

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

POST HEARING BRIEF OF WAL-MART STORES EAST, LP AND SAM'S EAST, INC.

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POST HEARING BRIEF OF WAL-MART STORES EAST, LP AND SAM’S EAST, INC.

I. INTRODUCTION

This case is about whether the Dayton Power and Light Company (“DP&L”) has met its burden in supporting an Electric Security Plan (“ESP”) pursuant to Ohio Rev. Code Section 4928.143. In its revised Application, DP&L asks the Commission’s approval of an ESP, with a term from January 1, 2013, through December 31, 2017, and assorted other tariff provisions. The case has been a series of false starts by DP&L, concluding with its filing of a Second Revised Application because of discovered errors in its First Revised Application. The current proceeding presents multiple issues, however, Wal-Mart Stores East, LP and Sam’s East, Inc. (“Walmart”) will only be addressing certain issues. Walmart believes that in addition to an Application which misaligns cost causation and cost responsibility, DP&L has not met its burden

to support its proposed Reconciliation Rider (“RR”), Switching Tracker (“ST”), Service Stability Rider (“SSR”) or its proposed modification of its Transmission Cost Recovery Rider (“TCRR-N”) into a two-part rider, which includes a non-bypassable portion. Any failure to address other portions of DP&L’s filing should not be construed as acquiescence to any position reflected in DP&L’s Application.

II. BACKGROUND

On March 30, 2012, DP&L filed an application for a Standard Service Offer (“SSO”) pursuant to Section 4928.141, Revised Code. The Application was for a Market Rate Offer (“MRO”) in accordance with Section 4928.142, Revised Code. On September 7, 2012, DP&L withdrew its application for a MRO offer. On October 5, 2012, DP&L filed an Application for an ESP in accordance with Section 4928.143, Revised Code. Additionally, DP&L filed accompanying applications for approval of revised tariffs, for approval of certain accounting authority, for waiver of certain Commission rules, and to establish tariff riders. On December 12, 2012, DP&L amended its Application for an ESP and filed a Second Revised Application. The case proceeded to hearing on March 18, 2013, and continued through April 3, 2013. A large portion of the hearing was conducted in a closed confidential session due to the discussion of information held to be confidential by the Attorney Examiners.

III. ISSUES AND ARGUMENT

A. The Commission should not grant DP&L a waiver of OAC Section 4901: 1-36-04(B) allowing it to utilize a non-bypassable Transmission Cost Recovery Rider.

DP&L has requested waiver authorization from the Commission to charge a Transmission Cost Recovery Rider (“TCRR-N”) to competitively supplied customers. (Exhibit DPL-9 at 5). DP&L has clearly not provided any rational support for a proposal which could

result in additional costs to DP&L's customers. As Walmart Witness Chriss discussed in his testimony, there are fatal flaws to this change in transmission service and related charges with the possibility of double billing to competitively supplied customers:

At present, the alternative generation suppliers are tasked with providing transmission service to shopping customers, so shopping customers are charged for transmission service as part of their contracts with their suppliers. Unless the contracts of every shopping customer expire when the proposed TCRR-N is made effective, there will be shopping customers who are paying for transmission service in their supply contracts and paying for the same transmission service from DP&L. This is an inappropriate and inequitable result.

(Exhibit SWC-1 at 18)

No evidence has been presented in this proceeding by DP&L that the provision of transmission service by alternative generation suppliers is problematic, and therefore, any such change is unnecessary. Even DP&L's rebuttal testimony fails to support a valid reason for this possible double billing wherein DP&L Witness Seger-Lawson, rather than providing support for a need for a non-bypassable rider, makes the unrealistic argument that it should be the responsibility of customers and CRES providers to attempt to renegotiate contracts when it is the responsibility of DP&L to operate under just and reasonable rates. (Exhibit DPL-12 at 22)

Not only has DP&L failed in its burden of proof regarding the granting of a waiver of OAC Section 4901:1-36-04(B), which clearly directs that a Transmission Cost Recovery Rider be avoidable by all customers who choose alternative generation suppliers, but it suggests to the Commission that arm's length contracts should be voided. As a general proposition, the Commission may waive its regulations for good cause shown. There has been no such showing here. DP&L has provided no support in the record for this change and its request should be rejected by the Commission.

B. DP&L has not demonstrated a need to utilize its proposed Reconciliation Rider.

In this proceeding, DP&L proposes a non-bypassable Reconciliation Rider (“RR”), which would recover costs associated with administering and implementing the competitive bidding process for the SSO customers, costs associated with implementing competitive retail enhancements and any deferred balance that exceeds 10 percent of the base recovery rate associated with a number of the Company’s proposed SSO service true-up riders and any remaining deferral balance or credit upon expiration of several riders in June 2016.(Exhibit DPL-10 at 8, as adopted by Donna R.Seger-Lawson.)

It appears that DP&L’s RR proposal is for the period ending May 31, 2016 and that, for customers who do not take supply from competitive suppliers, the Company’s SSO, or the generation portion of rates, will be based on the proposals in the Company’s filing pursuant to §§ 4928.141 and 4928.143 of the Ohio Revised Code. Clearly it is appropriate for any generation-related riders to be bypassable by customers who take competitive supply service. The price paid to the supplier by customers taking competitive supply includes the cost of power and the cost of procurement for that power, compliance costs, and other underlying operating costs.

As Walmart Witness Chriss indicated in his testimony, charging competitively supplied customers for any part of DP&L’s generation-related costs misaligns cost causation and cost responsibility, results in inequitable rates as those customers will pay a cost for which they will receive no benefit, and can result in double payment of costs, such as compliance costs, that are incurred by DP&L to serve their SSO customers and likewise incurred by competitive suppliers to serve their respective customers (Exhibit SWC-1 at 4). Additionally, this cost misalignment moves generation rates for the Company’s SSO customers and competitively supplied customers

away from the respective cost of service for each and does not provide for rates that reflect cost causation, send proper price signals, and minimize price distortions. (Exhibit SWC-1 at 4).

Walmart submits that the Commission should reject the Reconciliation Rider (“RR”) as proposed. Witnesses Collins (Exhibit FEA-2 at 5-8), Bowser (Exhibit IEU-Ohio-1 at 7), Higgins (Exhibit Kroger-1 at 15), and Donlon (Exhibit Staff-7 at 5), likewise, believe the RR as proposed, should be rejected as unsupported and that DP&L’s proposal incorrectly transfers risks.

As Walmart Witness Chriss indicated in his testimony, the price paid to the supplier by customers taking competitive supply already includes the cost of power and the cost of procurement for that power, compliance costs, and other underlying operating costs. Charging competitively supplied customers for any part of DP&L’s generation-related costs misaligns cost causation and cost responsibility results in inequitable rates as those customers will pay a cost for which they will receive no benefit and can result in double payment of costs, such as compliance costs, that are incurred by DP&L to serve their SSO customers and likewise incurred by competitive suppliers to serve their respective customers. Additionally, this cost misalignment moves generation rates for the Company’s SSO customers and competitively supplied customers away from the respective cost of service for each, and does not provide for rates that reflect cost causation, send proper price signals, and minimize price distortions. (Exhibit SWC-1 at 8).

This cost misalignment is a result of costs associated with administering and implementing the competitive bidding process for the SSO customers, costs associated with implementing competitive retail enhancements, and any deferred balance that exceeds ten percent (10%) of the base recovery rate associated with a number of the Company’s proposed SSO service true-up riders and any remaining deferral balance or credit upon the expiration of

several riders in June, 2016, according to DP&L witness Rabb, (Exhibit DPL-10 at 8, as adopted by Dona R. Seger-Lawson).

To the extent that DP&L implements projects that benefit competitive suppliers, Walmart believes that it would be appropriate to make recovery of those costs non-bypassable. However, there has been no showing by DP&L in this proceeding that this is so. In fact, Walmart submits that making the portion of the proposed RR that includes competitive bidding and true-up costs non-bypassable inappropriately shifts risks that DP&L, as a generation service provider, faces in a competitive environment, to customers who have chosen to take service from a competitor. Allowing the non-bypassable recovery of true-up deferral balances through the rider also potentially protects DP&L from a misalignment of the Company's rate-setting, collection, and generation contracting practices that are not related to customer switching.

Moreover, as Walmart Witness Chriss indicated in his direct testimony it is not appropriate to charge customers taking competitive generation supply for generation-related costs incurred for serving the Company's SSO customers as it misaligns cost causation and cost responsibility principles and results in inequitable rates as those customers will pay a cost for which they will receive no benefit. (Exhibit SWC-1 at 18).

Walmart does believe that to the extent the Commission approves and the Company implements projects that benefit competitive suppliers, the costs of those projects should be recovered on a separate new non-bypassable rider set up solely for that purpose.

In the alternative, Walmart believes that to the extent the Commission determines it is appropriate to make the rider non-bypassable and include competitive bidding costs and deferred SSO rider balances, it should condition the rider such that it is non-bypassable only for the first three billing months after a customer switches from SSO to competitive service, to reflect the

true-up interval of any rider or competitive bidding costs incurred while that customer took SSO service. (Exhibit SWC-1 at 4).

Walmart, therefore, contends that the Commission should reject the RR as proposed. However, to the extent the Commission approves, and the Company implements projects that benefit competitive suppliers, the costs of those projects should be recovered on a separate new non-bypassable rider set up solely for that purpose. To the extent the Commission determines it is appropriate to make the rider non-bypassable and include competitive bidding costs and deferred SSO rider balances, it should condition the rider such that it is non-bypassable only for the first three billing months after a customer switches from SSO to competitive service, to reflect the true-up interval of any rider or competitive bidding costs incurred while that customer took SSO service.

C. DP&L has not justified its proposed Service Stability Rider and Switching Tracker

DP&L's SSR as proposed, is a non-bypassable earnings stabilization mechanism that would insulate the Company from earnings losses due to customer switching. Likewise, DP&L's proposed ST would insulate the Company from generation revenues lost due to customer switching. DP&L proposes an annual SSR revenue requirement of \$137.5 million. (Exhibit DPL-8 at 3). This last revised SSR is an increase over the original ESP SSR filed in this case and well over the current \$72.5 million existing in the rates today as a Rate Stabilization Charge. (Exhibit *DPL-1* at *Exhibit CLJ-5* at Schedule 1B).

It is Walmart's understanding of the proposed ST that it would be a deferral account in which the Company would track generation revenues lost due to customer switching. The

tracker account would begin with the start of the ESP and cost recovery would be applicable after January 1, 2014, until June 1, 2016. (Exhibit DPL-1 at 11, 12).

Additionally, DP&L would calculate the incremental switching percentage for all customer classes relative to the switching percentage for all customer classes as of August 30, 2012. The incremental percentage would be multiplied by the distribution load and the resulting MWh would be multiplied by the difference in the Blended SSO rate and the competitive bidding rate. (Exhibit DPL-1 at 11). This would be a charge to all customers until the deferral balance plus carrying costs is zero.

As Walmart Witness Chriss indicated in his testimony, a switching tracker will result in a substantial windfall to DP&L. Mr. Chriss indicated that if one assumes a constant switching level of seventy percent (70%), the Company has illustrated additional revenue requirement impacts of \$32.8 million in 2013, \$23.3 million in 2014, \$8.4 million in 2015, and \$1.2 million in 2016, on top of current Rate Stabilization Charge of \$72.5 million. (Exhibit SWC-1 at 11, 12).

Moreover, before adding the impacts of the switching tracker, the proposed SSR would constitute an increase in earnings stabilization revenue requirement of almost ninety percent (90%). As Mr. Chriss discussed in his testimony, using the first year illustration of the switching tracker in addition to the proposed SSR revenue requirement would constitute an increase in earnings stabilization revenue requirement of almost one hundred thirty-five percent (135%):

Table 1. Calculation of SSR and Switching Tracker Revenue Requirement Impacts			
(1)	(\$000)	Rate Stabilization Revenue Requirement	\$ 72.5
(2)	(\$000)	Service Stability Rider	\$ 137.5
(3)	(%)	(2) / (1) - 1 Increase	89.7%
(4)	(\$000)	First Year Revenue Requirement, Switching Tracker Illustration	\$ 32.8
(5)	(\$000)	(2) + (4) Potential Revenue Requirement, Earnings Stabilization	\$ 170.3
(6)	(%)	(5) / (1) - 1 Increase	134.9%

Sources:

(1) Second Revised Application, Schedule 1B

(2) Second Revised Application, Schedule 8

(4) Exhibit CLJ-5, page 1

(Exhibit SWC-1 at 12)

Walmart Witness Chriss further discussed in his testimony, the implications of the billing impacts presented in Schedule 10, which are representative of the Company's proposed ESP as a whole and the proposed reductions in SSO generation costs for SSO customers which offset the impact of the SSR. However, Mr. Chriss adds that for shopping customers, those SSO generation cost offsets do not occur and the primary cost impact from this docket is the increase in earnings stabilization revenue requirement and that additionally the proposed SSR and ST mechanisms are only available to an electric utility, and competitive suppliers do not have the ability to charge customers who have left for lost revenues or earnings as these remedies are only available to the electric utility. (Exhibit SWC-1 at 13).

There are multiple problems with the SSR and the ST in addition to the incremental cost over the current Rate Stabilization Charge. First, as Mr. Chriss discussed in his testimony, the SSR and ST would inappropriately charge all competitively supplied customers for SSO-related generation costs and "lost opportunity" and inappropriately shifts risk that DP&L, as a generation service provider, faces in a competitive environment to customers who have chosen to take service from a competitor which results in misalignment of cost causation and cost

responsibility principles and results in inequitable rates as those customers will pay a cost for which they will receive no benefit. (Exhibit SWC-1 at 14-15). Likewise, Witnesses Gordon (Exhibit FEA-1 at 5-6), Hess (Exhibit IEU-Ohio-3 at 3,15,26), Murray (Exhibit IEU-Ohio-2 at 21,24) , Higgins (Exhibit Kroger-1 at 7,14,15), Kollen (Exhibit OEG-1 at 8-9), and Choueiki (Exhibit Staff-1 at 9) all reject either the SSR or ST or both for a variety of reasons, including the fact that these charges are an inappropriate cross-subsidy, anti-competitive, an illegal transfer of risk, and an overt attempt at improper transition cost recovery.

Additionally, Walmart submits the ST would inappropriately charge customers who have taken continuous service from a competitive supplier since before August 30, 2012, for SSO-related generation costs and lost generation revenue that could not have been incurred on their behalf or expected to be collected from them as SSO customers. Moreover, it is unclear if the Company intends to track the incremental lost revenues by customer class, such that any resulting cost recovery mechanism would introduce cross-subsidization between customer classes. Since there are significant differences in the shopping levels for residential and non-residential customers, one class should not be charged for generation costs related to SSO service to the other. (Exhibit SWC-1 at 14).

It seems highly possible that the ST in conjunction with the proposed RR may potentially constitute double recovery. The SSO service riders are true-up quarterly and the RR as proposed would provide the Company the ability to collect any deferred balance that exceeds ten percent (10%) of the base recovery rate associated with a number of the Company's proposed SSO service true-up riders. Therefore, it would appear that the "lost generation revenues" tied to actual incurred costs in a given month due to customer switching would first show up as an under-recovery in a quarterly rider true-up (and possibly be offset by increased sales from

continuing SSO load or other changes in SSO cost structure) and to the extent the deferred balance exceeds ten percent (10%) would show up in the proposed RR. As a result, those lost revenues would be recovered from SSO customers and, as proposed, potentially shopping customers as well (Exhibit SWC-1 at 15).

As such, charging customers for lost revenues through the ST without taking into account cost recovery through SSO rider true-ups and the proposed RR would constitute double recovery.

Finally, as Mr. Chriss points out in his testimony, the methodology proposed by the Company does not appear to include offsets for off-system sales, even though DP&L states that they will sell the freed-up electricity at current market prices, which could potentially exceed the blended SSO rate and provide the Company more revenue than a lost sale to the SSO customers. (Exhibit SWC-1 at 16).

IV. CONCLUSION

The Commission needs to reject the proposed ESP by DP&L for various reasons. The Application misaligns cost causation and cost responsibility and DP&L fails to adequately meet its burden of support for a new filing particularly regarding the proposed Reconciliation Rider, the Switching Tracker, the Service Stability Rider and the two-part Transmission Cost Recovery Rider. Walmart requests that the Commission reject those portions of DP&L's filing identified in its Post Hearing Brief.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Post Hearing Brief of Wal-Mart Stores East, LP and Sam's East, Inc. has been served electronically upon Dayton Power and Light Company of Ohio and each person designated on the official service list in this proceeding on the 20th day of May, 2013:

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Summary: Brief Post Hearing Brief of Wal-Mart Stores East, LP and Sam's East, Inc. electronically filed by Mr. Steven M. Sherman on behalf of Wal-Mart Stores East, LP and Sam's East, Inc.