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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The ) Case No. 07-1302-EL-ATA  
Dayton Power and Light Company For )  
Approval of its Proposed Market- )  
Based Standby Tariff Sheet. )  
)

THE DAYTON POWER AND LIGHT COMPANY'S MEMORANDUM IN  
RESPONSE TO MOTION TO INTERVENE OF  
INDUSTRIAL ENERGY USERS-OHIO

I. INTRODUCTION

Industrial Energy Users-Ohio ("IEU-Ohio") move pursuant to R.C. §4903.221 and Section 4901-1-1-11 of the Ohio Administrative Code to intervene in this matter. The concerns expressed by IEU-Ohio are unfounded and its intervention is unnecessary. Nonetheless, the Dayton Power and Light Company ("DP&L") will not formally oppose IEU-Ohio's motion to intervene, but will take the opportunity to further clarify its position and explain the reasons that IEU-Ohio has no cause to be concerned. DP&L makes what is in essence a dual application in this case

- First, DP&L asks the Commission to approve of its market-based standby service tariff being filed pursuant to the Commission's March 28, 2007 Order.<sup>1</sup>
- Second, DP&L seeks the Commission's approval to remove its cogeneration tariff sheet, a provision under which no customer has ever taken service since it became effective in 1983

<sup>1</sup> In the Matter of the Commission's Response to Provisions of the Federal Energy Policy Act of 2005 Regarding Net Metering, Smart Metering and Demand Response, Cogeneration and Power Production Purchase and Sale Requirements, and Interconnection, Case No. 05-1500-EL-COI Finding and Order, March 28, 2007 ("Order"), at 10-11.

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With respect to the first part of the application, it is important to note that IEU-Ohio raises no objection to DP&L's proposed market-based standby tariff. IEU-Ohio only takes issue with the second part of DP&L's application in which DP&L seeks to remove the existing cogeneration tariff sheet. IEU-Ohio expresses concern that doing so would violate the Commission's March 28, 2007 Order which directs that a market-based standby rate be offered in addition to existing fixed-rate offerings. Granting DP&L's Application in its entirety will not result in the discontinuance of a fixed-price standby rate because the cogeneration tariff *is not* a fixed-rate standby service offering, and no customer is taking or ever has taken service pursuant to that tariff provision.

## II. FACTS

On March 28, 2007 the Commission issued a Finding and Order in which it directed, among other things, that each Ohio electric distribution utility ("EDU") offer a market-based rate for customers owning distributed generation ("DG") equipment in addition to its rates currently in the tariff.<sup>2</sup> Specifically, the Order provides, in pertinent part, as follows: "Staff indicated it believes each utility should offer a market-based rate for DG in addition to its rates that are currently in its tariff."<sup>3</sup>

In order to comply with the provisions of the Order, on December 21, 2007, DP&L filed its Application for Approval of its proposed market-based standby tariff. As part of its application, DP&L also sought to remove its current cogeneration tariff sheet. IEU-Ohio timely moved to intervene, and raised its concern that DP&L seemed to be

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<sup>2</sup> Id.

<sup>3</sup> Id.

"discontinuing the current fixed price standby service," rather than adding market-based service to existing fixed-price rates.<sup>4</sup>

The cogeneration tariff offers a credit opportunity, but does not provide for a fixed-price standby service *rate*. Further, no DP&L customers are currently taking service under the cogeneration tariff, nor has any DP&L customer with DG ability ever taken service under the cogeneration tariff sheet since it became effective in April 1983. DP&L's DG owning customers will continue to be offered a fixed-price standby rate under the standard offer provisions of the tariff.

### III. ARGUMENT

Removing the current cogeneration tariff does not run afoul of the Commission's Order. First, DP&L's cogeneration tariff does not represent a fixed-price standby service "rate" in the current tariff, as described in the Commission's Order, but in effect is a credit which no customer has ever sought or used.<sup>5</sup> On its very face, the tariff makes clear that DG capable customers qualify for a credit, but are not charged a "rate" relating to standby service, specifying the manner of calculating the "Energy/Demand Credits for Qualified facilities."<sup>6</sup> Consequently, DP&L is not discontinuing any current fixed "rate" for standby service by seeking to remove the cogeneration tariff sheet.

Second, DP&L is not seeking to remove any other rate schedules set forth in the tariff and all the current standard offer rate provisions under which DP&L customers who

<sup>4</sup> IEU-Ohio Motion to Intervene, at 5.

<sup>5</sup> In addition to never being used, several provisions of the cogeneration tariff are outdated. For example it references qualifying facilities ("QFs"), which were established under the Public Utilities Regulatory Policies Act of 1978 ("PURPA") but were eliminated by the Energy Policy Act of 2005. This factor also supports DP&L's request to remove the cogeneration tariff sheet.

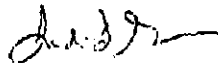
<sup>6</sup> PUCO No. 17- Generation Service - Original Sheet No. G21, Cogeneration - at page 3 of 3 (Emphasis added).

are DG owners may now take service will remain in place DP&L's market-based standby service tariff will in fact provide DG owning customers with an additional rate option under which to realize the benefits of their self-generation capabilities. This added option impact is squarely in line with the Commissions' objectives set forth in its March 28, 2007 Order. IEU-Ohio's concerns are unfounded, and DP&L's application should be approved.

IV. CONCLUSION

DP&L's application for approval of its market-based standby service tariff is unopposed by IEU-Ohio. Furthermore, for the reasons more fully described above, it is clear that DP&L's application to remove its cogeneration tariff does not violate the Commission's March 28, 2007 order, and the interests of IEU-Ohio's members will not be adversely impacted by approval of this aspect of DP&L's Application. Consequently, DP&L's application as a whole should be granted.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify a copy of the foregoing was served via First Class U S Mail,  
postage prepaid, this 6<sup>th</sup> day of February, 2008, upon the following.

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