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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-DTC

**THE DAYTON POWER AND LIGHT COMPANY'S MEMORANDUM CONTRA
INDUSTRIAL ENERGY USERS-OHIO'S APPLICATION FOR REHEARING**

I. INTRODUCTION

Pursuant to O.A.C. §4901-1-35(B), the Dayton Power and Light Company (“DP&L”) hereby submits its memorandum opposing the Industrial Energy Users-Ohio (“IEU-Ohio”) Application for Rehearing of the Commission’s May 29, 2009 Finding and Order (“Finding and Order”) approving DP&L’s Application for Approval of its Transmission Cost Recovery Rider (“TCRR”). The Commission should deny IEU-Ohio’s Application for Rehearing because the inclusion of costs imposed upon DP&L by PJM Interconnection (“PJM”) relating to the reliability pricing model (“RPM”) within the TCRR is lawful and reasonable. First, RPM costs and credits are properly included as a transmission-related component to the TCRR because RPM ensures there is adequate generating capacity on a regional basis to meet demand, thus ensuring transmission system reliability and compliance with required reliability standards. Second, in compliance with R.C. §4928.05(A)(2), RPM charges are not being recovered in any other schedule or rider in DP&L’s tariff. Third, inclusion of RPM costs and credits in the TCRR does not distort the cost comparisons between an Electric Security Plan (“ESP”) and a Market Rate Offer (“MRO”), as the analysis in the ESP did make an “apples to apples” comparison, including RPM costs. Fourth, netting the credits received from PJM

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by DP&L as a generation owner against the charges DP&L incurs as a Load Serving Entity ensures there is no subsidization of DP&L's generation costs. Finally, since RPM costs are not being recovered in existing rates, there is no double recovery of costs in violation of the Commission's rules.

For the reasons more fully explained below, the Finding and Order is both lawful and reasonable, and IEU-Ohio's Application for Rehearing should be denied.

II. ARGUMENT

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.**

As the Commission correctly noted in its May 27, 2009 Finding and Order, "R.C. §4928.05(A)(2) 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."¹ This broad range of costs authorized to be recovered under the statute include transmission system reliability-related charges imposed by a RTO. Indeed, the Commission has authorized recovery of reliability-related charges on prior occasions in the case of other companies' TCRRs.² 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

¹ Finding and Order, at ¶ 11.

² 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.

facilities which support the reliability of the transmission system and are charged to DP&L by PJM.³

These costs include:

- Reactive Supply and Voltage Control from Generation Sources
- Regulation
- Synchronized (Spinning) Reserves
- Operating Reserves
- Synchronous Condensing
- Black Start Service
- Losses
- PJM Admin Fee
- PJM Default Charges
- NERC/RFC Charges
- PJM Annual Membership Fees⁴

The Commission's inclusion of RPM-related costs and credits in DP&L's TCRR is consistent with the inclusion of these other reliability-related and RTO imposed costs in prior transmission rider cases.

Further, IEU-Ohio's argument against inclusion of RPM costs within the TCRR construct is based upon a premise that is simply false. IEU-Ohio claims:

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.⁵

³ Direct testimony of Sharon Schroder, 7:21-8:22.

⁴ Direct testimony of Sharon Schroder, 7:21-8:22.

⁵ IEU-Ohio Application for Rehearing, at 6.

This argument demonstrates a gross misunderstanding of the complexities of the reliability construct within PJM, and interconnectedness between adequate generation capacity and transmission system reliability.

Simply put, RPM maintains transmission system reliability. RPM has been designed to ensure there is adequate generating capacity on a regional and zonal basis to meet demand, thus ensuring the transmission system reliability during peak load 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 specific 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 of the entire transmission system.
- 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.”⁶

⁶ PJM Manual 18: PJM Capacity Market, at p. 11. (Emphasis added).

IEU-Ohio's bald assertion that there is no nexus between RPM costs and transmission, transmission-related, ancillary or congestions costs is misguided. The Finding and Order is lawful.

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

IEU-Ohio next argues that the Finding and Order violates R.C. §4928.141 based on an allegation that DP&L is already recovering such costs in its existing rates.⁷ Again IEU-Ohio is wrong on the facts. RPM costs were first imposed by PJM beginning June 1, 2007.⁸ The proposed generation rates that are included in the Stipulation approved in the Electric Security Plan ("ESP") Case No. 08-1094-EL-SSO, *et al.* are the same as DP&L's current generation rates, which were themselves established based on generation rates established in 1999, Case. No. 99-1687-EL-ETP, before PJM developed RPM and before DP&L even joined PJM. In that 1999 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.

⁷ IEU-Ohio Application for Rehearing, at 7.

⁸ PJM Interconnection, L.L.C., FERC Docket Nos. ER05-1410-002, *et al.*, 119 FERC ¶61,318 (2007) at pp. 95-96.

Prior to joining PJM DP&L was not required to maintain a long-term reserve margin like that required in the RPM construct. DP&L's only reserve margin requirement was placed on it by the East 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 were contained in DP&L's Retail Tariff Sheet Nos. T12 and T13. During the deferral period, the retail revenues recovered through these existing mechanisms were netted against PJM imposed costs, and consistent with the Finding and Order, those rates were eliminated effective June 1, 2009 when the TCRR became effective. Thus IEU-Ohio's claim the recovery of RPM-related costs amounts to a *double recovery is incorrect*.

C. The Commission's Finding and Order Does Not Distort the Comparison Between DP&L's ESP Versus a MRO.

Next, IEU-Ohio incorrectly asserts that inclusion of RPM costs in the TCRR will distort the cost comparisons between an ESP and a market based option required by R.C. §4928.143(C)(1).⁹ IEU-Ohio reaches this conclusion by starting with the faulty premise that RPM costs will be excluded from the ESP cost calculation but that those costs or

⁹ IEU-Ohio Application for Rehearing, at 8.

similar generation costs will be included in the market based rate option.¹⁰ The premise is faulty for two reasons: First, DP&L's witness in the ESP case, Dr. Scott Neiman, explicitly included RPM costs in his evaluation of ESP rates verses MRO option.¹¹ Second, these RPM costs are unavoidable as a result of DP&L's membership in PJM. Thus, any load serving entity operating in DP&L's service territory would be assessed RPM costs in proportion to the load it serves. Further, DP&L will incur these costs irrespective of whether or not it has an ESP or has a market-based rate option. Thus, a valid comparison of costs between an ESP and a market-based rate option can be and will be made on a consistent basis either by including the RPM costs for both alternatives or excluding the RPM costs from both alternatives. No distortion occurs and IEU-Ohio's argument should be rejected.

D. The Commission's Order Complies with R.C. §4928.02(H) Because it Does Not Permit a Subsidy of DP&L's Generation Costs through Distribution Rates.

Finally, IEU-Ohio cavalierly states that the Commission "explained away its duty to enforce Section §4928.02(H), Revised Code" in arguing that the Finding and Order amounts to an illegal subsidy under that section.¹² IEU-Ohio claims that netting RPM costs against RPM credits "does not magically transform generation-related costs into transmission related costs."¹³ As described above, RPM costs are charges related to ensuring reliability of the transmission grid. But putting aside the debate over the characterization of RPM related charges, it is clear that IEU-Ohio misses the key point in

¹⁰ Id.

¹¹ Testimony of Scott W, Niemann in Support of the Stipulation and Recommendation, p.3, lines 43-47.

¹² IEU-Ohio Application for Rehearing, at 9.

¹³ Id.

the Finding and Order on this subject: *the netting mechanism prevents any subsidy from occurring in the first place.*

R.C. §4928.02(H) prohibits anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service, or vice versa, including by prohibiting the recovery of any generation-related costs through distribution rates. The RPM costs and credits permitted 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 distribution rates. 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 (“LSE”), i.e., an entity that provides energy to customers. DP&L owns slightly less generation than it needs to meet its customer’s peak load requirements. As a result, DP&L in its role as a LSE makes payments to PJM above and beyond the amounts received from PJM as a generation owner. By netting the amounts, it is only that incremental cost incurred as an LSE that is included in the TCRR. There are no costs included in the TCRR that are associated with generation ownership. Indeed, if DP&L owned no generation assets whatsoever, it would be charged the same level of RPM costs since they are charged to DP&L and all other Load Serving Entities based on their contribution to PJM’s peak load without any regard whatsoever as to whether or not the LSE owns any generation.

DP&L’s TCRR as approved by the Finding and Order is specifically designed to avoid any cross-subsidy because the mechanism nets the credits DP&L receives from PJM as a generation owner against the charges it incurs as a LSE. If there were no netting mechanism, subsidy or double-collection arguments could conceivably have been

raised because DP&L would have been receiving payments from PJM as a generation owner and again from retail customers through the TCRR. By netting the RPM credits, DP&L has eliminated the possibility of double-collection or subsidy. It is a specious argument for IEU-Ohio to assert that this netting process itself creates an unlawful subsidy, when its effect is exactly the opposite. There is no unlawful subsidy.

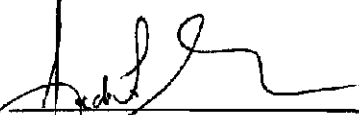
E. The Commission's Order Does Not Violate its Own Rule in O.A.C 4901:1-36-04(C) Because There is no Double Recovery of Costs.

IEU-Ohio claims finally that the Finding and Order violates the Commission's Rule 4901:1-36-04(C), which limits recovery of charges through the TCRR to those costs and revenues "not included in any other schedule or rider in the electric utility's tariff on file with the Commission." IEU-Ohio bases this argument on the same false premise that DP&L is already recovering RPM-related charges in its existing rates. For the reasons stated in Section (II)(B), above, there is no double recovery, IEU-Ohio's argument should be rejected, and its Application for Rehearing should be denied.

III. CONCLUSION

For the reasons fully explained above, the Commission's May 27, 2009 Finding and Order permitting recovery of PJM imposed RPM reliability related costs through DP&L's TCRR is not unlawful or unreasonable, and IEU-Ohio Application for rehearing should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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