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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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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

APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT
OF INDUSTRIAL ENERGY USERS-OHIO

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{C28215;6}

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APPLICATION FOR REHEARING

Pursuant to Rule 4901-1-35, Ohio Administrative Code, and Section 4903.10, Revised Code, Industrial Energy Users-Ohio ("IEU-Ohio") respectfully files this Application for Rehearing from the Public Utilities Commission of Ohio's ("Commission") May 29, 2009 Finding and Order approving The Dayton Power & Light Company's ("DP&L") revised Application to adjust its transmission cost recovery rider ("TCRR"). Specifically, the Commission's decision to permit DP&L to collect costs associated with PJM Interconnection's ("PJM") reliability pricing model ("RPM") through the TCRR is unlawful and unreasonable. Additionally, the Commission's Finding and Order violates Section 4903.09, Revised Code.

For these reasons, discussed in greater detail in the Memorandum in Support attached hereto, IEU-Ohio respectfully requests that the Commission grant this Application for Rehearing and exclude RPM costs from the costs that may be recovered through DP&L's TCRR.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On March 27, 2009, DP&L filed an Application for approval of its TCRR. On April 6, 2009, the Attorney Examiner issued an Entry ordering that interested parties move to intervene and file comments on DP&L's Application by May 5, 2009. IEU-Ohio moved to intervene and filed comments on DP&L's Application on May 5, 2009. IEU-Ohio was the only interested person to file comments on DP&L's Application.¹ IEU-Ohio observed, among other things, that DP&L's Application attempts to recover generation-related RPM costs through the TCRR that are not permitted under Ohio law.

On May 15, 2009, DP&L filed Reply Comments in response to the issues raised by IEU-Ohio as well as revised schedules and workpapers that addressed some of the points raised by IEU-Ohio. The revised schedules and workpapers indicate RPM costs account for \$39.3 million or approximately 41% of the projected TCRR costs for the June 2009 through April 2010 period.² Commission Staff ("Staff") issued its limited review and recommendation (one page) on May 21, 2009, recommending the

¹ The Ohio Consumers' Counsel ("OCC") also filed a Motion to Intervene in this case but did not file any comments on DP&L's Application.

² See Schedule B-1 of the Revised Schedules and Workpapers.
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Commission approve DP&L's revised Application. The Staff's review and recommendation did not recognize a single objection raised by IEU-Ohio, or attempt to substantively respond to any of IEU-Ohio's objections. The Commission issued its Finding and Order approving DP&L's revised Application on May 27, 2009 ("Order").

II. REHEARING REQUEST

The Commission should grant IEU-Ohio's Application for Rehearing and exclude RPM costs from the costs that may be recovered through DP&L's TCRR. Collecting RPM costs through the TCRR violates Sections 4928.02(H), 4928.05(A)(2), 4928.141, and 4928.143, Revised Code. Additionally, permitting DP&L to collect RPM costs through the TCRR contravenes Rule 4901:1-36-04(C), Ohio Administrative Code, inasmuch as it permits DP&L to double recover RPM costs.

A. The Order violates Section 4928.05(A)(2), Revised Code.

The Ohio General Assembly added the following language to Section 4928.05(A)(2), Revised Code, as part of Amended Substitute Senate Bill 221 ("SB 221"):

Notwithstanding Chapters 4905. and 4909. of the Revised Code, commission authority under this chapter shall include the authority to provide for the recovery, through a reconcilable rider on an electric distribution utility's distribution rates, of all transmission and transmission-related costs, including ancillary and congestion costs, imposed on or charged to the utility by the federal energy regulatory commission or a regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission (*emphasis added*).

The Commission approved DP&L's request to collect RPM costs through the TCRR, finding that Section 4928.05(A)(2), Revised Code, permits electric utilities to recover a

"broad range of transmission and transmission-related costs imposed by regional transmission organizations, including costs related to ancillary services."³

The Commission's decision to permit DP&L to recover RPM costs through the TCRR is illegal inasmuch as Section 4928.05, Revised Code, permits only "transmission and transmission-related costs, including ancillary and congestion costs" to be recovered through a TCRR. As Commissioner Centolella acknowledged in his dissent, RPM costs are "functionally not transmission or ancillary service costs."⁴ RPM costs are generation-related costs and inclusion of these costs in the TCRR is illegal.

The testimony submitted with DP&L's Application and DP&L's Reply Comments extensively argued that RPM costs should be recoverable through the TCRR because they are "reliability related."⁵ The only support provided by the Commission's Order to explain its decision to allow DP&L to recover RPM costs through the TCRR is that "RPM costs, which are imposed upon DP&L by the regional transmission organizations, are all 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."⁶

While the Commission may view RPM-related costs as necessary to the provision of electric services, there is no nexus of RPM costs to transmission, transmission-related, ancillary or congestion costs that could make recovery through the

³ Finding and Order at 3.

⁴ Of note, Commissioner Centolella chairs the RPM Working Group for the Organization of PJM States, Inc ("OPSI"). See <http://www.pjm.com/Media/about-pjm/who-we-are/public-disclosures/20081022-opsi-letter-to-pjm.pdf> (last viewed on June 19, 2009). See also Commissioner Centolella's comments to FERC regarding long-term resource adequacy at <http://www.opsi.us/filings/2008/20080507-072132-Centolella.pdf> (last viewed on June 19, 2009 as posted on the OPSI website).

⁵ Direct Testimony of Sharon Schroder at 8; Direct Testimony of David J. Crusey at 8-11; DP&L Reply Comments at 4-6.

⁶ Finding and Order at 4.
{C28215:6 }

TCRR lawful. RPM costs may be viewed by some parties as reliability related, but the RPM mechanism relates only to the reliability of generation supply, not the reliability of the transmission grid to bring power to customers when called upon. The entire concept of RPM is to compensate generation and demand response resources to meet system needs, not for transmission or transmission-related purposes. As the Commission itself agreed, "... the principal focus of RPM design, and capacity markets generally, is to provide more revenue to peaking units without regard to the economic efficiency of such units."⁷

DP&L's own Reply Comments also clearly explain the purpose of RPM – payments made to generators in PJM to help ensure that adequate generation will be built and maintained in the future to meet customer demand, thus maintaining reliability.⁸ As the Federal Energy Regulatory Commission ("FERC") described RPM in its December 22, 2006 Order approving the settlement that created RPM, "To protect customers against the possibility of losing service, PJM is responsible for ensuring that its system has sufficient generating capacity to meet its reliability obligations."⁹

RPM costs are for generation service and, as they are not transmission, transmission-related, or ancillary or congestion costs, they are ineligible for recovery through a transmission rider. Section 4928.05(A)(2), Revised Code, does not authorize the recovery of reliability-related costs through the TCRR, nor can the fact that some parties associate RPM with a reliability function transform RPM costs into being

⁷ *PJM Interconnection, LLC*, Docket Nos. ER05-1410-000 and ER05-148-000, Comments of OPSI at 8 (October 19, 2005). The Commission joined the OPSI comments as a member participating in the comments.

⁸ DP&L Reply Comments at 5 (emphasis added).

⁹ *PJM Interconnection, L.L.C.*, Order Denying Rehearing and Approving Settlement Subject to Conditions, 117 FERC ¶61331 at ¶12 (December 22, 2006) (emphasis added).
{C28215:6 }

classified as transmission or transmission-related.¹⁰ The Commission must grant IEU-Ohio's Application for Rehearing and exclude these generation-related costs from the costs collected by DP&L's TCRR.

B. The Order violates Section 4928.141, Revised Code.

The Stipulation and Recommendation ("Stipulation") approved by the Commission that established DP&L's rate stabilization plan ("RSP"), as well as the Stipulation that extended DP&L's RSP through December 31, 2010, both provide that DP&L will provide a market-based standard service offer ("SSO") to its customers pursuant to Section 4928.14(A), Revised Code.¹¹ DP&L is permitted, as part of the Stipulation to extend its RSP, to charge a rate stabilization charge in return for "providing stabilized rates for customers and Provider of Last Resort Service."¹² Similarly, the Stipulation and Recommendation pending before the Commission addressing DP&L's electric security plan ("ESP") does not alter DP&L's obligation to continue to provide an SSO, including all services necessary to maintain a firm supply of electric generation service, and be compensated for this service through its approved

¹⁰ Of note, the Commission itself previously distinguished RPM from transmission reliability measures. In a set of comments by OPSI that the Commission joined, OPSI observed that RPM is "antagonistic" to improvements of transmission facilities for reliability purposes and that, because RPM prefers generation over transmission solutions, RPM "may be at odds with the Commission's [FERC's] expressed preference that regional transmission organizations concentrate on fostering short and long term transmission reliability" (*emphasis added*). *PJM Interconnection, LLC*, Docket Nos. ER05-1410-000 and ER05-148-000, Comments of the Organization of PJM States, Inc. at 9 (October 19, 2005).

¹¹ *In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for The Dayton Power and Light Company*, Case No. 02-2779-EL-ATA, Stipulation and Recommendation at 12 (May 28, 2003). See also *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, Stipulation and Recommendation at 4 (November 3, 2005).

¹² *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, Stipulation and Recommendation at 5 (November 3, 2005).

rates for generation service.¹³ Section 4928.141(A), Revised Code, requires an SSO to include "all competitive retail electric services necessary to maintain essential electric service to consumers, **including a firm supply of electric generation service.**"¹⁴ Thus, the rates that DP&L is collecting for generation service provide compensation for firm (i.e. reliable) generation service to all customers, including any costs or credits that DP&L may experience as a result of being subject to PJM's RPM-related charges.

C. The Order violates Section 4928.143, Revised Code, and is unreasonable.

Allowing DP&L to recover RPM costs through the TCRR also unlawfully and unreasonably removes a generation-related component from the required evaluation of an ESP proposal. Section 4928.141, Revised Code, requires an electric distribution utility to offer an SSO, including a supply of firm generation service, pursuant to a market rate option ("MRO") or ESP. Section 4928.143(C)(1), Revised Code, only permits the Commission to approve an ESP if it finds that the ESP is "more favorable in the aggregate as compared to the expected results that would otherwise apply" under an MRO. Costs recovered through the TCRR are excluded from the required ESP versus MRO comparison. Thus, the Commission's decision sets a precedent by which the Commission excludes an important and significant generation cost from the required

¹³ Section 4928.141(A), Revised Code.

¹⁴ Section 4928.141(A), Revised Code (*emphasis added*) (formerly Section 4928.14(A), Revised Code, as amended into Section 4928.141(A), Revised Code, by SB 221). Former Section 4928.14, Revised Code, reads "(A) After its market development period, an electric distribution utility in this state shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a market-based standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. Such offer shall be filed with the public utilities commission under Section 4909.18 of the Revised Code."

ESP versus MRO comparison.¹⁵ The Commission cannot exclude from the ESP versus MRO comparison RPM costs or any other generation-related costs levied by a regional transmission organization inasmuch as doing so illegally distorts the required ESP versus MRO comparison (as utilized to satisfy Section 4928.141, Revised Code). Excluding RPM costs from the ESP versus MRO comparison by allowing DP&L to recover RPM costs through the TCRR will illegally tend to make the ESP artificially look more favorable than an MRO.

D. The Order violates Section 4928.02, Revised Code.

Section 4928.02(H), Revised Code, requires the Commission to "Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates." The Commission explained away its duty to enforce Section 4928.02(H), Revised Code, by observing that DP&L will net the credits it receives from PJM as a generator against the charges it receives as a load serving entity ("LSE"), which ensures these costs will not subsidize DP&L's generation costs.¹⁶ However, the fact that DP&L intends to net RPM costs against RPM credits does not magically transform generation-related costs into transmission-related costs. The

¹⁵ The Commission's decision shields RPM costs twice from the ESP versus MRO comparison in DP&L's pending ESP case. RPM costs, since they are imbedded in DP&L's current rates, are not subject to the ESP versus MRO test. See Section 4928.143(D), Revised Code. And, as noted above, TCRR costs are not considered in the ESP versus MRO evaluation.

¹⁶ Finding and Order at 4.

Commission's decision permits an illegal cross-subsidy and the Commission should rectify its error.

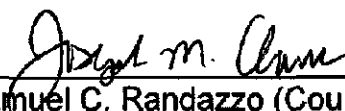
E. The Order violates Rule 4901:1-36-04(C), Ohio Administrative Code.

Finally, the approved TCRR violates the Commission's own rules. Rule 4901:1-36-04(C), O.A.C., prohibits using the TCRR to double recover costs. Permitting DP&L to recover RPM costs through the TCRR when DP&L is already being compensated for these costs through its RSP rates will allow DP&L to double recover RPM costs.

III. CONCLUSION

For the reasons stated herein, the Commission should grant IEU-Ohio's Application for Rehearing and prohibit the collection of RPM costs through DP&L's TCRR.

Respectfully submitted,

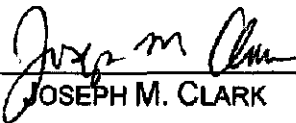


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio* was served upon the following parties of record this 19th day of June, 2009, via first class mail, postage prepaid.



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