

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
The Dayton Power and Light Company) Case No. 12-426-EL-SSO
for Approval of Its Market Rate Offer.)

In the Matter of the Application of)
The Dayton Power and Light Company) Case No. 12-427-EL-ATA
for Approval of Revised Tariffs.)

In the Matter of the Application of)
The Dayton Power and Light Company) Case No. 12-428-EL-AAM
for Approval of Certain Accounting)
Authority.)

In the Matter of the Application of)
The Dayton Power and Light Company) Case No. 12-429-EL-WVR
For the Waiver of Certain Commission)
Rules.)

In the Matter of the Application of)
The Dayton Power and Light Company) Case No. 12-430-RDR
to Establish Tariff Riders.)

REPLY BRIEF

OF

DUKE ENERGY RETAIL SALES, LLC,

AND

DUKE ENERGY COMMERCIAL ASSET MANAGEMENT, INC.

The Dayton Power and Light Company (DP&L), through these proceedings, seeks approval from the Public Utilities Commission of Ohio (Commission) of a proposed Electric Security Plan (ESP) that fails to provide a competitively priced standard service offer and

impedes competition in Ohio’s electric generation market. The Commission should not approve the ESP as filed.

I. BACKGROUND

Duke Energy Retail Sales, LLC, (DER) is a wholly owned subsidiary of Duke Energy Corporation, a publicly traded corporation. DER provides, on a competitive retail basis, electricity and energy-related services to customers in Ohio. DER holds a certificate issued by the Commission to engage in the competitive sale of electric service. As such, it is a competitive retail electric service (CRES) supplier, as that term is defined under Ohio law.¹ DER currently serves customers in all electric service territories in Ohio, including those of AEP Ohio, Duke Energy Ohio, DP&L, and the FirstEnergy utilities – Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.²

Duke Energy Commercial Asset Management, Inc. (DECAM), through subsidiaries, is the owner and operator of approximately 3,000 MW of gas-fired generation assets, located predominantly in the PJM-market footprint. DECAM is authorized by the Federal Energy Regulatory Commission to sell energy, capacity, and related products at wholesale. DECAM is also a wholesale auction participant, competing to provide full-service requirements and other products in response to wholesale auction solicitations.

II. RETAIL MARKET IMPACTS

DP&L contends that, if the Commission orders it to implement certain requested competitive enhancements, DP&L should be burdened with none of the associated costs.³ In reaching that conclusion, DP&L relies on a number of arguments. Among those arguments is

¹ R.C. 4928.01(A)(4).

² DER Ex. 1, at pp. 2-3.

³ DP&L Initial Brief, at pg. 97.

the assertion that no Commission rule requires such enhancements.⁴ DP&L even goes so far as to state that the “Commission should conclude that DP&L is in compliance with its rules, and there is thus no basis for the Commission to order additional enhancements.”⁵ But the Commission rules are not the only place to find requirements that are placed on utilities.

Ohio Revised Code (R.C.) Section 4928.02 lays out state policies, as they relate to the competitive electric market. Several of the policies, voted into law by the Ohio General Assembly, address the importance of support for the development of a functioning marketplace, including:

- Ensuring availability of comparable retail electric services, providing customers with options they may need
- Ensuring diversity of supplies and suppliers
- Giving customers effective choices
- Encouraging innovation and market access
- Encouraging cost-effective and efficient access to information
- Recognizing the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment

There is absolutely a “basis” for the Commission to order enhancements that would benefit the competitive retail market.

Furthermore, DER notes that DP&L has not proposed that the enhancement implementation process would be managed by the CRES providers, even though DP&L asks that such providers bear the costs. It would be unreasonable for such an outcome to be considered. The entity in charge of effectuating changes controls quality, timing, and cost. If

⁴ DP&L Initial Brief, at pg. 100.

⁵ DP&L Initial Brief, at 100.

DP&L were to have such control, it must also bear at least a substantial portion of the resultant costs. Noting that DP&L's systems still do not support meaningful retail competition after more than a decade of deregulation,⁶ the Commission should not only order DP&L to bear such costs but should establish a clear time schedule for functioning changes to be in place.

Finally, if the Commission determines that any part of the expense of competitive enhancements should be borne by CRES providers, it should also address how those expenses should be shared among the providers. Because the vast majority of the switched load in DP&L's territory is served by DP&L's affiliated CRES provider, it is critical that any cost sharing be based upon actual load served. It might be easier, and thus tempting, to charge an even amount per supplier operating in the territory. But, for a supplier with only a small share of the market, such an increase in the expense of operation would likely result in a decision to exit the market.

In addition, the allocation would have to be adjusted periodically, so that new entrants to the competitive market also pay their share. Without such regular updates, the pre-existing CRES providers would carry the burden for newer providers, resulting in a competitive advantage for those new entrants.

In order for the imposition of additional costs not to have a deleterious impact on the retail market, the sharing of costs among suppliers must be done over time and must be based on the then-current market share of then-existing suppliers.

III. WHOLESALE MARKET IMPACTS

DP&L's proposed ESP also negatively – and needlessly – impacts the wholesale market in Ohio. According to DP&L, it is a “rapid” transition to market for it not to reach 100%

⁶ DER Ex. 1, *passim*.

competitive pricing for retail service until June 1, 2016, more than three years from now.⁷ And it demands this lengthy transition in spite of the fact the competitive generation service was deregulated with the passage of Senate Bill 3 in 1999.

DECAM participates in the wholesale auctions that are currently held by other utilities around the state, as do several other wholesale market participants. DP&L, by itself, is already the smallest utility service territory by load, and the amount of load proposed by DP&L to be served competitively pales in comparison to the FirstEnergy and Duke Energy Ohio utilities' auction-based loads. Without the possibility of serving a not-insubstantial load, it is reasonable to conclude that many of those wholesalers would not find it worth the cost to participate. The result, with fewer bidders, would be higher prices.

DP&L argues that it needs to serve this group of customers to support its financial integrity, but this is an illogical argument. DP&L has also proposed nonbypassable charges to support its financial integrity, and such charges result in DP&L being indifferent to the standard service offer load being served competitively.

DP&L's argument is indisputably contrary to the legislatively determined state policies.⁸

IV. CONCLUSION

DER and DECAM respectfully request that the Commission modify DP&L's proposed ESP to place the costs of retail enhancements on DP&L or, alternatively, to require allocation of any CRES provider funded enhancement costs on the basis of load served, and to require an immediate shift to 100 percent auction-based pricing for DP&L's standard service offer of competitive retail electric service.

⁷ DP&L Initial Brief, at pg. 63.

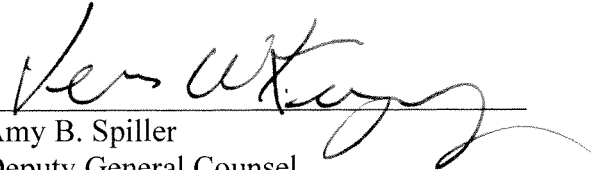
⁸ R.C. 4928.02.

Respectfully submitted,

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and

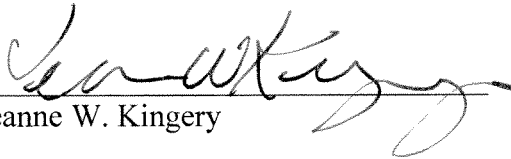
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 5th day of June, 2013, by U.S. mail, postage prepaid, or electronic mail, upon the persons listed below.


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