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FILE

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. 08-1094-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs	)	Case No. 08-1095-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. 08-1096-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for Approval of its Amended Corporate Separation Plan	)	Case No. 08-1097-EL-UNC

DIRECT TESTIMONY OF MARK R. FRYE OF PALMER ENERGY

ON BEHALF OF

HONDA OF AMERICA MFG, INC.

AND

CARGILL, INCORPORATED

January 26, 2009

DIRECT TESTIMONY OF MARK R. FRYE

I. INTRODUCTION AND QUALIFICATIONS

Q. Please state your name and business address.

A. My name is Mark Frye. My business address is 241 N. Superior Street, Toledo, Ohio 43604.

Q. What is your occupation?

A. I am an energy consultant and the President of Palmer Energy Company in Toledo, Ohio.

Q. Please describe your educational background and work experience.

A. I have worked in the energy field for 22 years and for clients in 18 states. I earned a Bachelors of Science degree in Energy Technology from Pennsylvania State University's Capitol College. I currently consult on energy procurement and utilization matters for a number of industrial, commercial, educational, institutional and governmental clients.

Q. Have you ever testified before the Public Utilities Commission of Ohio?

A. Yes. I have previously submitted direct testimony in several cases before the Public Utilities Commission of Ohio ("Commission" or "PUCO"), including FirstEnergy's Electric Security Plan ("ESP") Application [Case No. 08-935-EL-SSO], FirstEnergy's Rate Stabilization Plan ("RSP") Application [Case No.03-2144-EL-ATA], American Electric Power's ESP Application [Case No. 08-917-EL-SSO], and American Electric Power's IGCC Application [Case No.05-376-EL-ATA].

Q. On whose behalf are you testifying?

A. I am testifying on behalf of Honda of America Mfg, Inc. ("Honda") and Cargill, Incorporated ("Cargill") (collectively "Cargill-Honda"). Both Honda and Cargill are large industrial consumers with facilities located in and served by The Dayton Power and Light Company ("DP&L") or ("Company"). Honda manufactures automobiles, motorcycles and other products. They have over 27,000 employees in the United States and are one of the largest employers in the State of Ohio. Cargill is a provider of food, agricultural and risk management products and services with over 160,000 employees in 67 countries, with facilities in Dayton and Sidney, Ohio served by DP&L. Cargill operates a corn wet mill in Dayton producing corn syrup based products. In Sidney, Cargill operates a soybean crush plant and refinery producing vegetable oil, salad dressings, mayonnaise and other soybean based products. Honda receives energy at transmission voltage and owns its own substation. The Dayton facility of Cargill receives energy at a primary voltage and owns its own substation. The Sidney facility of Cargill receives energy at distribution primary voltage. Finally, both Honda and Cargill purchase their own generation and thus only receive delivery service from DP&L.

Q. What is the purpose of your testimony in this case?

A. My testimony addresses certain aspects of the proposed Electric Security Plan ("Plan" or "ESP"), which includes continuation of the earlier approved Rate Stabilization Plan [1] ("RSP) filed by the Company which especially affects large industrial customers whose only service from DP&L is the delivery of high voltage or primary voltage service. These include: 1) Requesting deferral of fuel costs without demonstrating that a deferral is proper or necessary; 2) Charging shopping customers for fuel they did not use ; 3) Forcing shopping customers to return to market based rates but continuing to charge the RSS fee; 4) Failing to specifically provide an opt out mechanism from the CCEM EER rider for mercantile customers who wish to operate their own conservation program; and 5) Charging customers served outside the distribution system for metering improvements on the distribution system.

[1] The RSP was approved by Opinion and Order, dated December 28, 2005, in Case No. 05-276-EL-AIR.

II. FUEL DEFERRALS

Q. What do you see as the first problem in DP&L's ESP, as it relates to Cargill-Honda?

A. First, the Plan seeks authority to defer fuel charges in excess of 1.8 cents per kWh for calendar years 2009 and 2010, for recovery or phase-in of those charges as regulatory assets beginning in 2011 with interest. I believe that a utility seeking a phase-in must first demonstrate that the proposed deferral of current costs is necessary for price or rate stability, and that the phase–in is implemented in a manner that is just and reasonable.

Q. Based on the Plan and the supporting testimony do you believe that a deferral of fuel costs is necessary for price or rate stability?

A. The Plan fails to provide specifically the authoritative basis for the size of its deferral request, and a basis to verify costs. Further, even if a justified substantial increase in costs occurs, DP&L must demonstrate that the resulting deferrals will create stability over time. If the anticipated fuel deferrals create a price spike in 2011 when DP&L begins to charge the current unsubsidized fuel costs plus the impact of the first deferral payment, then stability has not been achieved.

Q. Is there reason to believe that DP&L is not experiencing a large increase in fuel costs?

A. A review of DP&L's third quarter 2008 financial statements available on their website indicate that Net kWh generated fuel cost after deducting coal sales and derivative gains actually declined from 2.00 cents per kWh in the first nine months of 2007 to 1.64 cents in the first nine months of 2008. When you combine these facts with declining energy costs generally since the middle of 2008, it is very difficult to see where firm electric service to customers would be sufficiently in question to abrogate the Company's commitment to fixed SSO pricing in 2009 and 2010. The Plan, including the testimony and worksheets, simply do not present a factual pattern of a price spike that would warrant a deferral.

Q. Would customers benefit from a deferral now even without a price spike in fuel prices?

A. Not under the terms proposed in the Plan. Workpaper MRF 1 shows a hypothetical $10 million deferral during the 9 months of 2009 and an additional $10 million deferral during 2010. When the carrying cost proposed by the Company (13.32%) is grossed up for federal taxes at a 35% rate it creates $52 million in collections over 10 years. Essentially DP&L would collect approximately $2.50 for every $1 of deferral in their example. This is a steep price for consumers to pay. It is interesting to note that when the Company proposes to over collect revenue in the first three years of the IIR program it is offering a carrying cost of 9.36%[2]. If the fuel deferral carrying cost were to accrue at 9.36%, the total collection would drop 34%. The Company should be consistent when paying and charging carrying costs. I have attached a work paper supporting the above calculations as Appendix A of this testimony.

Also missing from the Plan are any indications that customers support deferring fuel costs now for recovery over ten years at the credit card level of carrying charges proposed by the Company.

Q. Is the proposed fuel deferral reasonable?

A. The Company requests a deferral of fuel costs that are unknown in size or scope. This is not only troublesome, but unreasonable on its face for the Company to fail to present any evidence that there will be substantial increase in the aggregate for fuel costs and yet claim that it is necessary to defer part or all of that increase. The burden of proof that a deferral is needed should be high for deferrals by which their very nature run counter to a basic principle of rate making. Rates should be designed so that there is a pairing of the customers who cause the cost with the

[2] Book II – Customer Conservation and Energy Management, Revised Infrastructure Investment Rider (IIR) Rate Design, Schedule E-1, line 39.

customers who have the burden of paying the cost. When a deferral is implemented at a minimum there is a temporal separation between the customers who enjoyed the benefit and the customers who paid for the benefit. A customer who used the generation made with fuel purchased in 2009 and 2010 may not be a customer in 2011 when the cost of that fuel is charged. Similarly, a new customer who moves into the service area in 2020 will be asked to pay for fuel used in 2009 and 2010 that provides the customer no benefit.

In sum, as a matter of regulatory policy, deferrals should be avoided when possible as they create market distortions, potential cross subsidies, and logistical issues. There are times when rate stability may be so critical that the problems deferrals create are outweighed by the need to phase-in the cost. The burden is on DP&L to make that case and it begins with a reasonable estimate or projection of the size of upcoming fuel cost increases and the size of the desired deferral. Absent this information, the Commission cannot determine whether the deferral is warranted in light of regulatory policy concerns and the high carrying costs.

Q. Is the deferral requested in the Plan just?

A. In addition to not knowing the amount of the deferral, the Plan is silent as to whether all customers, including customers who shop during the Plan, will pay the deferrals and carrying charges. The Plan must be clarified to state that shopping customers who supply their own generation in 2009 -2010 will not be made to pay for the fuel of those customers who buy generation under the standard service offer. If DP&L convinces the Commission that a deferral is required for rate and price stability, then the rate design of both the deferral and the collection of the deferral should be non-discriminatory.

Q. If the Commission were to permit a deferral what do you recommend for a collection mechanism?

A. If the deferral is for fuel costs, then the collection mechanism should completely exclude or become by-passable for those customers purchasing third party generation supplies during the fuel deferral period of 2009 and 2010. DP&L incurs fuel costs for generation services provided to non-shopping customers. Thus, it is inequitable to charge customers who bought and paid for the fuel they used from third party suppliers in 2009-2010 to also have to pay for the fuel DP&L's standard service customers consumed in 2009-2010.

If the purpose of the deferral is to make electricity rates stable for all customers in the DP&L service area then all customers should enjoy a price deferral in 2009 – 2010 and pay for the deferral in the subsequent decade. Then all customers, including shopping customers, would both receive the deferral and pay for the deferral. This can be done by deferring a distribution cost rather than a generation cost or by simply granting a credit to shopping customers during 2009 and 2010 for the amount being deferred to address rising fuel costs and then charging all customers for the deferral. The credit to shopping customers in 2009 and 2010 would assure the goal of granting rate stability to all customers and more importantly pairing the benefits of deferral with the burden of paying for the deferral.

Q. What other factors make DP&L's proposed fuel deferral unjust or unreasonable?

A. The risk of increased fuel costs in 2009 and 2010 was a risk shifted to DP&L as part of the Commission accepted the Stipulation in Case No. 05-276-EL-AIR ("the Stipulation"). In exchange DP&L received the Rate Stabilization Surcharge ("RSS").

Q. What did DP&L stipulate to in Case 05-276-EL-AIR in regard to fuel cost recoveries for SSO provided service in 2009 and 2010?

A. In Case No. 05-276-EL-AIR, the Company agreed to a Stipulation[3] that extended its RSP through 2009 and 2010 in return for various increases in charges to consumers. DP&L stipulated to the recovery of approximately $76 million of

[3] Stipulation and Recommendation, docketed November 3, 2005, accepted as modified by the Commission in its Opinion and Order, dated December 28, 2005, in Case No. 05-276-EL-AIR.

these expenses.[4] The total estimated RSS revenue that will be collected during 2009 and 2010 is $152 million. DP&L stipulated that the RSS rate compensates for its provider of last resort service and stabilized rates.

Q. How does the ESP Plan treat the RSS charge for service provided during 2009 and 2010?

A. The Plan filed in this case proposes to maintain current rates under the 2005 approved RSP through the end of 2010 by receiving Commission approval to defer incremental costs associated with fuel, fuel-related, and purchased power that exceed 1.8 cents/kWh for the period January 1, 2009 through December 31, 2010. The 1.8 cents/kWh fuel related charge equals the EFC rate of 1.3 cents, plus the RSS rate of 0.5 cents.[5]

While the Plan includes the RSS as part of the ongoing expenses in 2009 and 2010, it ignores the critical factor that the RSS was supposed to provide stable rates and Provider of Last Resort ("POLR") service in those years.

Further, the Plan attempts to treat the RSS charge as completely fuel and fuel-related because approximately 75% of that rider reflects those costs.

Q. Does this Plan proposal violate the intent of the Stipulation?

A. Yes. The Commission concluded that serious bargaining among capable, knowledgeable parties representing a diversity of interests resulted in the Stipulation. [6] The Stipulation was also prescient as it provides for effects of future legislation by requiring good faith negotiations to modify the agreement if subsequent legislation affected its terms and rates.[7] As signatory parties to the Stipulation, Cargill and Honda were not contacted by DP&L to request re-negotiations to preserve compromised benefits. Thus the Stipulation continues as

[4] Book I, Chap. 5, pg. 22.
[5] Book I, Chap. 5, pg. 22-23.
[6] Opinion and Order, Case No. 05-276-EL-AIR, Finding 14, at pg. 15.
[7] Stipulation, par. G, pg. 6.

approved by the Commission without regard to passage of SB 221. DP&L simply attempts to circumvent provisions in the Stipulation approved by the Commission that specifically calls for negotiations.

Q. In what other way do you believe the Plan violates the Stipulation that resolved Case No. 05-276-EL-AIR?

A. DP&L recognized correctly in the Stipulation that fuel costs and other charges would be well above its generation rates in 2009 and 2010. Thus all parties agreed to RSS charges and EIR provisions that would extend stable rates and provide POLR service through that period. The Company accepted the risk of higher fuel costs in return for revenue.

III. RETURN TO SSO

Q. Do you have any other concerns related to the Company's Plan?

A. The Company is proposing material modifications to tariff sheet G9. Tariff sheet G9 addresses the power price paid by the customer upon return from third party supplied generation to the standard service offer ("SSO"). DP&L supports modification by noting the effect on unavoidable generation charges for large-scale governmental aggregation as required by OAC 4901:1-35-03 (C) (6) and (7). DP&L contends that Section 4928.20 (I), Revised Code, Section 4928.20 (J), Revised Code and elements of Ohio Electric Choice, inconsistently applies to cost-of-service based utility service provided by the SSO through 2010. As a result, DP&L believes it incurs significant risks by buying power at market rates to serve returning large-scale governmental or other aggregation customers at fixed, average, SSO tariff rates. On this basis, DP&L refers to Section 4928.143 (B) (2) (d) Revised Code that allows the Commission to place stabilizing limits on retail shopping.[8]

[8] SSO Book 1, Chap. 2, pg. 5-6.

DP&L revises G9 - Competitive Retail Generation Service, to require returning customers purchase generation service at market-based rates. Also, DP&L plans to file a new G23, Adjustable Rate tariff to avoid adversely affecting SSO customers by placing market price risks on returning aggregation customers. DP&L believes that G23 does not affect the unavoidable generation charges paid by DP&L customers receiving service from CRES providers pursuant to large-scale government aggregation programs. [9]

Q. What are some of your initial concerns regarding the modification of G9 in the Company's proposal?

A. There are several initial concerns. A modified G9, Competitive Retail Generation Service, applies to all shoppers [10] although presented only in the context of government aggregation customers.[11]

I believe the changes proposed are inappropriate for a current plan continued as part of the ESP through December 31, 2010 at present rates. Amended G9 dramatically changes the present rate plan where under all shopping customers pay the RSS to return at POLR generation rates.

As proposed, a modified G9 unreasonably and unjustly applies to all customers, under the current plan that continues through December 2010, who chose to take generation services from Alternative Generation Suppliers ("AGS"). Shopping customers choosing to would return to DP&L <u>retail generation service</u> (i.e. not POLR services) under the new G23, Adjustable Rate Tariff which has yet to be filed. Customers not selecting AGS, opting out of governmental aggregation programs, or dropped by their AGS for violation of coordination obligations, receive service under POLR G10-G18 generation tariffs. [12] Further, large commercial and all industrial customers must provide 90 days advance notice to

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[9] SSO Book 1, Chap. 2, pg. 5-6.
[10] DP&L relies on OAC:4901:1-35-03(C)(6).
[11] SSO Book I, Chap. 2; Book I. Test., Seger-Lawson, pg. 4-6.
[12] Book I, Schedules, G9, pg. 1-2.

return to DP&L retail generation (i.e. not POLR) between May and October, and 60 days notice to return between November and April. Inadequate notice results in a $10.00/kW penalty charge based on the highest demand reading during any of the previous three months before return.

The payment of RSS charges by all customers requires re-emphasis. All customers today pay an RSS charge for what the tariff states is the benefit of having stable rates. For shopping customers the rate stability purchased with this fee is the right to return at the then available SSO price. The proposed change to tariff sheet G9 eliminates that value. If shopping customers now have to return at market rates they will lose the value of the RSS under which service continues through 2010.

Q. What is your second concern regarding the modification of G9 in the Company's proposal?

A. Ms. Seger-Lawson testifies "When the Commission approved the RSS Stipulation it was clear to all parties that the RSS rate was a charge designed to compensate DP&L for being the provider of last resort." [13] This concept is reinforced by the Company's current tariff which states that the RSS fee is "intended to compensate DP&L for providing stabilized rates for customers and Provider of Last Resort Service." [14] The obvious dichotomy of changing the RSS so it no longer provides the right to return at the SSO price while keeping the RSS which is designed expressly for that purpose was not discussed in the testimony that supports the changes to tariff sheet G9. The POLR service established in both the Stipulation and the Commission Order accepting the Stipulation with modification in Case No. 05-276-EL-AIR clearly includes tariff sheet G9 as it now exists. It establishes a pricing mechanism that applies to any shopping customer returning to utility service. This material modification to the current plan on the basis presented should not be permitted.

[13] Seger-Lawson testimony, Book I, page 7 of 8, lines 142 -144.
[14] DP&L Sheet G25 page 1 of 2.

Q. What is your final concern regarding the modification of G9 in the Company's proposal?

A. When addressing the proposed modifications for tariff sheet G9, Ms. Seger-Lawson indicates consumers would "return to utility-supplies retail generation service . . . at market-based rates." [15] G9 proposed modifications permit larger commercial and industrial customers to return to SSO with proper notification to "DP&L retail generation" rather than "Standard Service Offer" [16]. This proposal results in all large commercial or industrial customers who choose to secure third party supplies to forever forgo their ability to return at the Company's SSO. While possibly not in the Company's intention, tariff sheet G9 as proposed is fundamentally unfair and anti-competitive as it excludes a utility customer who chooses to purchase third party generation from SSO supply forever.

Q. If the Commission chooses to permit modifications to G9, do you have any suggested changes to what the Company proposed?

A. Yes. The Commission approved a stay out provision in the Duke-Ohio ESP Case No. 08-920-EL-SSO during the term of its ESP in return for by-passability of the POLR collection charges. A similar measure could be crafted in this case. In addition, the Commission should require clarification that a customer electing to purchase third party supplies should be permitted to return to SSO supply upon reasonable notice at the end of the Rate Stabilization period.

IV. Customer Conservation and Energy Management Program

Q. What are your concerns related to the Infrastructure Investment Rider ("IIR")?

A. In examining the Company Plan it appears the charges for the IIR are designed to pay for the Advanced Metering Infrastructure ("AMI") equipment, software and limited deployment of smart grid technology. The AMI equipment will permit DP&L to control its distribution network in a more efficient manner and offer

[15] Seger-Lawson testimony, Book I, pg.4-5 of 8, lines 83-84.
[16] Second revised tariff sheet G, page 4 of 4.

distribution voltage customers information which may greatly assist their conservation. Unfortunately, the Company's application would also include charging the handful of meters of customers who take power at transmission voltage and are not part of the distribution network. The customers with their own substations taking energy at transmission and primary voltage have already invested in and own real time metering. It is unfair to make those customers pay for the cost of real time metering for other customers. In the alternative, if the Commission decides that the cost of the AMI equipment should be socialized to all customers, then the transmission customers who have already invested hundreds of thousands of dollars in their current smart metering should get a credit for the metering they installed so that DP&L may receive meter readings on a real time basis.

Q. What are your concerns related to the Energy Efficiency Rider ("EER")?

A. The majority of the charges the Company proposes in the EER are directly related to lost revenue from the implementation of the energy efficiency investments. As you can see in line 3 of MRF 2, sixty one percent of the total EER revenue requested is for lost revenues due to program implementation. SB221 authorizes the Commission to establish rules for a revenue decoupling mechanism in Section 4928.66 (D), Revised Code. It may approve an application for a distribution utility to recover forgone revenue as a result of the energy efficiency program provided it reasonably aligns the interests of the utility and its customers in favor of the programs. The Company's Plan for lost revenue collection fails to meet that measure.

Lines 48 and 52 of MRF 2 compare the total lost revenues collected against the total collection that would be necessary if the Company collected only the lost revenue derived if all customers were shopping. When a customer shops, the per kWh revenue collection is much lower as generation and other by-passable costs are deducted from the calculation.

The difference is substantial. If the Commission applied the Company's per kWh lost when a customer was shopping to all kWh conserved, consumers would pay the Company $46 million. The Company is requesting collection of $189.6 million between 2009 and 2015 for lost revenue. Essentially the Company's Plan would charge consumers an extra $143 million for generation and other by-passable charges that are never purchased by the Company. Lost revenue due to conservation should not include these types of charges.

Q. What do the Commission Staff's proposed rules indicate regarding a recovery mechanism due to energy efficiency changes?

A. The Staff proposes the "recovery of costs due to peak demand reduction, demand response, energy efficiency program costs, appropriate lost distribution revenues, and potential shared savings."[17]

Depending upon its application, the Staff's proposed rules make it clear that recovery should be cost based with the exception of distribution revenues and shared savings. Since the Company will not experience a cost for generation when power is not consumed, it should not be included in the revenue collection request.

Q. Are there other problems with the CCEM portion of the application?

A. Yes. Section 4928.66, Revised Code allow mercantile customers to opt out of utility conservation programs if they engage in energy conservation and demand reduction programs of their own that meet the statutory levels of reduction. The wisdom of an opt-out program is obvious. While the utility may have more knowledge of and have better capability to save energy and lower demand for facilities owned by residential and small commercial customers, it is unlikely that the utility is better versed than the owner on how to achieve energy savings at a large scale manufacturing facility. The General Assembly recognized this fact and permitted mercantile class users to select whether to have their own

[17] Case No. 08-888-EL-ORD, Staff's Proposed Rules – New Chapter 4901:1-39-05 (A).

conservation plan or join the one created by their local distribution utility. Further, the conservation plan offered by the opt-out mercantile customer must be filed with the Commission for approval. In short, Section 4928.66, Revised Code provides flexibility to achieve optimal conservation programs. To comply with this statutory requirement the Plan must be expanded to accommodate mercantile customers who seek to do their own conservation plan in lieu of DP&L's CCEM.

Q. Does this conclude your testimony?

A. Yes it does.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of Joint Testimony was served this 26th day of January, 2009 by electronic mail or, where no e-mail address is available, by regular U.S. mail, postage prepaid, upon the persons listed below.

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