BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for an Increase In Its Electric Distribution Rates.	)))	Case No. 20-1651-EL-AIR
In the Matter of the Application of The Dayton Power and Light Company for Accounting Authority.	)))	Case No. 20-1652-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for Approval Of Revised Tariffs.	)))	Case No. 20-1653-EL-ATA

OBJECTIONS TO THE STAFF REPORT OF INDUSTRIAL ENERGY USERS-OHIO

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August 25, 2021

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OBJECTIONS TO THE STAFF REPORT OF INDUSTRIAL ENERGY USERS-OHIO

Pursuant to R.C. 4909.19, Ohio Adm.Code 4901-1-28(B), and the Attorney Examiner's Entry dated July 30, 2021, Industrial Energy Users-Ohio ("IEU-Ohio") hereby files its Objections to the Staff Report of Investigation ("Staff Report") in the above-captioned matters. The Staff Report was filed with the Public Utilities Commission of Ohio ("Commission") on July 26, 2021. It provides the Commission Staff's ("Staff") findings regarding the application for authority to increase rates for distribution service filed by The Dayton Power and Light Company d/b/a AES Ohio ("AES Ohio") on November 30, 2020. In submitting the Objections listed below, IEU-Ohio specifically reserves the right to contest, through presentation of documentary evidence, testimony, or cross examination, issues on which Staff's position changes, or which are newly raised, between the issuance of the Staff Report and the closing of the record.

I. OBJECTIONS TO THE STAFF REPORT ON AES OHIO

Revenue Requirement

1. The range of Staff's recommended revenue increase as set out in Schedule A-1 of the Staff Report, is unjust, unreasonable, and not in accordance with Ohio law or proper ratemaking practices. IEU-Ohio objects to the Staff's recommended revenue increase range of $306,600,385 to $312,150,118. IEU-Ohio recommends a lower revenue requirement increase based on the objections to Staff's proposed rate of return, more fully set forth below.

Rate of Return

2. IEU-Ohio objects to Staff's recommended return on equity range ("ROE") as too high. As described in more detail below, Staff incorrectly calculated its inputs to come up with its ROE range, resulting in a recommended range that is improperly overstated.

Specifically, IEU-Ohio objects to the Staff's failure to use a lower risk-free rate when calculating the capital asset pricing model ("CAPM") cost of common equity estimate, resulting in an overstated recommended rate of return. The risk-free rate is the interest rate an investor would expect to receive in a hypothetical risk-free investment. Using an inflated risk-free rate attributes risk to a company that it does not have. This applies to all companies, not just monopoly utilities. In this case, the Staff calculated a 15-year average of 10-year and 30-year yields, which resulted in a risk-free rate of 3.05 percent. This inclusion of rates over the last 15 years, however, ignores the current state of the market and the fact that rates are currently low and are expected to stay that way for the near future. Instead of averaging rates from 15 years ago, Staff should use market rates as they currently exist, and any future change in market rates can be reflected in a future distribution rate case.

Yields for U.S. Treasuries are no longer "historically low" because they have remained low. This is not an anomaly, for the time being low rates are the new normal. Even the Federal Energy Regulatory Commission ("FERC") has wrestled with whether "anomalous capital market conditions" (i.e., historically low interest rates) justify an upward adjustment to a utility's ROE. In 2019, FERC issued a Notice of Inquiry ("NOI") seeking information regarding its policies concerning ROE determinations.[1] FERC noted that it issued the NOI in response to the decision of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Emera Maine v. FERC*[2] reversing and vacating Opinion No. 531[3] in which FERC had determined "anomalous capital market conditions" justified an ROE above the midpoint of the zone of reasonableness. Even though the D.C. Circuit Court did not expressly reverse the Commission's finding of anomalous market conditions, the D.C. Circuit Court held that the Commission's decision was unjust and unreasonable because it failed to cite record evidence supporting its conclusion that anomalous market conditions warranted an ROE above the midpoint. In the Staff Report, Staff did not demonstrate, or even allege, that current market conditions are anomalous. It is therefore unreasonable to ignore current market conditions and utilize an approach that artificially increases the ROE.

[1] *Inquiry Regarding the Commission's Policy for Determining Return on Equity*, Docket No. PL19-4-000, 166 FERC ¶61,207.

[2] Emera Maine v. FERC, 854 F.3d 9 (D.C. Cir. 2017).

[3] *Coakley, Mass. Attorney Gen. v. Bangor Hydro-Elec. Co.*, Opinion No. 531, 147 FERC ¶61,234, *order on paper hearing*, 149 FERC ¶61,032 (2014), *order on reh'g*, 150 FERC ¶61,165 (2015).

The most common proxy for the risk-free rate when conducting a CAPM cost of common equity estimate is yields on U.S. Treasury Bonds, and has been regularly employed by Staff in recent rate cases.[4] As of close on July 23, 2021, yields on 30-year Treasury Bonds were 1.92 percent, while yields on 13-week Treasury Bonds were 0.0450 percent. Accordingly, the Staff should have used a risk-free rate between 0.0450 percent and 1.92 percent when calculating the CAPM cost of common equity estimate. Using the average of 0.9825 percent, all else being held equal, the CAPM estimate of the cost of common equity would be 7.36 percent, instead of Staff's proposed 9.42 percent.

3. IEU-Ohio objects to the Staff's failure to consider the reduced risk faced by AES Ohio resulting from guaranteed recovery distribution riders, like the Infrastructure Investment Rider. By excluding that consideration, the Staff arrived at an overstated rate of return. Distribution riders ensure the company recovers its costs for certain capital investments. Each of these distribution riders reduce the level of business and financial risk faced by AES Ohio. The Staff Report fails to adjust downward the ROE to account for AES Ohio's reduced risk of providing electric distribution service.

To appropriately reflect the reduced risk to AES Ohio from the very significant amount of revenue collected through distribution riders, the Commission should set AES Ohio's overall rate of return based on the ROE at the midpoint of the bottom half of the Staff's recommended ROE range, after that range is corrected for the errors identified in IEU-Ohio Objection number 2.

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[4] *Inquiry Regarding the Commission's Policy for Determining Return on Equity*, Docket No. PL19-4-000, 166 FERC ¶61,207, at ¶14, "The risk-free rate is represented by a proxy, typically the yield on 30-year Treasury bonds.", *citing* Roger A. Morin, New Regulatory Finance 308 (Public Utilities Reports, Inc. 2006) at 155-162; *see also*, *e.g.*, *In Re Dayton Power & Light*, Case No. 15-1830-EL-AIR, Staff Report at 19 (Mar. 12, 2018); *Vectren Energy Delivery of Ohio*, Case No. 18-298-GA-AIR, Staff Report at 21 (Oct. 1, 2018).

Transmission Planning

4. IEU-Ohio objects to the failure of the Staff to make any recommendation that would facilitate high voltage customers incorporating in transmission planning their long-term demand reduction capabilities. The Commission should encourage AES Ohio to work with high voltage customers to identify opportunities for high voltage customers to commit their capabilities long-term and help reduce future transmission spending, with AES Ohio potentially recognizing this long-term benefit in the process utilized to calculate transmission billing determinants or other mechanisms that send price signals to high voltage customers in ways that produce system wide benefits and costs savings for all AES Ohio customers. The Commission should direct AES Ohio to collaborate with high voltage customers to discuss opportunities to reduce long-term transmission costs.

Demand Rates for Primary and Secondary Customers

5. IEU-Ohio objects to the Staff's failure to propose demand rates for primary and secondary customers.[5] IEU-Ohio cannot review the reasonableness of rates that have not been proposed and the failure to include proposed rates in the Staff Report prevents IEU-Ohio from offering any additional detail in these objections regarding the reasonableness, or lack thereof, of such unknown proposed rates.

II. STATEMENT OF MAJOR ISSUES

1. The revenue requirement increase recommended by the Staff and whether such increase is unjust, unreasonable, and not in accordance with Ohio law or proper ratemaking practices.

2. The Staff's rate of return calculations.

[5] Staff Report at 30, 31 ("Staff proposes to continue to work with the Applicant to develop appropriate rates for secondary and primary customers.")

3. Information and rate designs that could enhance customer-side operations and planning to better utilize transmission resources and reduce transmission grid level costs borne by all customers.

4. Staff's failure to recommend demand rates for primary and secondary customers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Objections to the Staff Report of Investigation and Summary of Major Issues of Industrial Energy Users-Ohio* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio, to the following parties of record this 25th day of August 2021, *via* electronic transmission.

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