Case No. 16-397-EL-AAM

THE KROGER CO'S MEMORANDUM CONTRA TO THE DAYTON POWER AND LIGHT COMPANY'S MOTION TO IMPLEMENT THE SSR EXTENSION RIDER

I. Introduction.

The Dayton Power and Light Company's (DP&L) motion to implement the SSR Extension Rider (SSR-E) and recover up to $45.8 million from customers should be denied.[1] In DP&L's last electric security plan proceeding, the Public Utilities Commission of Ohio (PUCO) prescribed five conditions that DP&L must meet to implement the SSR-E. These conditions require DP&L to: (1) show that the SSR-E is necessary to maintain its financial integrity; (2) file an application for a distribution rate case by July 1, 2014; (3) file an application by December 31, 2013 to divest its generation assets and propose to divest these assets by December 31, 2016; (4) file an application to modernize its electric distribution infrastructure through implementation of a smart grid plan and advanced metering infrastructure (AMI); and (5) establish and begin

[1] DP&L does not explain why its motion to implement the SSR-E was not filed contemporaneously with its application seeking approval of its electric security plan.

implementation of a plan to modernize its billing system.[2] Because DP&L has not met all five of these conditions, it should not be granted authority to implement the SSR-E.

II. Discussion.

It is undisputed that DP&L has not in-fact met all the conditions required by the PUCO for implementing the SSR-E. DP&L failed to comply with four of the requisite conditions. First, DP&L did not file a timely distribution rate case. As directed by the PUCO, DP&L was required to file the case by July 1, 2014. But DP&L did not file until November 30, 2015—roughly a year-and-a-half past the PUCO-established deadline.[3] DP&L's significantly-late filing plainly shows noncompliance with this condition.

Second, DP&L has not filed an application to modernize its electric distribution infrastructure through implementation of a smart grid plan and AMI. By its own admission, DP&L has not complied with this directive. At most, DP&L states that it is "actively considering" such a plan.[4] But "actively considering" whether to file a plan is a far cry from actually filing a plan.

Third, DP&L's billing system is not consistent with the PUCO's stated expectations. At a minimum, the PUCO expected the billing system to be equipped to handle rate-ready billing, percentage off price-to-compare (PTC) pricing, and AMI.[5] DP&L states that its billing system is capable of performing rate-ready billing and PTC pricing.[6] Noticeably absent, however, is a statement that the billing system is capable of supporting AMI. The lack of AMI functionality

[2] *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan, et al.*, Case No. 12-426-EL-SSO, et al., Opinion and Order at 27-28 (September 4, 2013) (*DP&L SSO Order*).

[3] *In the Matter of the Dayton Power and Light Company to Increase Its Rates for Electric Distribution, et al.*, Case No. 15-1830-EL-AIR, et al., Application (November 30, 2015).

[4] DP&L Memo. in Support at 1.

[5] *DP&L SSO Order* at 28.

[6] DP&L Ex. 2 at 5 (Schroder Direct).

with DP&L's billing system means this condition is unmet. Indeed, it would be difficult for DP&L to argue otherwise given that it has not filed an application to modernize its distribution system through the implementation of AMI.

Fourth, DP&L has not proven that the SSR-E is necessary to maintain its financial integrity. As part of its analysis, the PUCO stated that it would take into account operations and maintenance (O&M) savings, dividends paid to parent companies, and other capital expenditure reductions.[7] DP&L's ESP application provides no concrete examples of O&M savings. Instead, the application merely assumes that unidentified O&M savings will materialize at some future point.[8] Requesting recovery of up to $45.8 million without any concrete examples of offsetting O&M savings is unjust and unreasonable. Customers should receive a tangible benefit in exchange for DP&L's request to implement the SSR-E.

The dividends paid from DP&L to its parent also substantially undermine the claim that the SSR-E is necessary to maintain its financial integrity. DP&L states it made no dividend payments to AES since 2012 and then discusses the payments it made to DP&L Inc. for 2015 as well as projected dividend payments to DP&L Inc. for 2016.[9] But this statement provides an incomplete account of DP&L's dividend-payment history. DP&L's Form 10-K filed with the Securities and Exchange Commission for the fiscal year ended December 31, 2015 shows dividends paid on common stock to DP&L Inc. of $50 million (2015), $159 million (2014), and $190 million (2013).[10] These hefty dividend payments to DP&L Inc. call into question the claim that DP&L is truly in need of an additional $45.8 million from customers.

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[7] *DP&L SSO Order* at 27.

[8] DP&L Ex. 1 at 4 (Jackson Direct).

[9] Id. at 3.

[10] DP&L's Form 10-K for Year Ended December 31, 2015 at pg. 133, available at: http://www.sec.gov/Archives/edgar/data/27430/000078725016000035/dpl10k12312015q4.htm.

The preceding discussion plainly shows that DP&L has not complied with the conditions necessary to implement the SSR-E.

While it is true that the PUCO sometimes applies the substantial-compliance doctrine to excuse filing flaws or review subjective practices and notice filings, DP&L's actions plainly do not merit such treatment here.[11] In fact, DP&L's own representations show that it cannot demonstrate substantial compliance.

Regarding DP&L's untimely distribution rate case filing, a filing made a year-and-a-half late does not constitute substantial compliance with meeting the prescribed deadline, particularly given the timing of implementation of the Rider SSR-E. As the PUCO explained, "conducting a distribution rate case before authorizing the SSR-E will provide the Commission and parties with the increased certainty necessary to evaluate whether DP&L's financial integrity is at risk and whether the SSR-E is necessary."[12] An increase in distribution rates may have alleviated the need to "seek relief" pursuant to Rider SSR-E. Furthermore, merely "actively considering" whether to file a grid modernization plan cannot be considered tantamount to substantial compliance with actually filing a plan. Nowhere in DP&L's motion does it point to events beyond its control that frustrated its ability to meet these conditions.

"Substantial" means: "considerable in importance, value, degree, amount or extent."[13] DP&L's actions do not come close to meeting this definition. DP&L's own representations plainly show that it has not taken considerable steps toward satisfying the necessary conditions for implementing the SSR-E. Indeed, if DP&L's actions constitute substantial compliance, then the substantial-compliance doctrine will be converted into a sweeping rule of law that could be

[11] DP&L Memo. in Support at 3-4.

[12] *DP&L SSO Order* at 27.

[13] *Our Place, Inc. v. Ohio Liquor Control Comm.*, 63 Ohio St.3d 570, fn. 3, 589 N.E.2d 1303 (1992) (citing The American Heritage Dictionary at 1284 (1981 Ed.)).

used to justify noncompliance with PUCO directives in a vast range of scenarios. That outcome will have a destabilizing effect on the precedential value of PUCO decisions, introduce unnecessary certainty into the regulatory environment, and upset settled expectations about the meaning of PUCO directives. To ensure adherence to PUCO directives, DP&L's limitless interpretation of this doctrine should be rejected.

III. Conclusion.

The PUCO should reject DP&L's motion to recover $45.8 million through the SSR-E. DP&L's own representations show that the necessary conditions for implementation have not in-fact been met. Moreover, DP&L's efforts at rehabilitating its failure to meet the necessary conditions by asserting the substantial-compliance doctrine similarly fail.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on April 29, 2016.

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Summary: Memorandum THE KROGER CO'S MEMORANDUM CONTRA TO THE DAYTON POWER AND LIGHT COMPANY'S MOTION TO IMPLEMENT THE SSR EXTENSION RIDER electronically filed by Ms. Cheryl A Smith on behalf of The Kroger Co.