**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of The Dayton Power and Light Company d/b/a “AES Ohio” to Update its Transmission Cost Recovery Rider – Non-Bypassable | )  )  )  ) | Case No. 22-152-EL-RDR |

**CONSUMER PROTECTION COMMENTS**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

# INTRODUCTION

This case is about the Dayton Power and Light Company d/b/a AES Ohio (“DP&L”) updating the rates charged to consumers under its Transmission Cost Recovery Rider – Non-Bypassable (“TCRR-N” or “Charge”). DP&L seeks approval to begin charging the updated rates to consumers beginning June 1, 2022.

DP&L’s TCRR-N charges consumers for transmission-related costs that are charged to DP&L by PJM Interconnection, LLC (“PJM”) through tariffs filed at the Federal Energy Regulatory Commission (“FERC”). The TCRR-N is charged to all residential consumers and certain commercial and industrial consumers that do not opt out of the charge by participating in a pilot program enabling the opt-out. Residential consumers cannot opt out.

DP&L’s TCRR-N opt-out pilot program was initially approved in the Public Utilities Commission of Ohio’s (“PUCO”) October 20, 2017 Opinion and Order in Case No. 16-395-EL-SSO. Under the pilot program, certain non-residential consumers can opt out of paying for transmission charges under the TCRR-N and instead pay transmission charges directly to their supplier.

This program can result in cost-shifting (meaning higher rates) to residential consumers and business consumers that are not part of the pilot program. The PUCO should conduct a comprehensive review and analysis of the cost-shifting to residential and business consumers as a result of DP&L’s pilot program. Such an analysis has been ordered for consumer protection regarding FirstEnergy’s similar pilot program.[[1]](#footnote-2)

To protect consumers from overpaying for non-market-based transmission charges, the PUCO should require its Staff to conduct a comprehensive review of the pilot program. The PUCO Staff should then publicly file a report to the PUCO on the extent of “cost shifting” and higher charges to residential consumers and business consumers that have resulted from the opt-out pilot program since its inception. The PUCO should then conduct a public process with opportunities for advocacy including on behalf of residential consumers.

In addition, the PUCO should examine the extent to which DP&L charges consumers for supplemental transmission projects through the TCRR-N. That means dollar amounts for supplemental transmission projects should be identified and the projects should be described.

# COMMENTS

Consumers will see a reduction in the TCRR-N charges this year. This is not due to any actions by DP&L other than reconciling the overcharges to consumers in previous years. Although there is a decrease in rates, PJM-related costs (the basis for the TCRR-N charges) have been increasing for consumers over the last three years. In 2019, the TCRR-N costs before reconciliations were $46.8 million[[2]](#footnote-3) and in 2022 they are $71.8 million,[[3]](#footnote-4) an increase of 53.4%. The PUCO needs to protect consumers by finding ways to control these transmission costs that are rising at an alarming rate.

* 1. **To protect consumers, the PUCO Staff should conduct a review of the TCRR-N Opt-Out Pilot Program to quantify the cost-shifting that is occurring.**

In PUCO Case No. 16-395-EL-SSO, the PUCO approved the TCRR-N Pilot Program that allowed certain customers to opt out of the TCRR-N and obtain all transmission and ancillary services through a Certified Retail Electric Service provider (“Marketer”).[[4]](#footnote-5) During that proceeding, OCC raised concerns with the shifting of costs from those participants of the pilot program (that opt-out of the TCRR-N) to those non-participants that continue receiving transmission services from DP&L. This is especially concerning for residential consumers who are unable to opt-out. The PUCO recognized this and ordered “DP&L and Staff to continuously review the actual results of the pilot program and periodically report their findings to the Commission.”[[5]](#footnote-6) The PUCO Staff has filed Staff Reviews and Recommendations in the annual TCRR-N cases.[[6]](#footnote-7) But, these reports contain little more than a description of the pilot program and the number of customers that are in the pilot program. According to the most recent report there is only one customer that is enrolled in the pilot program.[[7]](#footnote-8)

The PUCO Staff has already agreed to a review of a similar pilot program in FirstEnergy Ohio utilities’ transmission rider.[[8]](#footnote-9) And a request for proposal has been issued to hire a consultant to review that program.[[9]](#footnote-10) OCC understands given the size of the DP&L program that an outside auditor may not be necessary. But that does not mean that DP&L’s program should not be continuously reviewed by Staff and DP&L. Consumers deserve to know if this opt-out pilot program of DP&L is causing increased rates to consumers that cannot participate in the program, including all residential consumers and certain non-residential consumers.

Because there is only one consumer that has opted into the pilot program, the first consideration should be whether the program is providing any benefits to consumers. Supporters of the pilot program stated it would reduce costs to consumers.[[10]](#footnote-11) This should be much easier to review with only one consumer in the program. The PUCO should also consider whether the program provides sufficient and reliable data demonstrating benefits to non-participating consumers and whether the program should continue.

In the Order approving the pilot program, the PUCO questioned if the program should be terminated and replaced.[[11]](#footnote-12) A pilot program is meant to provide information to see if a larger program can work. If the program does not benefit the system, then consumers will not see the savings the program’s proponents touted. If only one customer participates, the PUCO should consider whether the program is providing the system-wide benefits or savings that were promised.

The PUCO should require a full review and evaluation to determine if the pilot program is offering any benefits to consumers and if it should continue.

* 1. **To protect consumers, the PUCO should order DP&L to report on supplemental transmission projects and the cost impact to consumers.**

The number and costs of supplemental transmission projects in Ohio have skyrocketed in recent years. A report by the Ohio Power Siting Board showed over five billion dollars in supplemental projects charged to Ohio consumers.[[12]](#footnote-13) A search on PJM’s website lists the supplemental transmission projects for DP&L’s transmission affiliate. The list shows 56 projects totaling almost $250 million.[[13]](#footnote-14)

Supplemental projects at PJM are considered transmission enhancements or expansions that are not required for compliance with system reliability, operational performance or economic criteria.[[14]](#footnote-15) These projects are not reviewed or approved by the PJM Board nor are they reviewed or approved by the FERC. The PUCO is also not reviewing. These projects have found a regulatory loophole that is being exploited by Ohio transmission owners. This issue was brought before the Ohio Power Siting Board and that agency decided to pass on overseeing these projects.[[15]](#footnote-16) Consumers should have some protection from paying skyrocketing transmission costs because of this loophole in the regulatory process.

DP&L may assert that it does not have control over the actions of its transmission affiliate and is merely passing through the costs of these supplemental projects. But when no agency oversees the process of constructing supplemental transmission projects, the PUCO should require DP&L to report the impact on consumers of all the supplemental transmission project costs it is passing through on consumers’ bills. This information will provide consumers information about how much they are being charged for transmission projects that are not being reviewed for necessity or prudence. Although this will not necessarily close the regulatory loophole in Ohio law it will provide information to consumers to help them understand why their transmission charges continue to increase every year.

# CONCLUSION

Consumers’ transmission costs have been increasing at an alarming rate with little to no protections. These increasing charges to consumers should not be ignored. The PUCO should protect consumers from costs of supplemental transmission projects that are largely unregulated. The PUCO should also require its Staff to conduct a review of the TCRR-N Opt-Out Pilot Program, to quantify cost-shifting that is occurring. The PUCO should review costs shifted to non-participating consumers and determine whether the program should be terminated.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Consumer Protection Comments was served on the persons stated below via electronic transmission, this 25th day of April 2022.

*/s/* *Angela D. O’Brien*

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The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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1. *In the Matter of the Review of the Non-Market-Based Services Rider Pilot Program Established by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 22-391-EL-RDR, Entry directing Staff to issue a request for proposals for auditing services to assist Staff with the review of Rider NMB Pilot Program (April 20, 2022). [↑](#footnote-ref-2)
2. *In the Matter of the Application of The Dayton Power and Light Company to Update its Transmission Cost Recovery Rider – Non-Bypassable,* Case No. 19-577-EL-RDR Application Schedule B-1 (March 15, 2019). [↑](#footnote-ref-3)
3. Schedule B-1. [↑](#footnote-ref-4)
4. *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 Opinion and Order at page 33 (March 13, 2017). [↑](#footnote-ref-5)
5. *Id.* at page 34. [↑](#footnote-ref-6)
6. *See* PUCO Case Nos. 21-224-EL-RDR, 20-547-EL-RDR, 19-577-EL-RDR and 18-447-EL-RDR. [↑](#footnote-ref-7)
7. *In the Matter of the Application of Dayton Power and Light Company d/b/a AES Ohio (AES Ohio), to Update its Transmission Cost Recovery Rider – Non-bypassable (TCRR-N),* Case No. 21-224-EL-RDR, Staff’s Review and Recommendations at page 2 (May 7, 2021). [↑](#footnote-ref-8)
8. *In the Matter of the Review of the Non-Market Based Services Rider contained in the Tariffs of Ohio Edison, The Cleveland Electric Illuminating Company and The Toledo Edison Company*, Case No. 21-1225-EL-RDR, Staff’s Review and Recommendations at page 2 (February 14, 2022). [↑](#footnote-ref-9)
9. *In the Matter of the Review of the Non-Market Based Services Rider Pilot Program Established by Ohio Edison, The Cleveland Electric Illuminating Company and The Toledo Edison Company*, Case No. 22-391-EL-RDR. [↑](#footnote-ref-10)
10. Case No. 16-395-EL-SSO Opinion and Order, at p. 31. [↑](#footnote-ref-11)
11. *Id*. at page 34. [↑](#footnote-ref-12)
12. *See In the Matter of the Ohio Power Siting Board’s Report to the General Assembly Regarding the Power Transmission System*, Case No. 21-796-EL-UNC, OPSB Final Report (November 16, 2021). [↑](#footnote-ref-13)
13. <https://www.pjm.com/planning/project-construction>. [↑](#footnote-ref-14)
14. 1.5.9(a)(ii) of Schedule 6 of the PJM Operating Agreement. [↑](#footnote-ref-15)
15. *In the Matter of the Ohio Power Siting Board’s Report to the General Assembly Regarding the Power Transmission System*, Case No. 21-796-EL-UNC Ohio Power Siting Board Report to the General Assembly Regarding the Power Transmission System at page 12 (November 16, 2021). [↑](#footnote-ref-16)