

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the Dayton Power and Light Company for Approval of Its Electric Security Plan.)))	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

REPLY BRIEF OF THE OMA ENERGY GROUP

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REPLY BRIEF OF THE OMA ENERGY GROUP

I. INTRODUCTION

The OMA Energy Group (“OMAEG”) filed its post hearing brief on May 20, 2013, and subsequently submitted an amended post hearing brief on May 23, 2013 in this proceeding. Pursuant to the procedural schedule established by the Attorney Examiners, the OMAEG now submits its reply brief requesting the Commission to reject The Dayton Power and Light Company’s (“DP&L”) proposed nonbypassable Service Stability Rider (“SSR”) for the reasons stated below.

II. LEGAL ARGUMENT

A. The Commission should reject DP&L's proposed SSR because the SSR does not comport with R.C. 4928.143(B)(2)(d) or Ohio's policy objective of ensuring the availability of reasonably priced retail electric service.

In its reply brief, DP&L asserts that the Commission should approve its request for an SSR because the SSR meets the criteria of a "lawful charge" defined in R.C. 4928.143(B)(2)(d) as follows:

- (1) a term, condition, or charge;
- (2) relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals; and
- (3) having the effect of stabilizing or providing certainty regarding retail electric service.¹

DP&L claims that its proposed SSR satisfies prong three (3) of 4928.143(B)(2)(d) because it would stabilize non-fuel generation rates throughout the ESP term.² The reality is, however, that throughout these proceedings, DP&L has asserted that the SSR is necessary to assure DP&L's financial integrity.³ Moreover, record evidence overwhelmingly demonstrates that DP&L's financial integrity is in jeopardy due to declining revenues in its competitive generation service which are directly related to "customer shopping and declining capacity and wholesale power prices."⁴ In other words, DP&L has already admitted that it needs an SSR to mitigate financial losses

¹ DP&L's Post-Hearing Brief, p. 10-12.

² *Id.* at 12.

³ DP&L Ex. 12 at 23.

⁴ DP&L Ex. 1 at 13, CLJ-1.

related to its competitive generation service. Additionally, despite DP&L's claim, the proposed SSR will not create stability in electric rates for consumers. To the contrary, under DP&L's proposed SSR, electric rates would increase dramatically.

1. The Commission should reject DP&L's proposed SSR because it violates Ohio's policy objective of ensuring the availability of reasonably priced retail electric service.

As stated in R.C. 4928.02(A), it is the state's policy to "ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and *reasonably priced* retail electric service." Yet, if DP&L's SSR is approved, ratepayers will suddenly be subjected to exorbitant price increases. Such exorbitant price increases would hit Ohio manufacturers especially hard due to the unique nature of the manufacturing industry. As previously indicated in the OMAEG's amended post hearing brief, an increase in the industrial electricity price by one (1) cent per kilowatt-hour is highly likely to decrease average manufacturing productivity by \$2,527 of annual gross state product per employee.⁵

Thus, because DP&L has already conceded that its proposed SSR is actually needed to mitigate losses associated with its competitive generation service and because the SSR would dramatically harm manufacturing productivity, the Commission should reject DP&L's proposal.

⁵ Dr. Iryna Lendel et al., *Moving Ohio Manufacturing Forward: Competitive Electricity Pricing*. Page ii. (2013). http://www.urban.csuohio.edu/publications/center/center_for_economic_development/CSU_MovingOhioMnfForward_2013.pdf.

B. The Commission should reject DP&L's assertion that this case is analogous to AEP-Ohio Case No. 11-346 and that the distinction between a FRR entity and RPM entity is irrelevant to establishing a reasonable ROE target.

DP&L claims that the differences between this case and the Commission's order in a previous American Electric Power Ohio ("AEP-Ohio") case are irrelevant.⁶ The OMAEG asserts, however, that AEP-Ohio's status as a Fixed Resource Requirement ("FRR") entity and DP&L's status as a RPM participant is an important material difference for the Commission to consider. FRR entities face requirements uniquely different from those imposed on RPM participants. For instance, FRR entities are obligated to fully supply their own capacity needs for a minimum of five consecutive years.⁷ Additionally, FRR entities do not enjoy the benefit of PJM's backstop auction⁸ and so must take measures to ensure that "adequate capacity resources exist within their footprint during this timeframe."⁹ Moreover, before establishing a reasonable rate of return ("ROE") in the AEP-Ohio case, the Commission first determined that as an FRR entity, AEP-Ohio was entitled to a cost-based capacity pricing in order to be adequately compensated for the capacity it supplied to CRES providers.¹⁰ Thus, the Commission's adoption of a ROE range between seven (7) percent and eleven (11) percent was predicated on the Commission's initial determination regarding the state compensation mechanism to which AEP-Ohio was entitled.¹¹ DP&L is an RPM entity and, based on the Commission's rationale in the AEP-Ohio case, would likely not be

⁶ See *supra* note 1, at 47.

⁷ 117 F.E.R.C. P61,331 ¶ 17, 2006 FERC LEXIS 2939.

⁸ *Id.*

⁹ PUCO Case No. 10-2929-EL-UNC, 298 P.U.R.4th 233, 2012 Ohio PUC LEXIS 666 *22.

¹⁰ *Id.* *55.

¹¹ *Id.* *80-81.

entitled to cost-based capacity pricing. Rather, as an RPM entity, DP&L would be entitled to RPM-based capacity pricing. It follows then that DP&L is also not automatically entitled to the seven (7) percent to eleven (11) percent ROE range.

Based on the differences between a FRR entity and an RPM entity, along with the rationale of the Commission's AEP-Ohio decision, the OMAEG believes that the Commission cannot consider the present case analogous to the AEP-Ohio proceeding nor should it grant DP&L an automatic right to obtain the ROE range provided to AEP-Ohio in that separate proceeding.

1. Because the present case is not analogous to the AEP-Ohio proceeding, DP&L cannot rely on that proceeding to support the validity of its proposed SSR.

DP&L claims that its proposed SSR should be approved because it would provide the same benefits as AEP-Ohio's Rate Stabilization Rider ("RSR") approved in the AEP-Ohio proceeding.¹² However, as has been previously demonstrated, the AEP-Ohio case and the present one are not analogous. Consequently, DP&L should not be permitted to rely on that proceeding as support for its proposed SSR. Moreover, even if the Commission finds the distinctions between the AEP-Ohio proceeding and the present case irrelevant, in which the OMAEG in no way believes it should, it is important to remember that the AEP-Ohio case is on appeal to the Supreme Court of Ohio. Consequently, that case is not yet binding.

¹² See *supra* note 1, at 12.

C. The Commission should reject DP&L's proposed SSR because DP&L's projected range of expected declining future returns on equity is speculative and unreliable.

The Commission should also reject DP&L's proposed SSR because DP&L's projected range of expected declining future returns on equity has been a moving target throughout these proceedings. As other parties to this case have aptly stated, DP&L's projected financial statements rely on assumptions and data that could not be reasonably supported by DP&L's witness.¹³ Furthermore, DP&L relies on these speculative projected financial statements in concluding that it will suffer a declining ROE over the next several years. Because both the projected financial statements and projected ROE rely on speculative assumptions and unverifiable data, the Commission should reject DP&L's requested SSR.

III. CONCLUSION

For the foregoing reasons, the OMAEG respectfully requests that the Commission adopt the positions of the OMAEG as set forth in its post hearing brief and reply brief.

Respectfully submitted on behalf of
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¹³ OEG Ex. 1 at 7:11-13.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Reply Brief of the OMA Energy Group was served upon the parties of record listed below this 5th day of June 2013 via electronic mail.



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