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Via Next Day Delivery

March 26, 2009

Public Utilities Commission of Ohio
PUCO Docketing
180 East Broad Street, 13th Floor
Columbus, Ohio 43215

In Re: Case No. 08-1094-EL-SSO et al.

Greetings:

Cargill Incorporated files its Brief in the above proceeding via fax today. Docketing will receive for filing the original and necessary copies of the Brief on March 27, 2009.

Regards

Craig I. Smith
Attorney for Cargill, Incorporated

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

BRIEF ON BEHALF OF CARGILL, INCORPORATED

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Introduction

Cargill Incorporated ('Cargill"), a mercantile customer of The Dayton Power and Light Company ("DP&L") or ("Company"), operates facilities in Dayton and Sidney, Ohio. Cargill, with over 160,000 employees, provides food, agricultural and risk management products and services in 67 countries. The Dayton facility operates a corn wet mill producing corn syrup based products. In Sidney, Cargill operates a soybean crush plant and refinery to produce vegetable oil and other soybean based products. DP&L supplies the Cargill Dayton facility at primary substation voltage, and the Sidney facility at distribution primary voltage. Cargill shops for generation, and receives only delivery services from DP&L.

Statement of the Case

DP&L sought approval of an Electric Security Plan ("ESP") to continue its present Rate Stabilization Plan ("RSP") through December 2010,[1] meet energy efficiency and demand reduction targets, and comply with expanded default service obligations and economic development commitments.[2] DP&L also requested recovery of compliance costs required by the ESP.

The ESP application requested fuel cost deferrals to continue current RSP rates during 2009 and 2010.[3] As part of addressing significant risks of buying power for returning large-scale governmental or other aggregation customers, DP&L proposed to modify the G9 tariff, and implement a new G23 adjustable rate, to charge all returning

[1] RC 4928.143 (D) continues the current plan approved in Case No. 05-276-EL-AIR.
[2] RC 4928.141 and 4928.143 sets forth requirements for ESP filings.

shopping customers at market based rates in addition to those served by governmental aggregators. [4]

The ESP Stipulation between DP&L and multiple parties modified the filed ESP application. The stipulation, *inter alia*, extends the current RSP until December 31, 2012 to maintain rate certainty. DP&L withdraws its fuel deferral request in exchange for timely cost recovery beginning in 2010 under an adjustable bypassable rider initially set at $0.019/kWh, with that amount subtracted from residual generation rates. [5]

The ESP Stipulation continues the non-bypassable Rate Stabilization Surcharge ("RSS") at present rates through December 31, 2012. Shopping customers continue to pay the applicable Standard Service Offer ("SSO") rates upon return to DP&L through 2012. The RSS becomes bypassable after 2010 for governmental aggregation customers who elect to pay market based rates upon their return to DP&L. DP&L files for approval a market based rate by July 1, 2010.[6]

Cargill opposes the stipulation to the extent the RSS continues as a non-bypassable charge during 2011 and 2012. A bypassable RSS charge should apply to <u>all</u> shopping customers during 2011 and 2012 who agree to return to DP&L provider of last resort ('POLR") services at market based rates. In 2013, all shopping customers return to DP&L POLR service at SSO rates unless the subsequently approved plan by the Commission provides otherwise.

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[3] Ex 5, ESP filing, SSO, Book 1, Chapter 5.
[4] Ex. 5, ESP filing, SSO, Book 1, Chapter 2.
[5] ESP Stipulation and Recommendation, filed February 24, 2009 ("ESP Stipulation"), pg. 2-3, par. 1, 2.
[6] ESP Stipulation, pg. 4, par. 3.

Statement of Facts

Commission approval of the RSP Stipulation in Case No. 05-276-EL-AIR, *inter alia*, resulted in extended fixed rates through December 31, 2010, and recovery of POLR costs through a non-bypassable RSS charge. [7]

Under the ESP Stipulation, a principle term is that the non-bypassable RSS charge continues at current rates through 2012.[8] Paragraph 3 of the stipulation provides:

> "The current RSS charge will continue as a non-bypassable charge through December 31, 2012. Through December 31, 2012, shopping customers who return to DP&L shall pay the Standard Service Offer ("SSO") rate under the applicable tariff. In 2011 and 2012, governmental aggregation customers who elect not to pay the RSS will return to DP&L at a market-based rate. DP&L will develop and file for approval a market-based rate calculated consistent with Section 4928.20(J), Revised Code, by July 1,2010."[9]

The non-cost based RSS charge equals 11% of generation rates in effect on January 1, 2004. The RSS charge reflects the price customers willingly pay for stable rates when coming back to POLR service.[10] POLR charges compensate DP&L for standing by to serve shopping customers returning to the DP&L system. Fuel costs are not recovered as POLR charges.[11]

Factual and Legal Arguments

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[7] In Re DP&L, Case No. 05-276-EL-AIR, Opinion and Order, dated December 28, 2005 ("RSP Decision") approving with modifications the RSP Stipulatoni filed November 3, 2005 ("RSP Stipulation").

[8] Tr. Pg. 16, lines 1-6 (February 24, 2009).

[9] ESP Stipulation, pg. 4, par. 3.

[10] Tr. Pg. 16, lines 19-23, Tr. 16, line 25-Pg. 17 line 1, Tr. Pg. 17, lines 1-11 (February 24, 2009).

[11] Tr. Pg. 17, line 24, pg. 18, lines 1-4; Tr. Pg. 17, lines 19-21(February 24, 2009).

DP&L supports approval of the ESP Stipulation based on the Commission criteria used to determine (i) whether a product of serious bargaining among capable, knowledgeable parties; whether as a package it benefits ratepayers and the public interest; and whether it violates any important regulatory principle or practice.[12]

Benefits to ratepayers and in the public interest from the ESP Stipulation, as a package, listed by DP&L results from: extension of the current plan through 2012; frozen distribution rates through 2012; recovery of current fuel costs above $0.019/kWh during 2010 through 2012; AMI and Smart Grid implementation subject to Commission review; savings from AMI and Smart Grid programs not retained by DP&L; energy efficiency and demand response program implementation; exclusion of lost generation revenues and capping at $72 million the recovery of lost revenues; carrying charges limited to DP&L's cost of debt; collaborative advice and consultation regarding energy efficiency and peak demand reduction targets; and assistance to mercantile customers on implementing energy efficiency and demand response programs.[13]

An unlisted principal benefit[14] to DP&L from the ESP Stipulation is continual recovery of RSS charges at current rates from all customers for two more years through 2012.[15] The RSP Decision determined that the RSS charge results in annual revenues of $76,250,127.[16] During 2011 and 2012, DP&L will receive over $150 million in revenues by charging for POLR services the non-cost based RSS rider.

Cargill opposes the ESP Stipulation to the extent paragraph 3 needs modification by the Commission before approval. The RSS charge should become bypassable for all

[12] DP&L Test. Ex. 2., Pg. 9.
[13] DP&L Test. Ex. 2., Pg. 12.
[14] Tr. Pg. 16, lines 1-6 (February 24, 2009).
[15] Stipulation, Jt. Ex. 1, Pg. 4, par. 3.

customers during 2011 through 2012 who elect to return to DP&L POLR service at market based rates.[17] In 2013, all customers returning to DP&L should pay the applicable SSO rates, unless otherwise provided for by the subsequently approved plan.[18]

DP&L opposes this modification. Cargill did sign and support the 2005 RSP Stipulation to establish a non-bypassable RSS charge through 2010. The RSP Stipulation was presented only for the RSP case, and not binding on Cargill in subsequent cases. The ESP Stipulation supersedes that provision by extending the RSS an additional two years as an unavoidable charge. [19]

DP&L apparently relies on RC 4928.143 (D) to argue the RSP Stipulation continues even during the two-year extension proposed in this proceeding. This section allows for continuation of the RSP rate plan through 2010 without Commission approval. The changed terms and conditions after 2010 under the ESP Stipulation require Commission approval under RC 4928.143. Cargill does not oppose the non-bypassable nature of the RSS charges through 2010.

DP&L also relies on RC 4928.20 as a statutory limitation to make the RSS charge bypassable for all customers. As discussed, *supra*, the AEP-Ohio companies, also subject to that section, allow for bypass of POLR riders by all customers upon agreement to pay upon return for that service at market based rates. Further, DP&L expanded its requirements under RC 4928.20 by allowing all governmental aggregation customers to by-pass the RSS charge upon agreeing to return at market based rates.

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[16] RSP Decision, Pg. 11, at IV.
[17] Cargill Ex. 1, Pg. 3-4.
[18] Cargill Ex. 1, Pg. 3-4.
[19] RSP Stipulation, par. D, pg. 8.

DP&L further argues that economic and financial principles decide whether to make riders bypassable.[20] However, bypassable RSS charges apply during 2011 and 2012 when a DP&L witness projects noticeably higher MRO market prices than prices charged under the ESP.[21] From that testimony, customers electing to forego payment of the RSS charge appear to assume substantial risks upon returning to DP&L POLR services at market based rates during 2011 and 2012.

1. The ESP Stipulation requires Commission modifications before approval because bypassable RSS charges for all customers during 2011 and 2012 benefit ratepayers and advance the public interest.

The RSP Decision considered "(1) rate certainty for customers; (2) financial stability for the utility; and (3) the further development of competitive markets" when determining whether the RSP Stipulation, as a package, benefited ratepayers and the public interest. [22] The Commission modified the RSP Stipulation upon determining, as a package, it failed to benefit ratepayers and the public interest by not further developing competitive markets. [23] On that basis, the EIR rider became entirely avoidable to shopping customers from 2007 through 2010, instead of avoidable only during 2009 and 2010.

Likewise, the ESP Stipulation requires modification before approval for the RSS charge to become bypassable during the last two years of the extended plan, 2011 and

[20] Tr. Pg. 35, lines 5-14.
[21] DP&L Ex. 3, Pg. 10-12, SWN-2.
[22] RSP Decision at Pg. 7.
[23] RSP Decision, Pg. 9.

2012. A bypassable RSS charge benefits ratepayers and advances the public interest by further development of competitive markets within the DP&L service area.

All shopping customers during 2011 and 2012 should elect whether or not to pay the RSS charge. Customers not paying the RSS charge return to DP&L POLR service at a market-based rate filed with, and approved by, the Commission. Customers paying the RSS charge receive the benefit of stable rates. Customers forgoing the RSS charge allow DP&L to avoid the costs of providing rate stability by assuming market volatility risks. [24]

The election not to pay the RSS and return at market based rates end when the current DP&L plan ends in 2012. All customers return to applicable SSO rates in 2013, unless the Commission approved plan provides otherwise. [25]

2. **The ESP application requires Commission modifications before approval because bypassable RSS charges for all customers during 2011 and 2012 advance the public interest.**

RC Chapter 4928 advances state policies for customers to receive adequate and reliable electric service at reasonable prices. State policies integrated into Ohio regulation guide Commission decisions under RC 4928.143.[26] Codified state policies pertinent to the DP&L ESP Case include: (A) Ensuring consumers with adequate, reliable, nondiscriminatory, and reasonably priced retail service; [27] (G) developing and

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[24] Cargill Ex. 1, Pg. 3-4
[25] Cargill Ex. 1, Pg. 3-4
[26] *In Re Application of Columbus Southern Power Company and Ohio Power Company for* Approval of Electric Security Plans, Opinion and Order, dated March 18, 2009, Case No. 08-917-EL-SSO et al, and Case No. 08-918-EL-SSO et al. ("AEP-Ohio Case"), at Pg. 12-13.
[27] RC 4928.02 (A)

implementing flexible regulation to recognize continuous emerging competitive electricity markets;[28] and (N) facilitating Ohio's effectiveness in the global economy.[29]

RC 4928.143 requires the Commission to approve, or modify and approve the stipulated to ESP upon finding the plan approved, including the pricing and other terms/conditons, is more favorable in the aggregate when compared to results expected for the MRO under RC 4928.142.[30]

Cargill recommends approval of the stipulated to ESP application after the Commission modifies the plan to advance the public interest by making bypassable the RSS charges for all customers during 2011 and 2012. Thereafter, customers return to DP&L POLR service at SSO rates unless the approved plan provides otherwise.

The AEP-Ohio Decision considered use of non-bypassable POLR riders to collect revenue requirements of $108.2 million for CSP and $60.9 million for OP.[31] The Commission recognized the AEP-Ohio companies incur some risks from customer switching and returning to POLR service as contracts near end during rising market prices. However, the Commission properly concluded that:

> "*** the risk of returning customers may be mitigated, not eliminated, by requiring customers that switch to an alternative supplier (either through a governmental aggregation or individual CRES providers) to agree to return to market price, and pay market price, if they return to the electric utility after taking service from a CRES provider, for the remaining period of the ESP term or until the customer switches to another alternative supplier***."[32]

Further:

> "*** In exchange for this commitment, those customers shall

[28] RC 4928.02 (G)
[29] RC 4928.02 (N)
[30] RC 4928.143 (C) (1)
[31] AEP Ohio Case at Pg. 38.
[32] AEP Ohio Case at Pg. 40.

> avoid paying the POLR charge. We believe that this outcome is consistent with the Requirement in Section 4928.20(J), Revised Code, which allows governmental aggregations to elect not to pay standby service charges, in exchange for agreeing to pay market price for power if they return to the electric utility***." [33]

Based on the record, the Commission modified the proposed ESP to make the POLR rider bypassable because it compensates the AEP companies for providing POLR services, and the associated risks, including customer migration. The POLR Rider became bypassable on the basis that shopping customers agree to return at market prices and pay those prices for service provided to them.[34]

The Commission earlier approved the Duke Energy stipulation that allows nonresidential shopping customers to avoid SRA-SRT rider charges by agreeing not to return to the standard service offer for the rest of the three-year ESP. -[35]

The RSS riders compensate DP&L for providing stabilized rates and acting as the POLR provider. DP&L through testimony in the record agrees "[w]hen 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."[36] This concept is reinforced by DP&L'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."[37]

DP&L recovers approximately $76 million in revenue during both 2011 and 2012 from non-bypassable RSS charges, except for those charges made bypassable for

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[33] Id at 40.
[34] Id at 40.
[35] In Re Application of Duke Energy Ohio for Approval of an Electric Security Plan, Case No. 08-920-EL-SSO, et al., Opinion and Order, dated December 17, 2008, Pg. 15, 16, 27.
[36] Cargill Ex. 1, Pg. 4.
[37] Cargill Ex. 1, Pg. 4.

customers part of governmental aggregation groups who elect to return to standard offer at market based rates. As with the AEP-Ohio companies DP&L receives compensation for providing POLR services and assuming risks, including customer migration.

In this DP&L proceeding, the Commission needs to modify then approve the propose ESP plan by requiring a bypassable RSS charge beginning during 2011 and 2012 for all customers. Customers electing not to pay the RSS charges return at filed and approved market based rates to DP&L POLR services. DP&L avoids the costs of providing rate stability because those customers forgoing stable rates to assume market volatility risks. [38]

The election not to pay the RSS and return at market based rates end when the current DP&L plan ends in 2012. All customers return to DP&L SSO supply in 2013 unless the subsequently approved plan provides otherwise. Shopping customers do not forgo their rights to SSO service upon their return to DP&L by electing not to pay the RSS during 2011 and 2012. [39]

Conclusion

In this proceeding, DP&L agreed to partially bypassable RSS charges for POLR services. For reasons presented, and based on Commission earlier decisions approving stipulations and applying RC 4928.143, the RSS charge should become bypassable during 2011 and 2012 for all customers who elect to return to POLR services at market based rates approved by the Commission.

[38] Cargill Ex. 1, pg. 3-4
[39] Cargill Ex. 1, pg. 3-4

In 2013, all customers return to SSO rates for POLR services, unless the approved plan provides otherwise.

Respectfully submitted

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of this Brief was served this 26 day of March, 2009 by electronic mail upon the persons listed below.

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