BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Market Rate Offer.	)))	Case No. 12-426-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.	)))	Case No. 12-427-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority.	))))	Case No. 12-428-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for Waiver of Certain Commission Rules.	)))	Case No. 12-429-EL-WVR
In the Matter of the Application of The Dayton Power and Light Company to Establish Tariff Riders.	)))	Case No. 12-672-EL-RDR

JOINT MOVANTS'
MEMORANDUM IN OPPOSITION TO
THE DAYTON POWER AND LIGHT COMPANY'S WAIVER REQUEST

November 21, 2012

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JOINT MOVANTS'[1]
MEMORANDUM IN OPPOSITION TO
THE DAYTON POWER AND LIGHT COMPANY'S WAIVER REQUEST

I. BACKGROUND

On October 5, 2012, the Dayton Power and Light Company ("DP&L") filed an application ("Application") to establish a standard service offer ("SSO") in the form of an electric security plan ("ESP"). DP&L's Application, however, failed to comply with the standard filing requirements for an ESP as established by Rule 4901:1-35-03, Ohio

[1] The Joint Movants filing this pleading are Honda of America Manufacturing, Inc. ("Honda), Industrial Energy Users-Ohio ("IEU-Ohio"), the OMA Energy Group ("OMAEG"), the Ohio Partners for Affordable Energy ("OPAE"), SolarVision, LLC and Wal-Mart Stores East, LP and Sam's East, Inc.

Administrative Code ("O.A.C."). Accordingly, on October 22, 2012, a joint motion[2] was filed seeking an order from the Public Utilities Commission of Ohio ("Commission") directing DP&L to comply with the standard filing requirements and requested the Commission stay the procedural schedule until DP&L complies.

DP&L responded on November 6, 2012 acknowledging that its Application was not in compliance with several standard filing requirements.[3] DP&L stated that it would remedy some of the violations identified by the joint motion at some point in the future through a supplemental filing. On November 8, 2012, DP&L filed its supplement to its Application ("Supplement").[4]

Relevant to this pleading, the Supplement also requests a waiver of Commission Rule 4901:1-36-04, O.A.C., which requires an electric distribution utility's ("EDU") transmission cost recovery rider ("TCRR") to be fully bypassable. Although Rule 4901:1-36:02(B), O.A.C., allows the Commission to waive any requirement of Chapter 4901:1-36, O.A.C., for good cause, DP&L failed to offer any reason to justify a waiver of the rule (instead citing to previously filed testimony).[5] Moreover, as discussed below, DP&L cannot demonstrate good cause exists to waive this requirement.

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[2] The parties to the October 22, 2012 joint motion included Industrial Energy Users-Ohio ("IEU-Ohio"), Ohio Partners for Affordable Energy ("OPAE"), The Kroger Company ("Kroger"), the Ohio Energy Group ("OEG"), Honda of America Manufacturing, Inc. ("Honda"), SolarVision, LLC ("SolarVision"), the OMA Energy Group ("OMAEG") and the Office of the Ohio Consumers' Counsel ("OCC").

[3] *See* The Dayton Power and Light Company's Memorandum in Opposition to the Joint Movants' Motion Seeking an Order Directing the Dayton Power and Light Company to Comply with the Standard Filing Requirements for an Electric Security Plan and Memorandum in Support and Memorandum Contra the Dayton Power and Light Company's Request for Waivers at 2 (Nov. 6, 2012) (refiled with docketing on Nov. 8, 2012) (hereinafter "DP&L Memorandum in Opposition").

[4] The Dayton Power and Light Company's Supplement to its ESP Application (Nov. 8, 2012) ("Supplement").

[5] Supplement at 2.

II. ARGUMENT

A. DP&L's request for a waiver of Rule 4901:1-36-04, O.A.C., should be denied because DP&L has not and cannot demonstrate good cause for a waiver of the rule.

Although the Commission may waive any requirement in Chapter 4901:1-36, O.A.C., the Commission may only do so upon "good cause shown."[6] DP&L's Supplement, however, fails to offer any reason for a waiver of Rule 4901:1-36-04, O.A.C. Instead, to support its request for a waiver, DP&L simply includes a generic citation to the pre-filed testimony of DP&L witness Hale. For this reason alone, the Commission should deny DP&L's waiver request.

If, however, the Commission decides to undertake DP&L's invitation to search through DP&L's pre-filed testimony for a demonstration of "good cause shown," the Commission will still not find that requisite support. Ms. Hale's testimony does not specifically request or address a waiver of Rule 4901:1-36-04, O.A.C. Rather, her testimony only offers vague and conclusory reasons for establishing the TCRR on a partly non-bypassable basis.

First, Ms. Hale claims that network integration transmission service ("NITS") charges already practically function as non-bypassable charges. According to Ms. Hale's testimony, DP&L currently charges SSO customers NITS charges, while competitive retail electric service ("CRES") providers serving shopping customers in DP&L's territory pay DP&L, through PJM Interconnection, L.L.C. ("PJM"), their share of

[6] Rule 4901:1-36-02, O.A.C.

NITS costs.[7] Ms. Hale then extends the costs to be collected on a non-bypassable basis to other cost categories that Ms. Hale describes as non-market based.[8]

Ms. Hale's testimony describing NITS charges as effectively being non-bypassable, which has not been subject to cross-examination, is factually incorrect. Although Ms. Hale is correct that DP&L and CRES providers are assessed NITS charges in the same manner, there is no symmetry between how DP&L and CRES providers recover those costs from customers. For instance, DP&L allocates its annual NITS revenue requirement between customer classes based upon the class's proportional contribution to DP&L's single coincident peak. Once the individual class annual revenue requirement is allocated, for customers served under commercial and industrial rate schedules (*e.g.*, High Voltage, Primary-Substation, Secondary, Primary), this NITS-related revenue requirement is then collected from individual customers based upon a demand charge applied to the customer's maximum monthly billing demand.

Shopping commercial and industrial customers, however, are not required to pay a NITS charge to their CRES provider based upon their maximum monthly billing demand. Because NITS charges are assessed upon CRES providers by PJM on behalf of the customers they are serving, the price that shopping customers pay for NITS is a function of their negotiated price with their CRES supplier. For example, a shopping customer may elect to negotiate an all-in delivery fixed price for generation and transmission with their CRES provider. In such a case, the CRES provider will assume all risk associated with the movement up or down in the rate charged by PJM for NITS.

[7] Direct Testimony of Claire E. Hale at 4 (Oct. 5, 2012).

[8] *Id.*

Alternatively, a shopping customer could contract with a CRES provider and agree to pay a price for NITS that reflects their contribution to PJM's single coincident peak. Such an arrangement would be consistent with how PJM determines billing determinants for transmission service and would provide a price signal to the customer to reduce demand during peak load conditions. Thus, although there is symmetry between the rate that PJM charges DP&L and CRES providers for NITS (among other transmission services billed by PJM), there simply will never be symmetry between how DP&L bills non-shopping customers for transmission service and how a CRES provider may bill a customer for transmission service. Taking away a customer's ability to negotiate a pricing structure that is best suited for its individual needs simply is not a benefit to customers.

The only other rationale for making a significant portion of the TCRR non-bypassable is a question and answer on page 5 of Ms. Hale's pre-filed testimony:

> **Q. How will the non-bypassable charge TCRR-N benefit customers?**
>
> A. When the Company becomes responsible for these costs for all customers, DP&L removes the requirement for wholesale or retail suppliers to include them in their product. Excluding these costs should lower the generation price that suppliers charge to their customers. Additionally, moving these costs to a non-bypassable charge should cause less variation in the price to compare, making it easier for customers to compare offers from alternative retail electric generation suppliers.

While is it mathematically true that if all other factors are held constant, removing NITS charges from the product bidders are requested to provide in an auction (to establish prices for DP&L's ESP) should result in a lower bid price, this does not necessarily support a conclusion that customers will benefit. First, as discussed at page 25 of the pre-filed testimony of DP&L witness Chambers, the majority (62%) of DP&L

customers are presently shopping. Therefore, as discussed above, these customers pay for NITS transmission service through their CRES provider and there is no evidence to show how forcing shopping customers to pay DP&L for transmission services rather than their CRES providers is a benefit. As discussed previously, it may have a negative effect on some customers by shifting risk to them or preventing them from negotiating with CRES providers to craft solutions to meet their individual needs.

Second, Ms. Hale's testimony fails to demonstrate how a non-bypassable TCRR will stabilize the price-to-compare: all DP&L plans to do is require shopping customers to pay DP&L a cost that they would otherwise pay to their CRES provider. While this will have the effect of lowering the price-to-compare, since the charge is no longer bypassable, it will not lower the amount customers ultimately end up paying. And furthermore, simply removing transmission charges from the calculation of the price-to-compare will not in and of itself stabilize the price-to-compare. The price-to-compare will be largely outside the scope of DP&L's control as it will be largely dictated by the price established by the competitive bid process ("CBP") auctions to establish the ESP rates. And other bypassable charges will continue to fluctuate and alter the price-to-compare as they have in the past. For instance DP&L's FUEL Rider, the Reliability Pricing Model ("RPM") Rider, the bypassable portion of the TCRR, and the Alternative Energy Rider ("AER") will all vary over the term of the ESP (as they are eventually phased out).

Third, DP&L has failed to detail how it plans to ensure that shopping customers do not pay twice for the same transmission services. Customers that are currently taking service from a CRES provider compensate the CRES provider in accordance

with the terms of their contract. DP&L's decision that it wants to bill those shopping customers directly does not change the terms of those customers' contracts with CRES providers; rather, those customers must continue paying their CRES provider an agreed-upon price. For example, a customer who has an all-in price with its CRES provider will continue to pay that all-in price to its CRES provider regardless of whether or not the CRES provider's costs have gone up or down. If these customers then have to pay the non-bypassable TCRR charge to DP&L as well, they will effectively pay for the same transmission service twice. Since the majority of DP&L customers are presently shopping, if those customers have fixed price contracts with their CRES providers, DP&L's proposed change to make NITS a non-bypassable charge could result in a higher overall price for electricity, which is certainly not a benefit.

In summary, DP&L's testimony fails to demonstrate good cause exists for a waiver of Rule 4901:1-36-04, O.A.C. DP&L's waiver request was not accompanied by any supporting rationale for the waiver request. Providing a citation to pre-filed testimony falls well short of demonstrating good cause. And furthermore, the vague rationales for making part of the TCRR non-bypassable contained in Ms. Hale's testimony are either factually incorrect or simply not a benefit to customers; and for some customers could result in unjustly being billed twice for the same service. For these reasons, the Commission should deny DP&L's waiver request.

B. In any event, the Commission should not grant DP&L's waiver request until after the evidentiary hearing in this proceeding.

If the Commission does not deny DP&L's waiver request due to its failure to demonstrate good cause, the Commission should not, in any event, grant DP&L's waiver request until after the evidentiary hearing. The factual assertions contained in

Ms. Hale's testimony have not been subjected to the rigors of cross-examination and parties have not been provided an opportunity to present their own evidence on the unreasonableness of DP&L's request. Accordingly, should the Commission not deny DP&L's waiver request outright at this time, it should hold its ruling in abeyance until it issues its final decision in this proceeding.

III. CONCLUSION

For the foregoing reasons, the Commission should deny DP&L's request for a waiver of Rule 4901:1-36-04, O.A.C., or at least withhold its decision until after the evidentiary hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Joint Movants' Memorandum in Opposition to The Dayton Power and Light Company's Waiver Request* was served upon the following parties of record this 21st day of November 2012, *via* electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

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Summary: Memorandum in Opposition to The Dayton Power and Light Company's Waiver Request of Joint Movants [Honda of America Manufacturing, Inc. ("Honda), Industrial Energy Users-Ohio ("IEU-Ohio"), the OMA Energy Group ("OMAEG"), the Ohio Partners for Affordable Energy ("OPAE"), SolarVision, LLC and Wal-Mart Stores East, LP and Sam's East, Inc.] electronically filed by Mr. Matthew R. Pritchard on behalf of Industrial Energy Users-Ohio