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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Transmission Cost Recovery Rider	))))	Case No. 09-256-EL-UNC

REPLY COMMENTS OF THE DAYTON POWER AND LIGHT COMPANY TO COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

I. INTRODUCTION

The Comments of Industrial Energy Users-Ohio ("IEU-Ohio Comments") filed in this case on May 5, 2009 object to four aspects of DP&L's Application for Approval of its Transmission Cost Recovery Rider ("Application"). Contrary to IEU-Ohio's assertions, DP&L's Application is not unlawful or unreasonable, because: (1) Every cost and credit proposed to be included in the application is transmission, transmission-related, or reliability-related; and (2) the costs are imposed upon DP&L by an RTO or "similar organization;" and (3) the costs are not currently being recovered in DP&L's existing rates, and to the extent they are, to prevent over-recovery, DP&L proposes to eliminate or reduce the current tariff charges permitting recovery. For the reasons more fully explained below, IEU-Ohio's objections are unwarranted and should be rejected. DP&L's Application is just, reasonable and lawful under R.C. §4928.05 and should be approved as proposed in DP&L's Application and revised Schedules and Workpapers being filed contemporaneously with these reply comments.

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II. ALLIANCE RTO START-UP COSTS

A. Alliance RTO Start Up Costs are Properly Included as a Component in DP&L's TCRR.

IEU-Ohio first objects to the inclusion of the start-up costs associated with the Alliance RTO, claiming that "DP&L does little to unravel the mystery associated with the precise nature of these Alliance RTO costs."[1] These costs, which were incurred between 2001 and 2005, include start-up costs DP&L contributed to "BridgeCo," a RTO start-up operation, plus DP&L's share of legal and consulting expenses associated with establishing the Alliance RTO and participating in related proceedings at FERC seeking approval of the Alliance RTO. In addition, there were costs that DP&L incurred to wind-down BridgeCo operations as part of the process that led to DP&L joining PJM.

IEU-Ohio also questions the basis of the deferral of these costs, as well as the location of the costs as a forecasted expense depicted in Schedule C-1.[2] With respect to the basis for the deferral, the Company has not previously sought recovery of these costs, but deferred them in a manner consistent with the approach set forth in rulings regarding the recovery of Alliance RTO start-up costs for AEP and ComEd.[3] In those proceedings, FERC ordered the companies to defer the costs of the Alliance RTO start-up and amortize the deferred costs to expense over a 10-year period, beginning on the date that the companies integrated their transmission assets into PJM. The amount DP&L seeks to recover through its TCRR reflects only the remaining balance after expensing

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1 IEU-Ohio Comments, at 4.

2 Id., at 5.

3 American Electric Power Service Corp., et al., 104 FERC ¶ 61,013 (July 2, 2003); Commonwealth Edison Company, et al., 105 FERC ¶ 61,186 (November 10, 2003).

approximately $6.7 million over a four and a half year period since DP&L integrated into PJM.

With respect to inclusion of the costs in Schedule C-1, these charges were included to show the projected monthly jurisdictional net TCRR costs for the post deferral or "current" period, broken down by TCRR component, as required by the Appendix to Rule 4901:1-36-03. IEU-Ohio correctly but irrelevantly notes that these are not "forecasted," but rather actual costs. In contrast to forecasted costs, there can be no doubt here as to whether the costs are properly estimated or will be incurred – they are actual costs already incurred. The reason that the costs were included as a component in Schedule C-1 rather than being shown as part of the deferral in Schedule C-1a was to group these costs with other costs in this proceeding upon which DP&L is not seeking to impose carrying charges.

B. Compromise Position.

For the reasons stated above, the inclusion of the Alliance RTO start-up costs in this Application is wholly appropriate. DP&L, however, is also making a filing today separate from these reply comments, in which it is withdrawing its request to include Alliance RTO start-up costs in its TCRR. This filing is being made without prejudice. DP&L does not waive rights of any kind with respect to these costs, and DP&L expressly reserves all rights to seek approval for recovery of these costs through a separate mechanism at a later date. The contemporaneous filing to withdraw the request for recovery of Alliance RTO start-up costs at this time is provided as a part of a unified proposal of compromise conditioned on the Commission's approval of the remaining elements of DP&L's filing. The withdrawal of the request to include Alliance RTO

Start-up costs through the TCRR results in a compromise on the part of DP&L for purposes of this TCRR Application in the amount of $7,981,152.[4]

III. RELIABILITY PRICING MODEL (RPM)

A. R.C. §4928.05(A)(2) Permits the Recovery Through DP&L's TCRR of the Costs Related to Transmission System Reliability Imposed by PJM.

The Commission has broad authority pursuant to R.C. §4928.05(A)(2) to permit recovery of reliability-related net charges imposed by a RTO, and indeed has done so on prior occasions in the case of other companies' TCRRs.[5] As noted in the testimony of Sharon Schroder, despite the "TCRR" name, many costs imposed upon DP&L by PJM and which have been permitted to be recovered by other Companies in their TCRR structure are more accurately labeled as "reliability-related" or "RTO-Related" because they are costs incurred in connection with generation facilities which support the reliability of the transmission system and are charged to DP&L by PJM.[6] DP&L's inclusion of RPM charges and credits in its Application here is consistent with the approach of including components which bolster transmission system reliability within the TCRR structure.

The reliability construct within PJM today is called the Reliability Pricing Model ("RPM") and it maintains transmission system reliability. RPM has been designed to ensure there is adequate generating capacity on a regional basis to meet demand, thus ensuring the transmission system is not overloaded by having to import or export

[4] Remaining balance of Alliance RTO start-up costs as of April 30, 2009.

[5] AEP-Ohio in Case No. 08-1202-EL-UNC, Duke Energy Ohio in Case No. 08-920-EL-SSO *et al*, and FirstEnergy in Case No. 08-1172-EL-ATA.

[6] Direct testimony of Sharon Schroder, 7:21-8:22.

excessive generation levels to meet customer demands. The transmission system is an integrated system tying generation throughout PJM to load throughout PJM. RPM maintains the reliability of the entire transmission system for the following reasons:

- Load Serving Entities ("LSEs") pay the locational reliability charge to guarantee that there is sufficient generating capacity during peak periods to meet customer demand. Without sufficient generating capacity, the transmission system would not be able to serve the load and could experience brown out or black out conditions during peak periods.

- PJM's Regional Transmission Expansion Planning Process ("RTEPP") within RPM determines future transmission reliability requirements by examining existing generation in conjunction with the existing transmission network and the forecasted load.

- The RPM payments made to generators in PJM help to ensure that adequate generation will be built and maintained in the future to meet customer demand, thus maintaining reliability.

- Finally, the PJM RPM manual itself explains how the RPM construct maintains transmission reliability: "the [RPM] capacity market is designed to ensure the adequate availability of necessary resources that can be called upon to **ensure the reliability of the grid**."[7]

In additional to the substantive arguments supporting inclusion of RPM reliability-related costs and credits within the TCRR, such inclusion creates procedural advantages as well. RPM costs, along with the others proposed to be included in one comprehensive rider, are imposed by PJM, fall largely outside of DP&L's control, appear on DP&L's monthly PJM bill, and are avoidable by customers that shop. The annual true-up mechanisms already put in place by O.A.C. 4901:1-36 will provide an efficient means to administer and audit all of these costs and credits in one proceeding.

[7] PJM Manual 18: PJM Capacity Market, at p. 11. (Emphasis added).

The Commission should exercise its broad authority to include in the TCRR these costs in connection with maintaining transmission system reliability imposed upon DP&L by PJM.

B. The RPM Costs Which DP&L Proposes to Include in its TCRR are Not Currently Being Recovered in Existing Rates.

IEU-Ohio next claims that DP&L's existing generation rates provide DP&L compensation for costs or credits that DP&L may experience as a result of being subject to PJM's RPM-related charges. [8] This assertion is simply incorrect. The proposed generation rates that are included in the Stipulation pending approval in the Electric Security Plan ("ESP") Case No. 08-1094-EL-SSO, *et al.* are the same as DP&L's current generation rates. DP&L's current generation rates were established in Case. No. 99-1687-EL-ETP. In that proceeding the Company unbundled its retail rates into Generation, Distribution, Transmission, Ancillary Service and other rate riders consistent with unbundling provisions contained in Ohio SB 3. Specifically, bundled rates that were in effect in 1999 were adjusted for tax changes that were contained in SB 3, then unbundled by first subtracting the Company's Open Access Transmission Tariff (OATT) rates for transmission and ancillary services. From there, the distribution rates were developed and subtracted from the remaining portion of the bundled rate, and the remainder from that calculation was considered generation. All of this was done before PJM even created RPM or began charging load-serving entities, including DP&L, under RPM.

Prior to joining PJM (and RPM) DP&L was not required to maintain a long term reserve margin. DP&L's only reserve margin requirement was placed on it by the East

[8] IEU-Ohio Comments, at 6.

Central Reliability Coordination Agreement ("ECAR"). This reserve margin was a daily requirement consisting of a total of approximately 4% of the daily peak load for both spinning and operating reserves. The costs of meeting these reserve requirements were included in DP&L's retail spinning and supplemental reserve ancillary service rates. When DP&L unbundled its rates in response to the passage of SB 3 in 1999, retail spinning and supplemental reserve rates were separately identified and correctly classified as transmission-related based on the Company's then current OATT that was on file at FERC, consistent with R.C. 4928.34(A)(1). Those retail tariffed rates remain in effect today and are located on DP&L's Retail Tariff Sheet Nos. T12 and T13. As described in the Company's TCRR filing, during the deferral period, the retail revenues recovered through these existing mechanisms were netted against PJM imposed costs. Going forward, as described within Witness Schroder's testimony, DP&L proposes to eliminate these rates simultaneously with placing the Company's TCRR into effect. IEU-Ohio's claim that the RPM-related costs are currently being recovered in rates is incorrect.

C. DP&L's Proposal to Recover RPM-Related Costs is Consistent with Ohio Supreme Court Precedent.

Finally, IEU-Ohio argues that Ohio Supreme Court precedent prevents recovery of the RPM costs imposed by PJM through DP&L's TCRR. The cited precedent, however, does not support IEU-Ohio's position. The cited case involved a cross-subsidy claim that simply does not arise here where the costs proposed for recovery are bypassible and the recovery mechanism is separate and apart from a case in which distribution rates would be set. In *Elyria Foundry Co. v. Pub. Util. Comm.* (2007), 114

Ohio St. 3d 305,FirstEnergy ("FE") initially sought approval of a "generation-charge adjustment rider," but in the face of opposition from intervening parties, introduced an alternative proposal, under which FE would be permitted to recover fuel costs up to a certain threshold, but fuel costs above that threshold would be deferred and recovered through a distribution rate case.[9] The Court held that allowing the generation-cost component (fuel) to be deferred and subsequently recovered in a distribution rate case would violate R.C. 4928.02(H).[10]

The RPM costs and credits sought to be recovered through the TCRR—which is by-passable to shopping customers—are not a case of DP&L's generation costs being recovered through a later distribution rate case. DP&L is charged RPM-related costs through a third-party Regional Transmission Organization—PJM . DP&L is charged these costs in its role as a Load Serving Entity. Indeed, if DP&L owned no generation assets whatsoever, it would be charged these RPM costs since they are calculated based on DP&L's contribution to PJM's peak load. In fact, DP&L's proposal is specifically designed to avoid any cross-subsidy. In its initial filing and throughout this proceeding, DP&L has proposed to net the credits it receives from PJM as a generator against the charges it incurs as a LSE through the TCRR so that the costs included in the TCRR are independent of the generation side of DP&L's operations. The structure of DP&L's TCRR is consistent with the holding is *Elyria Foundry*.

IV. NERC/RFC CHARGES

IEU-Ohio's objection to DP&L's inclusion of North American Electric Reliability Corporation ("NERC") charges and Reliability First Corporation ("RFC") charges in its

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[9] Elyria Foundry Co. v. Pub. Util. Comm. (2007), 114 Ohio St. 3d 305, 314.

[10] Id. at 315.

Application is clearly based upon a misunderstanding of these charges. With respect to this objection, IEU-Ohio claims: "IEU-Ohio is unaware of any rate schedule through which PJM explicitly invoices members for NERC and/or RFC charges."[11] These charges are indeed invoiced directly to DP&L by PJM under PJM's OATT, rate schedule 10.

NERC charges are a set rate charged to transmission customers based on energy delivered to load in the PJM region.[12] RFC charges are likewise a set rate charged to transmission customers based on energy delivered to load in the PJM region.[13] Contrary to IEU-Ohio's assertion, both of these transmission-related charges are in fact imposed upon DP&L by PJM's Tariff, and as such are properly included in the TCRR. IEU-Ohio's objection in connection with these charges should be rejected.

IEU-Ohio also argues that any costs that DP&L is billed by PJM for default charges should be excluded from the TCRR.[14] This argument also reflects a misunderstanding of this component and it should be rejected. PJM default charges are not imposed because of any default on the part of DP&L; rather, these charges resulted from the default by two other members of PJM to make payments owed to PJM and its members. Under the PJM Operating Agreement, in the event a member defaults in a payment obligations to PJM, the PJM Board assesses a charge to all non-defaulting members of PJM in proportional shares, to pay for the amount that the defaulting member

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11 IEU-Ohio Comments, at 8, fn 16.

12 PJM Open Access Transmission Tariff (OATT), page 364, Schedule 10-NERC.

13 PJM OATT, page 366, Schedule 10-RFC.

14 IEU-Ohio Comments, at 8-9.

failed to pay, plus interest.[15] Much like PJM's Administrative Fees, these default charges are beyond the control of DP&L, are charged to DP&L by PJM as a result of its membership, and are properly recoverable as a "transmission-related cost . . . imposed on . . .the utility by . . . a regional transmission organization." R.C. 4928.05(A)(2). IEU-Ohio's objections to the inclusion in the TCRR of this component should be overruled.

V. FINANCIAL TRANSMISSION RIGHTS ("FTRS") AND AUCTION REVENUE RIGHTS ("ARRS")

A. DP&L'S ARR/FTR Allocation Proposal is Just and Reasonable.

IEU-Ohio's comments with respect to DP&L's ARR/FTR allocation proposal do not expressly present an objection to the inclusion of the ARR/FTR component within the TCRR, but instead question the allocation proposed by DP&L. IEU-Ohio's proposal reflects another misunderstanding of the rights themselves and the value added by DP&L's management of these ARR/FTR rights and opportunities.

As described in great detail in Mr. Crusey's testimony, as a network transmission customer, DP&L can request congestion hedging instruments called Auction Revenue Rights ("ARRs") and Financial Transmission Rights ("FTRs") from PJM.[16] This is a right held by DP&L. These instruments can be used to protect customers from cost exposure due to congestion.[17] DP&L could take a relatively passive approach of requesting and holding ARR/FTRs and achieve a sufficient level of congestion protection that would provide no additional value to either customers or the Company[18] Currently, DP&L more actively manages these instruments to optimize the value of the ARR/FTR

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[15] PJM Interconnection LLC Operating Agreement, Section 15.2, Enforcement of Obligations.

[16] Direct Testimony of David Crusey, 3:5-8.

[17] Id.. at 4:11-12.

[18] Id., at 4:12-14.

rights, while at the same time continuing to hedge its customers' congestion exposure. The Company accomplishes this by investing people and resources to analyze and identify the transmission paths most likely to have positive ARR/FTR values and obtaining ARR/FTRs on those paths. This more active management approach—which DP&L is not required to undertake—results in an opportunity to make the ARR/FTR process more financially optimal.

In its TCRR proposal, DP&L seeks to equally allocate the risks and rewards of this process among its retail customers and shareholders. In short, while the opportunities exist to obtain ARR/FTRs because of DP&L's retail customers, the financial optimization potential associated with these opportunities can only be achieved with an investment by the Company in people and resources beyond that which could be required under a more passive management approach. DP&L and its consultants apply their knowledge of PJM's transmission system, historical levels of congestion, and other market conditions to identify transmission paths where the associated ARRs/FTRs will have a positive expected value. DP&L uses consultants and the talent of its employees with the goal of achieving a positive net congestion position with respect to these rights. Continuing to do so would benefit both customers and shareholders and the sharing proposal in DP&L's TCRR Application encourages a continued active management approach. IEU-Ohio's proposal should be rejected.

B. Compromise Position.

While the 50%/50% allocation method proposed by DP&L in its initial filing is just and reasonable, DP&L is also willing to accept a revised Congestion Allocator such that 75% of the total cost/credit goes to DP&L's retail load and 25% of the total

cost/credit is retained by DP&L. DP&L's revised Schedules and Workpapers being filed contemporaneously with these reply comments includes this revision. This revised allocation methodology is expected to result in a decrease in retail customer's TCRR costs for the deferral and "current" period of approximately $2.5 million. This revision, along with DP&L's revision concerning the Alliance RTO start-up costs, represent significant concessions on the part of DP&L to benefit other stakeholders and are being offered, without prejudice or waiver of any rights, as a part of a unified proposal of compromise conditioned on the Commission's approval of the remaining elements of DP&L's filing.

VI. CONCLUSION

DP&L's TCRR as proposed in DP&L's Application and revised Schedules and Workpapers, is lawful and reasonable. DP&L respectfully submits that IEU-Ohio's objections lack merit and should be rejected outright, and DP&L's TCRR as proposed in its Application and revised Schedules and Workpapers should be approved to become effective June 1, 2009.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served via first class mail, postage prepaid, this 15th day of May, 2009 upon the following:

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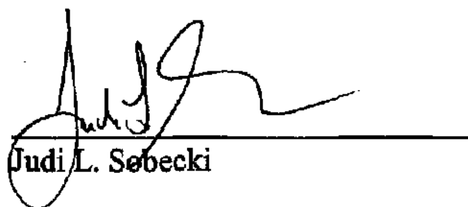

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