BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify its Accounting Procedures.	: : : :	Case No. 10-2447-EL-AAM

MOTION TO INTERVENE
OF
THE OHIO DEPARTMENT OF DEVELOPMENT

By the above-styled application, The Dayton Power and Light Company ("DP&L") seeks authority to modify its accounting procedures to defer, for treatment as a regulatory asset, the otherwise unrecoverable uncollectible expense DP&L alleges will be created as a result of the new PIPP Plus rules recently implemented by the Ohio Department of Development ("ODOD"). According to the application, DP&L will seek approval in some future proceeding of an uncollectible expense rider designed to recover the deferred amounts and the related carrying costs. As more fully discussed in the accompanying memorandum, ODOD has a real and substantial interest in this proceeding, and is so situated that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect that interest. Further, ODOD's interest in this proceeding is not represented by any existing party, and its participation in this proceeding will contribute to a just and expeditious resolution of the issues involved without unduly delaying the proceeding or unjustly prejudicing any existing party. Accordingly, ODOD moves to intervene in this proceeding pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code ("OAC").

WHEREFORE, ODOD respectfully requests that the Commission grant its motion to intervene.

Respectfully submitted,

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BEFORE
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In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify its Accounting Procedures.	: : : :	Case No. 10-2447-EL-AAM

MEMORANDUM IN SUPPORT
OF
MOTION TO INTERVENE
OF
THE OHIO DEPARTMENT OF DEVELOPMENT

By its application filed herein on October 28, 2010, The Dayton Power and Light Company ("DP&L") requests authority from this Commission to modify its accounting procedures to defer the incremental uncollectible expense that DP&L alleges will be created as a result of certain new rules governing the operation of the electric percentage of income payment plan ("PIPP") program administered by the Ohio Department of Development ("ODOD"). Although the application does not seek approval of a mechanism for recovering the deferred costs, the application indicates that, in some subsequent proceeding, DP&L will seek approval of an uncollectible expense rider designed to recover the deferred amounts and the related carrying costs. However, because the creation of a regulatory asset via the deferral of a current cost is only permitted if ultimate recovery of the cost is assured, approval of DP&L's application in this case would be tantamount to approving this PIPP-specific uncollectible expense rider, notwithstanding that the rider itself may not be implemented for some time.

Section 4903.221, Revised Code, provides that any "person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding." The

Ohio Department of Development ("ODOD") is charged by statute with the responsibility for administering the electric PIPP program.[1] In fulfilling that responsibility, ODOD, after providing all stakeholders with an opportunity to be heard, recently adopted a new set of rules – known as the PIPP Plus rules – governing the operation of the electric PIPP program,[2] including the rules alluded to in DP&L's application. For reasons discussed *infra*, ODOD submits that approval of this application would undermine the intent of the rules in question to the detriment of the newly-created PIPP Plus program and DP&L ratepayers. Thus, there can be no question that ODOD "may be adversely affected" by this proceeding. Further, not only does ODOD satisfy the statutory standard for intervention in Commission proceedings, but it also satisfies the standards governing intervention set forth in the Commission's rules.[3]

Rule 4901-1-11(A), Ohio Administrative Code ("OAC"), provides, in pertinent part, as follows:

> (A) Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:
>
> . . .
>
> (2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his ability to protect that interest, unless the person's interest is adequately represented by existing parties.

As the administrator of the PIPP Plus program, ODOD plainly has a real and substantial interest in a proceeding in which the Commission is being asked to approve an application

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[1] *See* Section 4928.53, Revised Code.

[2] *See* Chapter 122:5-3, OAC, effective November 1, 2010.

[3] In this connection, ODOD would point out that, although the statutory definition of a "person" does not include state agencies [*see* Section 1.59(C), Revised Code], the definition of a "person" in the Commission's rules does include agencies of the state of Ohio [*see* Rule 4901-1-01(K), OAC]. Thus, even if the Commission were to find that ODOD does not have a statutory right to intervene under Rule 4901-1-11(A)(1), OAC, the Commission must, nonetheless, grant ODOD' motion to intervene if ODOD satisfies the requirements of Rule 4901-1-11(A)(2), OAC.

containing a proposal that would undermine the objective of certain of its rules. Moreover, at this juncture, no other entity has moved to intervene in this proceeding. Thus, by definition, no existing parties represent ODOD's interest. Although ODOD does not believe this to be a close question, each of the specific considerations that the Commission may, by rule, take into account in applying the Rule 4901-1-11(A)(2), OAC, standard also fully support granting ODOD's motion to intervene.

Rule 4901-1-11(B), OAC, provides as follows:

> In deciding whether to permit intervention under paragraph (A)(2) of this rule, the commission, the legal director, the deputy legal director, or an attorney examiner shall consider:
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> (1) The nature and extent of the prospective intervenor's interest.
>
> (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.
>
> (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.
>
> (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.
>
> (5) The extent to which the person's interest is represented by existing parties.

First, ODOD's interest in a proceeding on an application, which, if approved, would pull the rug from under certain of its rule changes is obviously direct and substantial. Second, ODOD's position that this application is inconsistent with the underlying intent of certain provisions of the new PIPP Plus rules and is not in the public interest goes directly to the merits of the application. Third, the Commission must consider arguments that an application should not be approved in determining the merits of any application. Thus, granting ODOD's motion to intervene will not unduly prolong or delay the proceeding. Fourth, no one is better placed than

ODOD to explain the intent of provisions of its rules, and ODOD, which fully considered the ramifications of the provisions in question in the context of its own rulemaking, will bring substantial expertise to bear on the issues raised. Finally, as previously noted, no existing parties represent ODOD's interest. Thus, granting ODOD's motion to intervene is consistent with all the considerations set out in Rule 4901-1-11(B), OAC, and is also consistent with the Commission's stated policy "to encourage the broadest possible participation in its proceedings."[4]

As authority for bringing this application, DP&L cites a provision of the February 24, 2009 stipulation that resolved its ESP case that permits the company to apply to the Commission for approval of a separate rate rider to recover the "cost of complying with changes in tax or regulatory laws and regulations effective after the date of this Stipulation."[5] However, although the stipulation clearly contemplates that interested parties may intervene in the proceeding upon such an application,[6] neither the stipulation nor the Commission's order approving same[7] establishes the ground rules for proceedings on such applications. Thus, the procedural requirements and the specific standards to be applied by the Commission in evaluating an application made pursuant to this provision of the ESP stipulation are less than clear.[8] Be that as it may, the Commission certainly has an obligation to determine if the application contains proposals that may be unjust and unreasonable, and, if it so finds, to set the application for

[4] *See, e.g., Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR (Entry dated January 14, 1986, at 2).

[5] *In the Matter of the Application of The Dayton Power and Light Company of Approval of Its Electric Security Plan*, Case No. 08-1094-EL-SSO (Stipulation dated February 24, 2009, at 10, ¶18).

[6] *Id.*

[7] *See* Case No. 08-1094-EL-SSO (Opinion and Order dated June 24, 2009).

[8] One thing that is clear is that, regardless of the vehicle, DP&L, as the applicant utility, has the burden of proof with respect to the reasonableness of the proposals contained in its application.

hearing or, at minimum, establish a period for the filing of objections and/or comments.[9] ODOD offers the following as a showing that the proposals contained in the application may be unjust and unreasonable.

At the outset, ODOD would emphasize that it has no obligation in this proceeding to defend its duly-enacted and JCARR-approved rules. However, in determining whether the proposals in the application may be unjust or unreasonable, it is important that the Commission understand the objective of the rule changes cited by DP&L as the basis for its application.

As the Commission well knows, income-eligible customers enrolled in the PIPP program can maintain service by paying a fixed, specified percentage of their income to the utility each month, as opposed to paying the amount of the bill based on their actual monthly consumption. Under the electric PIPP program, the electric distribution utility ("EDU") is made whole for the difference between the PIPP installment amount paid by the PIPP customer and the cost of the electricity delivered to the PIPP customer through payments by the EDU's ratepayers collected via Universal Service Fund ("USF") riders approved by this Commission.[10] Pursuant to Section 4928.51(A), Revised Code, the EDU remits the funds collected through the USF riders to ODOD on a monthly basis for deposit in the state treasury's USF. ODOD then reimburses the EDU from the USF for the cost of electricity delivered to PIPP customers. This cost includes any accumulated arrearage at the time the customer enrolls in PIPP, as well as the difference between

[9] If this were a not-for-an-increase ATA application, a showing that the "proposals in the application may be unjust or unreasonable" would trigger the requirement that the matter be set for hearing (*see* Section 4909.18, Revised Code). ODOD respectfully submits that, regardless of the authority under which the application has been filed, this would still be an appropriate test.

[10] USF rider collections also fund low-income customer energy efficiency and consumer education programs administered by ODOD, and pay the administrative costs incurred by ODOD in connection with these programs. *See* Section 4928.52(A), Revised Code. However, the focus here is on the cost of PIPP component of the USF rider revenue requirement.

the PIPP customer payments and the cost of the electricity delivered to the PIPP customer after the customer is enrolled.

Historically, the EDU remitted the PIPP payment amounts collected from customers enrolled in the PIPP program along with the USF rider collections, and ODOD's reimbursement payments covered both this amount and the difference between the PIPP payment received and the cost of the electricity delivered to the PIPP customer. This practice resulted in arrearages generated by PIPP customers who failed to pay their monthly PIPP installment amount being included in the cost of PIPP. Because the EDU was guaranteed 100 percent recovery regardless whether the PIPP customer made the monthly PIPP installment payment, the EDU had no incentive to disconnect a defaulting PIPP customer promptly or to pursue collection aggressively once the customer was disconnected. ODOD believed that this lack of incentive may well have contributed to the cost of PIPP collected from ratepayers through the USF riders being greater than it would have been if the EDU faced the same financial risk with respect to defaulting PIPP customers that it faces with respect to defaulting customers generally. Thus, ODOD took pains to address this concern in developing its new PIPP Plus rules.

New Rule 122:5-3-04(B)(1), OAC, continues to treat accrued arrearages at the time of initial PIPP enrollment as a cost of PIPP that is fully reimbursed from the USF, and continues to guarantee the EDU 100 percent recovery of PIPP customer's post-enrollment arrearages created by the difference between the PIPP installment payment amount and the actual bill for the service provided. However, new Rule 122:5-3-04(B)(2), OAC, now provides:

> Electric distribution utilities shall not be entitled to recover from the fund, and they shall not charge to the director, any deficiencies accruing as a result of a PIPP customer's failure to pay monthly PIPP installment amounts.

By allowing the EDU to retain PIPP installment payment revenue[11] and excluding arrearages generated by a PIPP customer's failure to pay the monthly PIPP installment amount,[12] ODOD placed PIPP customer defaults on the same footing as other customer defaults, thereby providing the same incentive for the EDU to disconnect defaulting PIPP customers promptly and to pursue collection activities against them that the EDU has to take these actions with respect to other defaulting customers. Simply stated, with this rule change, the EDU now has skin in the game, whereas, before the rule change, it did not. But the risk the EDU now faces – *i.e.*, the risk that the PIPP customer will not pay the amount currently owed – is the same risk of nonpayment the EDU always faces when it bills a customer for the amount due. In other words, this risk is not created by the PIPP program and, thus, as the new rule recognizes, the USF should not be liable for the PIPP customer's failure to pay the PIPP installment amount. Moreover, the EDU's financial exposure is likely considerably less in the case of the PIPP customer because the dollar amount in jeopardy is only the amount of the current PIPP installment payment, as opposed to the total amount owed for service, the amount at risk in the case of all other customers.

As in the case of non-PIPP customer defaults, the Commission's disconnection procedures provide the EDU with the mechanism to limit the amount at risk, and the ability to pursue collection provides the EDU with the opportunity to reduce the amount that will ultimately be written off as bad debt. Yet DP&L now asks the Commission to insulate it completely from any incremental increase in uncollectible expense attributable to PIPP customer defaults on PIPP installment payments, notwithstanding that DP&L has no similar protection from incremental increases in uncollectible expense resulting from non-PIPP customer defaults.

[11] Under new Rule 122:5-05(D)(1), OAC, the EDU remits only USF rider collections.

[12] It bears emphasis that the EDU will continue to be reimbursed for the difference between the cost of electricity delivered to an active PIPP customer and the applicable monthly PIPP installment amount regardless whether the PIPP customer makes the PIPP installment payment. *See* Rule 122:5-05(B), OAC.

A Commission order approving the deferral of PIPP-specific uncollectible expense for ultimate recovery from ratepayers through an uncollectible expense rider would completely undo what ODOD intended to accomplish by this rule change and would result in DP&L ratepayers providing the same guarantee of 100 percent recovery of PIPP installment payments that they previously backed via the USF riders. In fact, DP&L's proposal would actually cost ratepayers more, because they would be required to provide the company with a return on the regulatory asset created by the deferral.

In opposing the Companies' application, ODOD understands that uncollectible expense is an ordinary business expense and, as such, can be recognized, in some manner, in the EDU's rates. However, ODOD objects to carving out PIPP-related uncollectible expense for guaranteed recovery when there is no similar guarantee with respect to the uncollectible expense generated by other customers.[13] Treating all uncollectible expense the same would satisfy ODOD's objective of placing the unrecovered installment payment arrearages of defaulting PIPP customers on the same footing as the arrearages of all other defaulting customers so that the incentives for the Companies to disconnect the defaulting customers promptly and to purse collection efforts would be the same in both scenarios. Thus, ODOD's objection goes to the Companies' attempt to circumvent newly-enacted PIPP Plus rules by asking the Commission to establish PIPP-specific uncollectible expense riders to give back what the new rules deliberately – and reasonably – took away as a part of ODOD's continuing effort to control the cost of the electric PIPP program and the burden it imposes on EDU ratepayers.

[13] As noted in the application, DP&L does not have an uncollectible expense rider. Application, 2.

DP&L contends that the Graduate PIPP customer arrearage crediting program created by the new PIPP Plus rules[14] will also cause its uncollectible expense to increase.[15] Under this program, a customer that is no longer income-eligible or who voluntarily drops out of the PIPP program can reduce, and ultimately eliminate, his/her accumulated arrearage amount by making specified installment payments over the ensuing twelve months. With each on-time payment, a portion of the customer's accumulated arrearage is forgiven, so that at the end of the twelve month transition period, a Graduate PIPP customer will, in effect, start with a clean slate. Two points bear mention. First, only customers with no unpaid PIPP amount balances are eligible for the Graduate PIPP program. Second, the EDU has already been fully reimbursed for the arrearage the customer had at the time of his/her initial PIPP enrollment, as well as for the arrearages generated by the difference between the PIPP installment amount and the actual cost of electricity delivered to the customer while enrolled in PIPP. Thus, the EDU is only at risk for the PIPP payment element of specified installment payment amount in the event the Graduate PIPP customer defaults. Here, too, permitting DP&L to defer any resulting uncollectible expense for subsequent recovery from its ratepayers through a PIPP-specific uncollectible expense rider would circumvent the intent of the rule, which is to provide the same incentive to the EDU to take prompt action against defaulting Graduate PIPP customers that it has to take prompt action against defaulting customers generally.

DP&L also cites as a concern the fact that it cannot require a security deposit from PIPP customers and cannot impose a late payment fee on customers enrolled in PIPP, stating that "this strips from the Company a tool to encourage prompt PIPP Plus and Graduate PIPP Plus

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14 *See* Rule 122:5-3-04(B)(5), OAC.

15 Application, 3.

installment payments," which, according to DP&L, "leaves the Company with less leverage to collect unpaid installments from PIPP Plus and Graduate PIPP customers, further contributing to the risk of increased uncollectible expense."[16] In addition, DP&L posits that "higher uncollectible amounts may cause DP&L to use more third party collection agencies increasing the expense of attempting to recover this amount."[17] Not only are these concerns not valid, but they have nothing to do with the issue at hand.

DP&L's claim that requiring a security deposit from a PIPP customer would decrease the risk that the customer would default on his/her monthly PIPP installment payment will not stand up to even cursory scrutiny. In fact, forcing the low-income customer to pay an up-front deposit as a condition of PIPP enrollment would not only create a barrier to participation in the program,[18] but taking money out of the customer's hands for a deposit would make it <u>less</u> likely that the customer will be able to meet the PIPP installment payment obligation. Moreover, although the prohibition against exacting a security deposit from a PIPP customer has been included in the new PIPP Plus rules,[19] the fact is that, beginning with Case No. 03-2049-EL-UNC, the stipulations that have resolved ODOD's annual USF rider rate adjustment proceedings have contained an express agreement by the Ohio EDUs, DP&L included, not to require a

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[16] Application, 3.

[17] *Id.*

[18] It should be noted that security deposits paid by existing customers prior to their enrollment in the PIPP program are remitted to ODOD (*see* Rule 122:5-3-05(A), OAC) and are used to offset the cost of PIPP, which, of course, reduces the cost to the EDU's ratepayers. Thus, DP&L's concern relates strictly to its inability to require a security deposit as a condition of enrolling in the PIPP program.

[19] *See* Rule 122:5-3-05(A), OAC. As specifically noted in this rule, this prohibition is also included in this Commission's gas PIPP rules. *See* Rule 4901:1-18-15(B), OAC.

security deposit from reconnecting PIPP customers.[20] Plainly, everyone concerned considered this to be a sound policy long before it was codified in the new PIPP Plus rules. The incentive for PIPP customers to make their installment payments is – or, at least, should be – that if they fail to make the required payment, their service will be disconnected. This incentive exists regardless of the prohibition against collecting security deposits from PIPP customers.

DP&L's claim that its risk of incurring uncollectible expense is increased because it cannot impose late payment fees on PIPP customers is equally unfounded. Contrary to DP&L's notion, adding a late payment fee would clearly increase – not decrease – the risk of customer default, which is why the new electric PIPP Plus rules,[21] like this Commission's gas PIPP rules,[22] specifically prohibit the practice. Indeed, this very issue was squarely decided by the Commission in the notice of intent phase of the 2005 USF rider rate adjustment proceeding, wherein the Commission determined that DP&L should not be permitted to impose a late payment charge on PIPP customers, and expressly found that DP&L's argument that a late payment charge encouraged PIPP customers to pay promptly was not persuasive.[23]

Finally, DP&L's suggestion that it will incur increased costs for third-party collection agency efforts if its uncollectible expense increases as a result of certain provisions the new PIPP Plus rules is just plain wrong. In the first place, collection agencies are typically compensated based on a percentage of the amounts they collect from defaulting customers. This is not an out-of-pocket expense to DP&L. Rather, the company simply receives something less than the full

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[20] *See, e.g., In the Matter of the Application of the Ohio Department of Development* Case No. 09-463-EL-UNC (Stipulation dated December 7, 2009, at 8).

[21] *See* Rule 122:5-3-04(C), OAC.

[22] *See* Rule 4901:1-18-15(C), OAC.

[23] *See In the Matter of the Application of the Ohio Department of Development* Case No. 05-717-EL-UNC (Opinion and Order dated September 29, 2005, at 16).

amount recovered by the collection agency, versus the zero dollars it would receive if it failed to pursue collection. Any dollars DP&L receives from a successful collection effort reduce the amount that will ultimately be written off as bad debt. Indeed, DP&L's argument makes the very point ODOD has raised. The intent of the rule is to incent the EDU to pursue collection from defaulting PIPP customers just as aggressively as it pursues collection from other defaulting customers.

Having said all this, ODOD recognizes that, because DP&L heretofore has been guaranteed 100 percent recovery of PIPP-related costs, its current rates contain no allowance for PIPP-specific uncollectible expense. However, before approving the creation of a regulatory asset by authorizing DP&L to defer PIPP-specific uncollectible expense, the Commission should take a broader look at the issue involved. DP&L provides no estimate of the amount of the incremental PIPP-specific uncollectible expense that will be deferred for subsequent recovery from ratepayers. Thus, the first step should be to gain some sense of the dollar value of the regulatory asset that would be created by authorizing the deferral of PIPP-specific uncollectible expense. As previously noted, as a matter of simple mathematics, the balance due when a PIPP customer defaults will be less than the balance due when a non-PIPP customer defaults. Moreover, the anecdotal evidence thus far indicates that the new PIPP Plus arrearage crediting program[24] is having the desired effect and suggests that this additional incentive to make full and timely installment payments will, indeed, reduce the risk of PIPP-customer defaults.

The Commission should then weigh DP&L's increased exposure to uncollectible expense created by the electric PIPP rule changes against the policy objective underlying the rule changes

[24] New Rule 122:5-3-04(B)(3), OAC, establishes an arrearage crediting program whereby a PIPP customer that makes a monthly on-time payment of the PIPP installment amount receives a credit against the current bill balance and a specified portion of his/her total accumulated arrearage balance. Because the EDU is reimbursed for the current bill balance and has already been reimbursed for the customer's accumulated arrearages, this program is risk-free from the EDU's perspective.

in question before handing DP&L the blank check it requests in its application. In proposing this balancing test, ODOD would note that approval of this application is a matter within the discretion of the Commission. Although the DP&L ESP stipulation permits the company to apply to the Commission for approval of a rider to recover the "cost of complying with changes in tax or regulatory laws and regulations effective after the date of this Stipulation,"[25] there is nothing in this provision that requires the Commission to approve such a rider.

ODOD submits that the foregoing discussion demonstrates that the proposals in the application may be unjust or unreasonable. Thus, the burden to prove otherwise falls to DP&L. This application plainly represents an attempt by the DP&L to make an end run around certain provisions of ODOD's new PIPP Plus rules. The Commission should not permit the DP&L to circumvent these provisions without providing stakeholders, including, but not limited to, ODOD with the opportunity to be heard.

WHEREFORE, ODOD respectfully requests that the Commission grant its motion to intervene, find that the proposals in the application may be unjust or unreasonable, and set this matter for hearing or, at minimum, establish a formal comment cycle that will permit the issues raised herein by ODOD to be fully explored.

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[25] Case No. 08-1094-EL-SSO (Stipulation dated February 24, 2009, at 10, ¶18).

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by first class mail, postage prepaid, this 25th day of February 2011.

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