

FILE

FAX

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.)
)

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THE DAYTON POWER AND LIGHT COMPANY'S MEMORANDUM IN
OPPOSITION TO MOTION TO INTERVENE AND MOTION TO AMEND
TARIFFS OR, IN THE ALTERNATIVE, MOTION FOR HEARING BY THE
OFFICE OF THE OHIO CONSUMER'S COUNSEL

I. INTRODUCTION

The OCC has moved to intervene in this matter involving DP&L's application to approve a market-based standby service tariff provision. While possible, it is highly unlikely the this tariff will impact residential customers. For that reason, the nature and extent of OCC's interest in the outcome of this application is so small that OCC's motion to intervene should be denied. Further, the OCC's objections to the proposed tariff are unfounded. First, the OCC's claim that the proposed tariff violates the Commission's March 28, 2007 because it does not take into account the elimination of the forced outage rate component (EFORD) is incorrect because the Commission does not require the rate offering to take EFORD into account. The OCC also asserts that DP&L's proposed market-based standby service tariff requires that standby customers qualify as qualifying facilities ("QFs") as a basis to support its motions. The proposed tariff never even mentions QFs. The OCC seeks a rigid definition of "administrative fees" in the tariff, yet the tariff is designed to maintain flexibility in order to keep those fees as low as possible by including the fees in the individual Service Agreements which will be signed by

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customers actually taking service under the proposed tariff. Finally, the OCC objects to DP&L's inclusion of the Environmental Investment Rider ("EIR") as a component of the market-based standby service rate, yet DP&L included that element to comply with the Commission's directive in the RSS case, Case No. 05-276, in which the Commission ordered that the EIR be included as a component of all rates with the exception of those customers taking generation from Competitive Retail Electric Service providers. The OCC's motion should be denied.

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.¹ 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."²

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 "discontinuing the current fixed price standby service," rather than adding market-based service to existing fixed-price rates.³ Notably, IEU-Ohio does not oppose the propose

¹ Id.

² Id.

³ IEU-Ohio Motion to Intervene, at 5.

market-based standby service tariff itself. DP&L has filed its response to HEU-Ohio, explaining that the existing standby service rates will continue to be offered. The OCC filed its motion to intervene in which it has objected to aspects of the market-based standby tariff. For the reasons explained point by point below, the OCC's objections are unfounded.

III. ARGUMENT

A. The OCC's Motion To Intervene Should Be Denied.

OCC should not be permitted to intervene in this proceeding because the tariff provisions involved in DP&L's application have very little if any impact on the interests of residential customers. R.C. 4903.221(B) provides, in pertinent part, as follows:

Any other person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding, provided: That the commission, in ruling upon applications to intervene in its proceedings, shall consider the following criteria:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

The OCC represents the interest of residential utility customers in Ohio.⁴ The customers who will most likely be impacted by the standby service tariff provisions are commercial and industrial users. Specifically, the proposed tariff provides:

⁴ Motion to Intervene and Motion to Amend Tariffs or, in the Alternative, Motion for Hearing by the Office of the Ohio Consumers' Counsel, February 1, 2008, at 1.

APPLICABLE:

Available to any customer who has signed an Interconnection Agreement, meets the requirements contained in Tariff Sheet D35[Interconnection Service], and has power production facilities that normally supply the Customer's entire load.⁵

While it is theoretically possible for a residential customer to meet this criteria, it is a remote possibility at best and the number of residential customers with the capability would be miniscule. When considering the first factor set forth above - the nature and the extent of the prospective intervenor's interest - it is clear that the nature and certainly extent of the OCC's interest in the outcome of this case is small. Since the impact, if any, on the OCC's constituency by the structure of DP&L's market-based standby service tariff would be quite small or non-existent all together, it follows that the OCC will not contribute to the full development and equitable resolution of the factual issues in the case pursuant to the fourth factor to consider in deciding whether to grant the OCC's motion to intervene. Finally, again, in light of the minor interest of the OCC in this tariff, the OCC's presence will only delay the proceedings, as its intervention will result in additional discovery which will lend little to the outcome of the case. The OCC's motion to intervene should be denied.

B. OCC's Motion To Amend The Tariffs Or In The Alternative Motion For Hearing Should Be Denied.

OCC first argues that DP&L failed to meet its burden of proof showing the standby service tariff is just and reasonable. OCC bases its argument on an unsupported assumption that the proposed tariff on its face appears unjust and unreasonable. It then

⁵ Emphasis added.

cites to a provision contained in R.C. 4909.18, which requires a hearing in which DP&L would carry the burden of proof of presenting evidence showing that the proposed tariff is just and reasonable. First of all, DP&L has filed an application to approve revisions to its tariff which are just and reasonable because the revisions are being made pursuant to and in compliance with the Commission's order directing DP&L to file revised tariff provisions complying with the findings set forth in the order.⁶ As an additional factor, however, what OCC ignores, is that before the hearing provision and resulting burden of proof provisions contained in R.C. 4909.18 are ever triggered, the Commission must first find that the tariff appears from the face of the application to be unjust and unreasonable.⁷ The Commission has made no such finding here. The OCC's argument that DP&L somehow failed to meet a burden of proof at a hearing that does not need to occur unless and until triggered by a specific Commission finding should be rejected.

C. DP&L's Proposed Standby Service Tariff Complies With The PUCO's Order in Case No. 05-1500-EL-COI.

The OCC first complains that DP&L's market-based standby service rate does not take into account the elimination of the forced outage rate component (EFORD) in the

⁶ 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, March 28, 2007 order, at 13.

⁷ The relevant portion of R.C. 4909.18 provides:

If it appears to the commission that the proposals in the application may be unjust or unreasonable, the commission shall set the matter for hearing and shall give notice of such hearing by sending written notice of the date set for the hearing to the public utility and publishing notice of the hearing one time in a newspaper of general circulation in each county in the service area affected by the application. At such hearing, the burden of proof to show that the proposals in the application are just and reasonable shall be upon the public utility. (Emphasis added).

wholesale rate of PJM Interconnection LLC. The OCC then compares DP&L's proposed tariff with the proposed tariff filed by American Electric Power ("AEP"). The OCC makes the leap in logic that because AEP included this element in its filing, by not including the EFORD in its filing, DP&L's tariff therefore fails to comply with the Commission's order in Case No. 05-1500-EL-COI.

The fact is that the Commission's order contained no set formula for developing a market-based stand service rate. The EDU's were given the authority to structure their individual rates as each best saw fit. The Commission did not order that all EDU's include the EFORD element in their charges for standby service. Each utility was given the latitude to tailor its rate based upon circumstances unique to the individual EDU. Indeed, it is notable that the Industrial Energy Users-Ohio ("IEU-Ohio"), whose constituency has a significant interest in the market-based standby service tariff, has not opposed any aspect of the substantive content of the proposed market-based standby tariff provision itself - including the lack of EFORD element. DP&L's structure of its market-based standby service rate fully complies with the Commission's order in Case No. 05-1500-EL-COI.

Next, the OCC curiously asserts that DP&L's proposed market-based standby service tariff requires that standby customers qualify as qualifying facilities ("QFs") pursuant to the Public Utilities Regulatory Policies Act of 1978 ("PURPA"). This is just incorrect. Nowhere in DP&L's proposed tariff are QFs even mentioned. OCC's request that DP&L amend its tariff to eliminate references to QFs is unnecessary and should be rejected.

The OCC next claims that DP&L must define what it means by "administrative fees" in the proposed tariff. The cost of "administrative fees" is dependent upon customer participation in the market-based standby service tariff, and consequently is indeterminate until such time as customers begin entering into Service Agreements as described in the proposed tariff. The administrative fees will be specified in the Service Agreements. The customers entering into Service Agreements under the market-based standby service tariff are sophisticated customers who understand that the administrative costs will vary based upon customer participation, and permitting flexibility in the administrative costs element will help keep those costs as low as possible. Once again, IED-Ohio, a party with a substantial interest in the tariff, has not opposed this aspect of the proposed tariff.

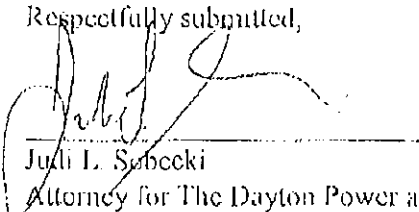
Finally, the OCC takes issue with the inclusion of the Environmental Investment Rider ("EIR") as a component of the market-based standby service rate. The Commission in Case No. 05-276 ("RSS case") ordered that the EIR be included as a component of all rates with the exception of those customers taking generation from Competitive Retail Electric Service ("CRES") providers.⁸ Customers taking standby service pursuant to the proposed market-based standby service tariff will by definition not be receiving generation service from CRES providers; consequently DP&L's inclusion of the EIR in this market-based standby tariff rate is appropriate and in compliance with the Commission's Order in the RSS case.

⁸ In the Matter of the Application of The Dayton Power and Light Company for the Creation of a Rate Stabilization Surcharge Rider and Distribution Rate Increase, Case No. 05-276-EL-AIR, December 28, 2005 Opinion and Order, at 9.

IV. CONCLUSION

For the foregoing reasons, OCC's Motion to Intervene and Motion to Amend Tariffs or, in the Alternative, Motion for Hearing should be denied in its entirety.

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 19th day of February, 2008, upon the following:

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