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October 15, 2008

Via Fed Ex

Public Utilities Commission of Ohio
Docketing Division
180 East Broad Street
Columbus, OH 43215-3793

Re: 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

Dear Sir/Madam:

Enclosed please find for filing the original and (15) fifteen copies of The
Dayton Power and Light Company's Memorandum Contra Motion to Strike of
Industrial Energy Users-Ohio, which was filed via facsimile today.

If you have any questions, please call me at 937-259-7171.

Sincerely,

A handwritten signature in black ink, appearing to read "Judi L. Sobecki", with a long, sweeping horizontal line extending to the right.

Judi L. Sobecki

Enclosures

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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

**THE DAYTON POWER AND LIGHT COMPANY'S
MEMORANDUM CONTRA MOTION TO STRIKE OF INDUSTRIAL ENERGY
USERS-OHIO**

I. INTRODUCTION

The Dayton Power and Light Company ("DP&L" or "the Company") respectfully requests that the Commission deny IEU-Ohio's Motion to Strike, which raises the very same arguments earlier rejected by the Commission and represents nothing more than an attempted third bite at the apple. After DP&L filed its initial TCRR Application IEU-Ohio intervened and filed comments, objecting to, among other things, DP&L's application to recover "costs associated with PJM's reliability pricing model ("RPM") through the TCRR." The same arguments as those being made in its Motion to Strike formed the basis of IEU-Ohio first objection.¹ DP&L responded to IEU-Ohio's Comments, the Staff issued its report recommending approval of the TCRR, and the Commission issued its Finding and Order approving recovery of the TCRR—including RPM costs. IEU-Ohio launched its second round of attack on June 19, 2009 by way of an Application for Rehearing, the entirety of which objected to the inclusion of RPM costs within the TCRR, and which asserted the very same arguments it advances in this current Motion to Strike. While the Commission agreed with IEU-Ohio that the RPM

¹ IEU-Ohio Comments, May 5, 2009, at 5-8.

costs were not sufficiently transmission-related to warrant recovery through the TCRR *mechanism*, it was not persuaded by IEU-Ohio's arguments that the RPM related costs were not recoverable at all, and notably never reversed itself in this regard. Now, IEU-Ohio is back a third time, arguing—on the same basis—that RPM related costs should not be permitted to be recovered at all. These arguments should now be rejected for a third time, and IEU-Ohio's Motion to Strike should be denied.

II. ARGUMENT

A. The Commission Approved DP&L's Combined TCRR, Including RPM Charges.

The Commission found that DP&L's recovery of RPM-related costs was just and reasonable, and never reversed that determination on rehearing, instead only reversing its decision to permit RPM-related costs to be recovered *through a transmission cost recovery rider*. IEU-OHIO concedes that "it is correct that the Commission's Order approved the recovery of RPM-related costs. . ." however it then claims the approvals of the costs were "reversed" by the Commission's subsequent Entry on Rehearing.² IEU-Ohio's assertion is not true.

The Commission *never* reversed its finding that "[t]he 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..."³ IEU-Ohio ignores the investigation into RPM-related costs already conducted by Staff, the resulting Staff report finding the

² IEU-Ohio Motion to Strike, at 4.

³ Finding and Order, May 27, 2009, at 4.

costs to be appropriate for recovery, and the Commission's finding that RPM costs are not included in existing rates, therefore allowing recovery.

Instead, IEU-Ohio overreaches in its reading of the Commission's Entry on Rehearing in this matter. To be precise, the Commission found, in part:

- "Although the generation capacity paid for by the RPM may ensure the reliability of the grid, upon further review, . . . 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 . . . are costs which are transmission or transmission-related"; and
- "The RPM costs may not be recovered **under the TCRR**..."⁴

The Entry on Rehearing reversed the Commission's decision regarding the *mechanism* of recovery of RPM-related costs and credits. It never reversed its finding that recovery of the RPM-related costs net of credits was not unjust or unreasonable. In fact, to the contrary the Commission Entry on Rehearing held that RPM-related costs could be recovered.⁵ Specifically, the Commission held:

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 6.⁶

DP&L's ESP Stipulation reserved DP&L's right to recover all RTO related costs by way of a rider outside of its Standard Service Offer as set by the ESP Stipulation.

⁴ Entry on Rehearing, at 5. (Emphasis added).

⁵ Id.

⁶ Id. (Emphasis added).

DP&L applied to recover all RTO-related costs within one mechanism—the TCRR. Given the Commission’s determination that the TCRR was not the appropriate vehicle by which to recover these costs—but not reversing its earlier determination that the RPM-costs were recoverable—DP&L filed separate tariff sheets for its revised TCRR and separate tariff sheets for its PJM RPM Rider. The workpapers, schedules and testimony supporting the PJM RPM Rider already filed in this case and evaluated by Staff and intervenors have not changed. DP&L’s “separate rider to recover RTO costs which are not recovered under the TCRR” is consistent with the ESP Stipulation.

IEU-Ohio’s contrary interpretation of the Commission’s holding with respect to DP&L’s ESP Stipulation is illogical. IEU-Ohio argues that any recovery of RPM-related costs must be considered in the context of an ESP, even concluding that DP&L must make an application seeking recovery of RPM related costs pursuant to Section 4928.141 and 4928.143 and subject to the relevant Commission ESP rules.⁷ The ESP Stipulation provision explicitly permits the use of a separate rider to recover RTO-related costs not otherwise recoverable under the TCRR. If the intent had been to require that DP&L file *another* full ESP application and have another round of litigation addressing every issue that could arise in an ESP proceeding in order to recover certain costs, the provision would have said exactly that. As a signatory party to the ESP Stipulation, IEU-Ohio was fully aware of its terms, which contained a negotiated trade-off of interests -- locking in much of DP&L’s existing rate structure through December 2012 in return for a limited number of adjustments to recover certain types of specified costs including these RTO-imposed costs. IEU-Ohio is reneging on its agreement in the ESP case and requesting the Commission to endorse that action.

⁷ Motion to Strike, at 5-6.

Clearly, the Commission's reference to the ESP Stipulation was meant to point out that DP&L's ESP *does not preclude* recovery of RPM-related costs, the extension of DP&L's existing rate plan through 2012 notwithstanding. DP&L's ESP Stipulation clearly permits an additional rider to recover costs imposed by PJM, but not recovered through the TCRR.⁸ The Stipulation does not require the rider be put into place in the context of the ESP proceeding. In fact, taking IEU-Ohio's argument to the extreme, the preservation of DP&L's right to seek recovery through a separate rider of several other categories of costs as negotiated in the course of the ESP proceeding was hollow.⁹ An argument that DP&L would have to seek recovery of these costs in the context of an ESP proceeding not only strains logic, but is an inappropriate attempt to strip negotiated and agreed upon value from a stipulation to which IEU-Ohio is a signatory party. IEU-Ohio's Motion to Strike should be denied.

B. RPM Charges Are Not Being Recovered in Existing Rates.

1. RPM Charges were never a component of rate increases taking effect during the period since DP&L's rates were unbundled.

As described above, the Commission's reversal of its prior holding was limited in scope, and it never reversed its holding that "[t]he RPM costs . . . are not included in any other schedule or rider in the electric utility's tariff..."¹⁰ Nonetheless, IEU-Ohio persists, arguing that because DP&L's generation rates increased from those set in Case No. 99-1687-EL-ETP, first through the Rate Stabilization Charge ("RSC") and then through the

⁸ ESP Stipulation, at ¶19.

⁹ Paragraph 19 of the ESP Stipulation also permits DP&L to seek recovery of: (1) the cost of compliance with environmental legislation; (2) environmental costs related to Hutchings Station; and (3) TCRR, in addition to other RTO-related costs through separate riders.

¹⁰ Finding and Order, May 27, 2009, at 4.

fuel rider permitted by its ESP Stipulation, there *must* be RPM charges built in.¹¹ This is simply incorrect. The generation rates that were included in the ESP Stipulation were the Company's generation rates in place at the time the ESP Application was filed. These generation rates were initially established in Case No. 99-1687-EL-ETP, prior to RPM implementation. 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 rates for transmission and ancillary services. From there, the distribution rates were developed and subtracted from the remaining portion of the bundled rate. The amount that remained was considered generation.

When the rates were unbundled, costs for spinning, supplemental, and standby reserves that were built into DP&L's bundled rates were placed in the Company's ancillary service rates. Those same ancillary rates remained in effect during the market development period, through the rate stabilization period, and until 2009. When DP&L developed its TCRR rate, those previous ancillary rates were eliminated and replaced by the TCRR rate that went into effect June 1, 2009 and included net RPM costs. RPM costs did not even exist until 2007 when the RPM mechanism became effective under PJM tariffs approved by the FERC.

Pursuant to Section I (C)(1) of the November 3, 2005 Stipulation and Recommendation in Case No. 05-276-EL-AIR, the Rate Stabilization Charge (RSC a.k.a. RSS) was implemented to compensate DP&L for providing stabilized rates for customers

¹¹ IEU-Ohio Motion to Strike, at 7-8.

and Provider of Last Resort service, which represents the option value to customers to return to tariffed standard offer rates instead of market prices. That settlement was entered into more than two years before RPM was implemented by PJM. Thus, while it is true that generation rates have increased since being set in Case No. 99-1687-EL-ETP, none of the increases were for the purpose of recovering RPM costs.

2. The Commission Staff has not taken the position in recent proceedings that DP&L is fully recovering all of its costs.

Apparently relying on testimony filed in the ESP proceeding that was never admitted into evidence or subjected to cross-examination, IEU-Ohio makes the procedurally improper and false assertion that the Commission's Staff has conclusively found that DP&L is fully recovering all of its costs.¹² Pursuant to the ESP Stipulation, all of the testimony of signatory parties filed in the ESP case except for DP&L's was to be withdrawn.¹³ Irrespective of whether the Signatory parties—including IEU-Ohio—have actually taken the procedural steps to have that testimony withdrawn, it is legally impermissible for IEU-Ohio to point to testimony that never even became part of an evidentiary record and attempt to use the testimony to its own advantage. The Commission should disregard any of IEU-Ohio's arguments that are based on a position allegedly taken by Staff and withdrawn.

Moreover, even if the Commission were inclined to consider the withdrawn statements submitted by Staff in the ESP proceeding, IEU-Ohio's argument fails. The testimony by Staff in the ESP proceeding did not conclude that DP&L is fully recovering

¹² IEU-Ohio Motion to Strike, at 9.

¹³ ESP Stipulation, at ¶34.

all of its costs. The testimony at issue was put on for the purpose of evaluating DP&L's request for a fuel deferral in the context of the ESP proceeding. The witness does not purport to express an opinion with respect to whether RPM-related costs are being recovered—the subject at issue in this case. It is misleading to take such comments out of context. Also, the opinion is based on—by the witness's own admission—a “back of the envelope calculation” and as such provides an insufficient basis upon which to conclude that RPM-related costs are being recovered in existing rates. Finally, IEU-Ohio's conclusion that the back of the envelope calculation of a return on equity *must* mean DP&L is recovering RPM-related costs—somewhere—is an assumption unsupported by any facts. IEU-Ohio implicitly concedes this.¹⁴

3. DP&L has not admitted to recovering RPM-related costs in existing rates.

IEU-Ohio next claims DP&L implicitly admitted that it is already recovering RPM costs in its own testimony submitted in support of its Stipulation and Recommendation in the ESP proceeding. DP&L's witness submitted testimony on February 24, 2009, that the only significant cost not being recovered under its existing rate plan was for fuel.

Throughout the ESP proceeding, DP&L considered RPM costs as transmission related costs, properly recoverable through a transmission cost recovery rider. Supporting this position, the Company had already received a Commission order dated February 19, 2009, which allowed RPM costs to be deferred as part of the TCRR

¹⁴ IEU-Ohio Motion to Strike, at 9 (“...it is difficult to identify which components of costs DP&L may or may not be recovering through rates”).

deferral. Consequently, when the testimony was filed, fuel was the only unrecovered cost for which no other recovery mechanism appeared available.

4. DP&L satisfied its burden of proof with evidence demonstrating that RPM costs are not being recovered through its existing rate plan.

Finally, IEU-Ohio incorrectly claims that DP&L presented no evidence in this proceeding to support DP&L's claim that RPM costs are not being recovered through its existing rate plan. DP&L's submitted testimony directly addressing this issue:

Q. Are the RPM-related costs/credits being charged to the Company by PJM and which DP&L proposes to include in its TCRR included in any other schedule or rider in DP&L's tariffs on file with the Commission?

A. No. PJM's capacity market (known as the Reliability Pricing Model or RPM) structure came about after rates in DP&L's current rate plan were established. However, certain retail ancillary service rates do include a reserve obligation pursuant to reliability requirements in place at the time DP&L set its cost-based ancillary service rates. These ancillary service rates, including the associated reserve obligation amounts, will be replaced by the TCRR.¹⁵

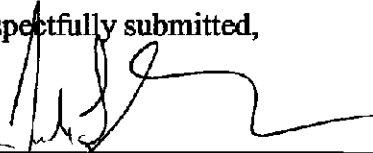
Thus, DP&L did in fact present testimony to establish the fact that RPM costs are not in existing rates.

III. CONCLUSION

For the reasons fully explained above, recovery of all RTO-imposed costs—including RPM related costs—is just and reasonable, and IEU-Ohio's Motion to Strike DP&L's tariff implementing its PJM RPM Rider should be denied.

¹⁵ Testimony of Sharon Schroder, p. 15, lines 14-22.

Respectfully submitted,



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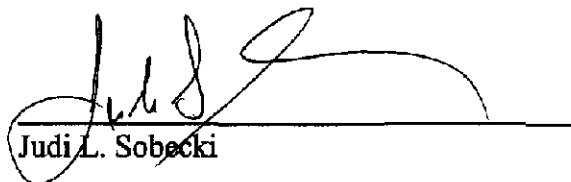
CERTIFICATE OF SERVICE

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

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