

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.)

ENTRY ON REHEARING

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 May 27, 2009, the Commission issued its Finding and Order in this proceeding.
- (4) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days of the entry of the order upon the Commission's journal.
- (5) On June 19, 2009, Industrial Energy Users-Ohio (IEU-Ohio) filed an application for rehearing, alleging that the Finding and Order was unreasonable and unlawful on the following grounds:
 - (a) The Commission's decision to permit DP&L to collect costs associated with the PJM Interconnection, Inc., (PJM) reliability pricing model (RPM) through the TCRR is unlawful and unreasonable.
 - (b) The Commission's Finding and Order violates Section 4903.09, Revised Code.

- (6) On June 29, 2009, DP&L filed a memorandum contra IEU-Ohio's application for rehearing.
- (7) On July 15, 2009, the Commission granted rehearing in order to further consider the matters raised in IEU-Ohio's application for rehearing.
- (8) In its application for rehearing, IEU-Ohio argues that the Finding and Order violates Section 4928.05(A)(2), Revised Code, which permits the recovery of only "transmission and transmission-related costs, including ancillary and congestion costs." IEU-Ohio claims that there is no nexus of RPM costs to transmission, transmission-related, ancillary, or congestion costs that could make recovery through the TCRR lawful. IEU-Ohio argues that, although RPM costs may be viewed as reliability-related, 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. IEU-Ohio concludes that, because RPM costs are for generation service, they are not eligible for recovery through a rider authorized by Section 4928.05(A)(2), Revised Code.

IEU-Ohio also argues that the Finding and Order issued on May 27, 2009, violates Section 4928.141, Revised Code. IEU-Ohio notes that Section 4928.141(A), Revised Code, requires an SSO to include all competitive retail electric services necessary to maintain essential electric service. Thus, IEU-Ohio claims that the rates that DP&L is collecting for generation service provide DP&L with compensation for the generation service it is providing to all customers, including any costs or credits that DP&L may incur as the result of the RPM.

Further, IEU-Ohio claims that the Finding and Order violates Section 4928.143, Revised Code. IEU-Ohio contends that, by including RPM costs in the TCRR, the Commission improperly excluded the RPM costs from DP&L's electric security plan (ESP). IEU-Ohio claims that excluding the RPM costs from the ESP will tend to make the ESP look more favorable in the aggregate than the expected results which would otherwise apply under Section 4928.142, Revised Code.

In addition, IEU-Ohio claims that the Finding and Order violates Section 4928.02, Revised Code. IEU-Ohio argues that

the Finding and Order permits an illegal cross-subsidy in violation of Section 4928.02(H), Revised Code, which requires the Commission to ensure effective competition by avoiding anticompetitive subsidies flowing from a non-competitive retail electric service to a competitive retail electric service.

Finally, IEU-Ohio claims that the Finding and Order violates Rule 4901:1-36-04(C), Ohio Administrative Code, which prohibits using the TCRR to double recover costs. IEU-Ohio argues that DP&L cannot be permitted to recover RPM costs through the TCRR when it is already being compensated for these costs through its current generation rates.

- (9) In its memorandum contra the application for rehearing, DP&L argues that Section 4928.05(A)(2), Revised Code, permits the recovery through the TCRR of costs related to transmission system reliability imposed by PJM. DP&L also claims that the Commission has authorized recovery of reliability-related charges on prior occasions in other electric utilities' TCRRs. DP&L notes that many costs imposed upon DP&L by PJM are reliability-related or RTO-related because they are costs incurred in connection with generation facilities that support the reliability of the transmission system. DP&L argues that RPM costs and credits are properly included as a transmission-related component of the TCRR because the RPM ensures there is adequate generation capacity on a regional basis to meet demand, thus ensuring transmission system reliability during peak load demands and compliance with required reliability standards.

DP&L also claims that the RPM costs included in the TCRR are not currently being recovered in existing rates since RPM costs were first imposed by PJM beginning June 1, 2007, and, prior to joining PJM, DP&L was not required to maintain a long-term reserve margin. 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, and the costs of meeting those reserves were recovered through rates in its transmission tariffs; however, those rates were eliminated effective June 1, 2009, with the implementation of the TCRR.

Moreover, DP&L claims that the Finding and Order does not distort the comparison between DP&L's ESP and the expected results which would otherwise apply under Section 4928.142, Revised Code. DP&L argues that, in its testimony in support of its ESP, RPM costs were explicitly included in the evaluation of the ESP in comparison with the expected results which would otherwise apply under Section 4928.142, Revised Code. Further, DP&L notes that the RPM costs are unavoidable as a result of DP&L membership in PJM. Thus, any load-serving entity (LSE) in DP&L service territory would be assessed RPM costs in proportion to the load it serves. Moreover, DP&L claims that it will incur these costs irrespective of whether it has an ESP or a rate determined under Section 4928.142, Revised Code.

Finally, DP&L contends that the Finding and Order complies with the provisions of Section 4928.02(H), Revised Code, because it does not permit a subsidy of DP&L's generation costs through distribution rates. DP&L claims that it nets the credits that it receives from PJM as a generator against the charges it incurs as an LSE and that this netting mechanism prevents any subsidy from taking place. DP&L reasons that, with the netting mechanism, only the incremental costs incurred as an LSE is included in the TCRR. DP&L further notes that, even if DP&L owned no generation assets, it would be charged the same level of RPM costs because the RPM costs are charged to LSEs based upon their contribution to PJM's peak load irrespective of whether the LSE owns any generation.

- (10) Based upon the arguments raised in the application for rehearing and upon further consideration of the issue, the Commission finds that rehearing should be granted and that the RPM costs are not recoverable under the TCRR. Although the Commission determined in its Finding and Order 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 (RTOs), the statute does not provide for the recovery of generation-related costs imposed by RTOs.

In its memorandum contra IEU-Ohio's application for rehearing, DP&L states that the "RPM ensures that there is *adequate generation capacity* on a regional basis to meet demand . . . [emphasis added]" and that "RPM payments made to

generators . . . help to ensure that *adequate generation will be built and maintained . . . to meet customer demand* [emphasis added]." These statements appear to be an explicit acknowledgement by DP&L that RPM payments are intended to pay for the construction and maintenance of generation capacity in PJM in order to meet customer demand. Although the generation capacity paid for by the RPM may ensure the reliability of the grid, upon further review, we agree with IEU-Ohio that this is not a sufficient basis to classify the RPM costs as a transmission or transmission-related cost. The only costs that may be recovered under a transmission rider authorized by Section 4928.05(A)(2), Revised Code, are costs which are transmission or transmission-related. Therefore, the RPM costs may not be recovered under the TCRR, which was filed pursuant to Section 4928.05(A)(2), Revised Code. DP&L is directed to file within 14 days revised tariffs, which remove the RPM costs from the TCRR, for Commission review and approval.

However, the Commission notes that, although the RPM costs are not recoverable under the TCRR, the RPM costs may be recoverable under DP&L's ESP, which was approved by the Commission pursuant to Section 4928.143, Revised Code. In fact, the stipulation approved by the Commission in DP&L's ESP proceeding specifically provides that DP&L may apply to the Commission for a separate rider to recover RTO costs which are not recovered under the TCRR. *In re Dayton Power and Light Company*, Case No. 08-1094-EL-SSO, et al., Opinion and Order (June 24, 2009) at 6.

Finally, the Commission notes that, having determined that the RPM costs are not recoverable under Section 4928.05(A)(2), Revised Code, it is not necessary for the Commission to address the remaining arguments raised by IEU-Ohio in its application for rehearing.

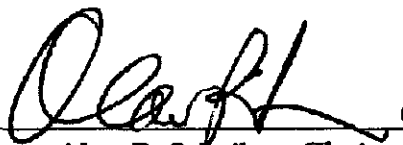
It is, therefore,

ORDERED, That the application for rehearing filed by IEU-Ohio be granted. It is, further,

ORDERED, That DP&L file revised tariffs, consistent with this Entry on Rehearing, within 14 days after the date of this Entry. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

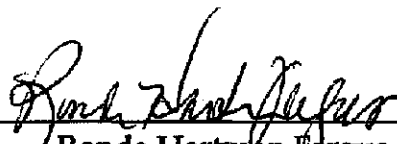
THE PUBLIC UTILITIES COMMISSION OF OHIO



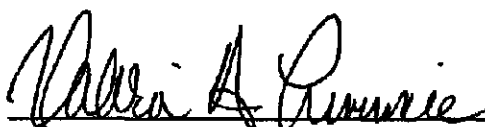
Alan R. Schriber, Chairman



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Reneé J. Jenkins
Secretary