

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

FINDING AND ORDER

The Commission finds:

- (1) The Dayton Power & Light Company (DP&L or Applicant) is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) On March 27, 2009, DP&L filed an application for approval of a transmission cost recovery rider (TCRR) pursuant to Section 4928.05(A)(2), Revised Code, and Chapter 4901:1-36, Ohio Administrative Code (O.A.C.).
- (3) On April 9, 2009, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene in this proceeding.
- (4) On May 5, 2009, the Industrial Energy Users-Ohio (IEU-Ohio) filed a motion to intervene and comments regarding the application.
- (5) On May 15, 2009, DP&L amended its application by filing revised schedules and work papers related to the application. DP&L also filed reply comments to the comments filed by IEU-Ohio.
- (6) On May 21, 2009, the Commission Staff (Staff) filed a letter in this docket in which the Staff recommended that the Commission approve the application, as amended by DP&L on May 15, 2009.
- (7) Upon consideration, the Commission finds that the motions to intervene filed by OCC and IEU-Ohio are reasonable and should be granted.

- (8) IEU-Ohio argues that recovery of Alliance RTO start-up costs is not supported by DP&L's application. According to IEU-Ohio, DP&L represented in its application that the costs to be recovered through the TCRR are either: costs that the Commission authorized DP&L to defer in Case No. 07-1287-EL-AAM or Case No. 08-1209-EL-AAM, or costs that will be incurred for the period of May 1, 2009, through April 30, 2010. However, IEU-Ohio contends that the Alliance start-up costs are not covered by either of these two types of costs.

In its reply comments, DP&L claims that the Alliance RTO start-up costs were properly included as a component in the TCRR. Nonetheless, in its amended filing, DP&L withdrew its request for recovery of the Alliance RTO start-up costs.

In light of DP&L's withdrawal of its request for recovery of the Alliance RTO start-up costs, the Commission finds that it is unnecessary to reach the question of whether these costs were properly included in DP&L's application.

- (9) With respect to the recovery of "reliability program model" (RPM) costs imposed upon DP&L by PJM, IEU-Ohio notes that Section 4928.05(A)(2), Revised Code, specifically limits the types of costs that can be recovered through a transmission cost recovery rider mechanism to transmission and transmission-related costs, including ancillary and congestion costs. Further, Rule 4901:1-36-04(C), O.A.C., states that a transmission rider cannot collect costs that an electric utility is recovering in any other schedule or rider. IEU-Ohio argues that the rates DP&L is collecting for generation service provides compensation for firm generation service, including any costs or credits that DP&L may be assessed pursuant to PJM's RPM. IEU-Ohio further contends that whether RPM costs are or are not reliability-related is irrelevant; because RPM costs are for generation service, and are not transmission, transmission-related or ancillary or congestion costs, RPM costs are ineligible for recovery through a transmission rider. Further, IEU-Ohio argues that DP&L's application is inconsistent with the Ohio Supreme Court's holding in *Elyria Foundry Co. v. Pub. Util. Comm.* (2007), 114 Ohio St.3d 305. In that case, the Court held that Section 4928.02(H), Revised Code, prohibits electric utilities

from using rates for noncompetitive services to collect revenues associated with competitive generation services.

- (10) DP&L responds that Section 4928.05(A)(2), Revised Code, permits the recovery through the TCRR of RPM costs imposed by PJM related to transmission system reliability. DP&L claims that, although these costs are incurred in connection with generation facilities, these costs are incurred to support the reliability of the transmission system and are charged to DP&L by PJM.

DP&L also alleges that the RPM costs in the TCRR are not currently being recovered in existing rates. DP&L notes that the RPM costs cannot be collected through generation rates because its transmission, distribution and generation rates were unbundled pursuant to Am. Sub. Senate Bill 3 prior to the creation of the RPM by PJM. Moreover, DP&L states that, prior to joining PJM, it was not required to maintain a long-term reserve margin; DP&L's only reserve margin requirement was imposed by the East Central Reliability Coordination Agreement (ECAR), and the costs of meeting those reserves currently are recovered through rates in its existing transmission tariffs. DP&L notes that it has proposed to eliminate the rates recovering the costs of the ECAR reserve requirement simultaneously with placing the TCRR in effect.

Finally, DP&L claims that its proposal to recover RPM-related costs is consistent with the Ohio Supreme Court's holding in *Elyria Foundry*. DP&L argues that it is charged RPM-related costs by PJM pursuant to DP&L's role as a load serving entity (LSE). Further, DP&L notes that it has proposed to net the credits it receives from PJM as a generator against the charges it incurs as an LSE through the TCRR in order to ensure that the costs included in the TCRR are independent of the generation side of DP&L's operations and that there is no cross-subsidy.

- (11) The Commission finds that Section 4928.05(A)(2), Revised Code, authorizes electric utilities to recover a broad range of transmission and transmission-related costs imposed by regional transmission organizations, including costs related to ancillary services.

The RPM costs, which are imposed upon DP&L by the regional transmission organization, are all costs which are necessary to the provision of electric services, and which are not included in any other schedule or rider in the electric utility's tariff consistent with Chapter 4901:1-36, O.A.C. Therefore, the RPM costs are recoverable under the proposed TCRR. Moreover, the Commission believes that the mechanism proposed by DP&L, under which DP&L will net the credits it receives from PJM as a generator against the charges it incurs as an LSE, will ensure that the costs recovered through the TCRR do not subsidize DP&L's generation costs and create a cross-subsidy of the type prohibited by *Elyria Foundry*. Nonetheless, the Commission will direct its Staff to specifically examine this mechanism during its annual reconciliation review to make certain that no cross-subsidization has occurred.

- (12) IEU-Ohio also objects to DP&L's inclusion of charges assessed by North American Electric Reliability Corporation (NERC) and Reliability First Corporation (RFC) as well as default charges assessed by PJM in the proposed TCRR. IEU-Ohio contends that any charges that PJM levies upon its members for defaults are not transmission, transmission-related or ancillary or congestion costs.
- (13) DP&L contends that the NERC and RFC charges are imposed upon DP&L by PJM's tariff and, as such, are recoverable under the proposed TCRR. DP&L further notes that the default charges have not been imposed because of any default on the part of DP&L; instead, PJM assesses a charge on all non-defaulting members of PJM in proportional shares to pay for the amount that a defaulting member failed to pay, plus interest. DP&L argues that the default charges are analogous to PJM administrative fees in that they are beyond the control of DP&L, are charged to DP&L as a result of its membership in DP&L, and are properly recoverable, under Section 4928.05(A)(2), Revised Code, as a transmission-related cost imposed upon the utility by a regional transmission organization.
- (14) The Commission agrees with DP&L's argument that the default charges are analogous to administrative fees. Both the

NERC/RFC charges and the default charges are assessed by PJM upon its members as a condition of membership in the regional transmission organization. Therefore, the NERC/RFC charges and the default charges are recoverable as transmission-related costs pursuant to Section 4928.05(A)(2), Revised Code.

- (15) Finally, IEU-Ohio objects to the sharing mechanism proposed by DP&L for revenues derived from the trading of financial transmission rights (FTRs) and auction revenue rights (ARRs). IEU-Ohio contends that DP&L's retail customers bear the responsibility for the embedded costs of the transmission system; retail customers, therefore, are entitled to any financial benefits associated with the congestion hedges that DP&L is allocated by PJM. Nonetheless, IEU-Ohio recommends that, if DP&L intends on engaging in speculative trading opportunities involving the FTRs and ARR, DP&L's shareholders should assume the responsibility for funding those activities and retain 100 percent of the risks and rewards of such trading.
- (16) DP&L responds that, although it engages in the active management of the FTRs and ARRs in order to optimize their value, it is under no obligation to do so; instead, DP&L could simply engage in a passive approach of obtaining and holding sufficient FTRs and ARRs to protect customers from cost exposure due to congestion. DP&L notes, however, that active management of the FTRs and ARRs requires an investment of personnel and resources and that both customers and shareholders can benefit by the active management approach. Further, in its amended filing, DP&L proposed to increase the customer share in the sharing mechanism to 75 percent from 50 percent and to reduce the company share to 25 percent from 50 percent.
- (17) The Commission believes that the revised sharing mechanism provides DP&L with an incentive to maximize the value of the FTRs and ARRs and ensures that the customers receive the majority of the benefits of the active management of these assets. Therefore, the Commission finds that the revised sharing mechanism is appropriate and is consistent with other sharing mechanisms approved by the Commission regarding the management of customer-funded assets by public utilities. However, the Commission will direct its Staff to review, during

the annual reconciliation audits, DP&L's active management program to ensure that DP&L's management of customer-funded FTRs and ARRs was prudent.

- (18) The Commission finds that the proposed TCRR is consistent with Section 4928.05(A)(2), Revised Code, and Chapter 4901:1-36, O.A.C., does not appear to be unjust or unreasonable, and should be approved. Therefore, the Commission finds that it is unnecessary to hold a hearing in this matter.

It is, therefore,

ORDERED, That the application filed by The Dayton and Power and Light Company, as amended on May 15, 2009, be approved. It is, further,

ORDERED, That the motions to intervene filed by the Ohio Consumer's Counsel and the Industrial Energy Users-Ohio be granted. It is, further,

ORDERED, That the Applicant be authorized to final in final form four complete, printed copies of tariffs consistent with this second Finding and Order, and to cancel and withdraw their superseded tariffs. The Applicant shall file one copy in this case docket and one copy in its TRF docket (or may make such filing electronically, as directed in Case No. 06-900-AU-WVR). The remaining two copies shall be designated for distribution to the Rates and Tariffs, Energy, and Water Division of the Commission's Utilities Department. It is, further,

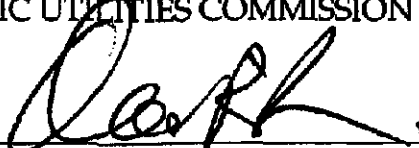
ORDERED, That the effective date of the new tariffs shall be a date not earlier than June 1, 2009 and the date upon which four complete printed copies of final tariffs are filed with the Commission. The new tariffs shall be effective for services rendered on or after such effective date. It is, further,

ORDERED, That the Applicant shall notify all effected customers via a bill message or via a bill insert within 30 days of the effective date of the tariffs. A copy of the customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least 10 days prior to its distribution to customers. It is, further,

ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule or regulation. It is, further,

ORDERED, That a copy of this Finding and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

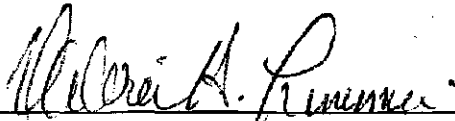


Alan R. Schriber, Chairman

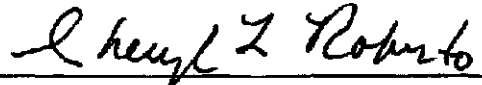
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Entered in the Journal

MAY 27 2009



Renee J. Jenkins  
Secretary

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SEPARATE OPINION OF COMMISSIONER PAUL A. CENTOLELLA

I dissent from the Commission's decision to not set for hearing the narrow issue of recovery of R.P.M. related costs and specifically whether such are already included in the Company's rates. Whether such costs are included in the Company's current generation rate is a material issue of fact which I do not believe can be determined from the pleadings before the Commission. R.P.M. costs are functionally not transmission or ancillary service costs. Such costs, however, may be recoverable under Sections 4928.141 and 4928.143(D) Ohio Revised Code to the extent that they are not recovered under the Company's existing rate plan.

I concur in the remainder of the Commission's decision.

  
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Paul A. Centolella, Commissioner