

**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 the 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
	:	
	:	

**RESPONSE TO APPLICATIONS FOR REHEARING SUBMITTED ON BEHALF OF
THE KROGER CO.**

I. RELEVANT PROCEDURAL POSTURE

Without reciting the procedural posture of the entire case in detail, it should be noted that the Dayton Power and Light Company (hereinafter “DP&L”) moved to extend the time allowed for responses to the various motions for rehearing filed in the instant case on October 7, 2013. The motion was granted on October 8, 2013, allowing all responses to the various motions for rehearing to be filed by October 31, 2013. By entry dated October 23, 2013, the Commission granted motions for rehearing to further consider matters raised in the various applications for rehearing submitted by The Kroger Co. (“Kroger”) and other parties. See, October 23, 2013 Entry on Rehearing at

Paragraph 12. Without wishing to needlessly add to the voluminous record in this case, Kroger submits the following brief response to the applications for rehearing submitted by DP&L as well as other parties to the case.

II. ARGUMENT

A. If the SSR is approved on rehearing, the Commission should reject DP&L's proposal to remove the conditions associated with the SSR.

As noted continuously throughout this case, DP&L claims that it is in danger of becoming financially "unstable." There are three main causes of this looming instability, according to DP&L witness Jackson, which are identified as follows: 1) anticipated marked increases in customer shopping, 2) low capacity pricing, and 3) low wholesale power prices.¹ As noted in Kroger's initial brief and the testimony of Kevin Higgins, the root cause of the increased customer shopping is DP&L's own aggressive pricing of its generation, which has made shopping for generation in DP&L's service territory increasingly attractive to DP&L's customers. This aggressive pricing strategy has allowed DP&L to recover generous returns on equity in the short-term. It was also foreseeable that these same aggressive pricing strategies might have negative long-term effects on the Company's financial health when a competitive environment exists.

In the September 24, 2013 Order, the Commission appeared to attempt to assist DP&L out of a difficult situation that was largely self-imposed by DP&L, in a way that balanced the needs of DP&L to be financially stable with the needs of DP&L's customers, while keeping in mind that DP&L should be required to take

¹ Second Revised Testimony of Craig L. Jackson, filed herein on December 2012, at page 13 at lines 6-9; also, Transcript of Proceedings, Volume I, filed herein on April 1, 2013, at page 248, lines 7-20, (cross examination of Craig L. Jackson.)

immediate steps to more effectively compete in the market. This assistance took the form of Rider SSR, which was apparently meant to aid DP&L in maintaining financial stability despite the fact that such instability was created largely by DP&L itself. Kroger and other parties argued that it is not fair or reasonable to expect shopping customers, particularly long term shopping customers, to “bail-out” DP&L from the consequences of the Company’s short-term pricing strategies.² Kroger also argued that collection of the SSR is a form of continued stranded cost recovery and is inconsistent with the stated policies of the State of Ohio, which are clearly meant to encourage competitive supply and customer choice.

The Commission may have felt that it needed to adopt a broader view. If making certain that DP&L is financially stable is good for consumers and serves the general public good, it may be rationally argued that it is not the Commission’s job to assign blame for instability. Rather the Commission should provide stability for DP&L in a manner that is fundamentally fair, and incents DP&L to take steps to increase its competitiveness so that eventually a financial stability subsidy charge is not needed in the future.

DP&L appears to believe that a bare assertion of “instability” should be enough to justify all of its financial demands, and that the Commission has no right to qualify, limit, or condition recovery of a stability subsidy in any manner.³ DP&L complains that the Commission may not condition the award of millions of dollars of rate payer funds by requiring DP&L to do, essentially, *anything*. If DP&L needs funds to remain financially stable, DP&L maintains that the Commission is legally required to permit DP&L to

² Transcript of Proceedings, Volume VII filed herein on April 9, 2013 at page 1682, lines 4-15.

³ See, DP&L application for rehearing at pages 1-6.

collect those funds from all ratepayers on a non-bypassable basis without any condition or reasonable limitation. Without the Commission's reasonably tailored conditions and limitations, permitting DP&L to recover an increased stability charge from all customers may no longer be said to serve any rational public purpose.

If it is the stated policy of the State to encourage competition, the Commission should reject DP&L's proposal to collect an unlimited and unconditioned non-bypassable stability charge. If the Commission considers such a charge to be necessary to serve the greater public good, the SSR should be reduced to historic levels, which are not insubstantial, for the period of the ESP only. Whether or not the stability charge is held to be unreasonable and redundant transition cost recovery, if any stability charge is approved, that charge will have to be based in part on anticipated DP&L's inability to thrive in a competitive environment, at least in the short term.

Further, as noted in Kroger's brief and application for rehearing, recovering a stability charge to insulate DP&L from its own aggressive pricing decisions fails to provide any reasonable or coherent rate treatment for customers generally, but is especially onerous for customers that have been shopping for several years. In effect, DP&L proposes to underwrite the future anticipated reduction in its SSO rates, and anticipated increases in shopping activity, by increasing the non-bypassable "stability" related charge to shoppers, without condition or limitation. This would be fundamentally unfair, especially as it relates to customers who shop, and have shopped for generation for an extended period.

It is highly appropriate, if the Commission finds that DP&L's proposed stability charge promotes "certainty for retail electric service," that the Commission balance

several factors in determining the appropriate level of the charges, and should condition the approval of such charge upon DP&L taking reasonable steps to make itself competitive. If the Commission determines that a "stability" charge is warranted, the charge should in fact be no greater than the current Rate Stabilization Charge ("RSC"), particularly as it applies to long-term shoppers, or those customers who have been shopping continuously for at least three (3) years. There is no evidence in this docket that these long term shopping customers impose, or will impose in the future, any greater costs on DP&L today than when the RSC was adopted.

It is also appropriate for the Commission to establish a sunset date after which individual shopping customers are no longer subject to an SSR, or other type of "stability" related charge. If DP&L and other EDUs are entitled to a stability charge notwithstanding their own failures to remain competitive and therefore "stable," there is no economic incentive for those Companies to take steps to effectively compete in the market. Companies like DP&L need not take steps to prudently prepare for competition. If DP&L is permitted to continue to collect an amount from those shopping customers so that it may remain "stable" despite its behavior, there is no incentive to improve its behaviour.

The Commission should establish sunset date of five (5) years, measured from the date of the individual customer's initiation of Competitive Retail Electric Service, as a reasonable time period for the Company to collect stability charges from any shopping customers under the circumstances set forth in DP&L's filing. In fact, the State of Ohio implemented a similar mechanism for ensuring appropriate allocation of costs incurred due to customer shopping where competitive gas choice was introduced, as noted by

hearing examiner Price.⁴ The institution of a firm sunset date will properly incent DP&L to take steps to compete in the market.

B. The rate design for Rider SSR is flawed and should be clarified by the Commission.

In its application for rehearing, DP&L requests that the Commission clarify its decision on SSR rate design.⁵ The Commission found that “the Staff’s proposed rate design, which would minimize rate impacts upon customers, should be adopted.” (Order at 26). The Ohio Energy Group also notes problems within the SSR rate design. As noted in Kroger’s application for rehearing, the rate design currently proposed for the SSR violates basic rate making principles and should be modified by the Commission to reflect a straight demand charge. The Opinion and Order correctly notes that the “underlying character” of SSR charges are demand based. The Commission states “(w)e agree with OEG that the SSR revenues should be allocated using a 1 CP demand allocation method that reflects the underlying character of the SSR charges.” (Order at 26.). While DP&L’s request for a flat customer charge may not have been ideal, particularly as applied to demand metered customers, it was not necessarily fundamentally inconsistent with the nature of the costs to be collected, which are demand related costs. For reasons not adequately or clearly explained, the Commission adopted the Staff’s proposed rate design, which is an energy charge, instead of adopting OEG’s recommendation that SSR be recovered through a demand charge for demand metered customers.

It is patently true, as OEG states in its Post Hearing Brief:

⁴ Transcript volume V11, pages 1648-1650

⁵ DP&L application for rehearing at page 14-15.

For demand metered rate classes, such as GS Secondary, Primary, Primary Substation and High Voltage classes, it is appropriate to recover 100% of the allocated SSR costs through the kW demand charge. There is no reasonable basis to recover the SSR through a combination of the customer, demand and energy charges of these rates as proposed by DP&L. These SSR costs, if approved by the Commission, are *100% demand related and it is not reasonable to recover these costs through a customer charge or an energy charge as proposed by DP&L.*"
OEG Merit Brief at 13-14 (Emphasis added.)

Staff's proposed rate design will do nothing to minimize rate impacts on customers. In fact, customers with high load factors will be unfairly and profoundly impacted by a rate design that allocates demand costs to customer classes on the basis of a 1CP demands allocation methodology, and then recovers those demand allocated costs through an energy charge. There is no rationale for recovering a charge that is 100% demand related through an energy charge. Since Kroger is in a commercial rate class, which rate class typically contributes significantly to peak demand, Kroger's rate class will be allocated a relatively substantial contribution to peak demand under a 1CP method. However, many of the customers in the commercial class do not have unfavorably low load factors, meaning that although these customers contribute significantly to peak demand, they consume comparatively meager amounts of energy on average. Low load factor customers are more expensive and less efficient to serve because of their inherently inefficient load characteristics. High load factor customers are generally cheaper to serve because of their inherent load characteristics. Since Kroger and similarly situated customers use larger amounts of energy on average than most members of the commercial rate class, Kroger and similarly situated high load factor customers will pay a disproportionately high amount of demand related charges if

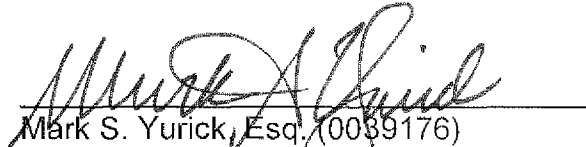
those costs are recovered through an energy charge. Customers who contribute equally to peak demand costs, but who use less energy on average, will therefore be the beneficiaries of an intra- class subsidy, to be paid by Kroger and other high load factor customers under this rate design.

The use of an energy charge to recover demand related costs is plainly discriminatory to high load factor customers, and should be rejected by the Commission on rehearing. Such a rate design does not minimize rate impacts on customers. Rather, such rate design improperly shifts costs that should fairly be paid through a demand charge for all demand metered customers disproportionately onto high load factor customers in the form of an energy charge. It is true that this rate design provides a subsidy for low load factor customers who contribute to peak demand but consume less energy on average than high load factor customers, and therefore the impact of those charges is unfairly shifted to other customers. But the effects are not “minimized,” especially from the perspective of the high load factor customer.

Instead of adopting only OEG's allocation methodology, the Commission should have adopted both OEG's allocation method and rate design. This approach would fairly align recovery method with cost. OEG urged the Commission to recover demand allocated costs through a demand charge. This rate design is fundamentally fair and sound, and recovers costs properly from the cost causer. It should be obvious that customers that contribute to peak demand equally should pay the same demand charge. There is no recognized rational or logical reason to prefer a rate design that discriminates against high load factor customers and provides low load factor customers an intra-class subsidy at the expense of consumers with a higher load factor. Adopting

a rate design that recovers SSR charges through a demand charge has the added benefit of being easy to understand - so there should be little confusion as to the rate design of SSR. It will simply and clearly follow the cost allocation methodology already adopted by the Commission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark S. Yurick", is written over a horizontal line.

Mark S. Yurick, Esq. (0039176)
(Counsel of Record)

Email: myurick@taftlaw.com

Direct Dial: (614) 334-7197

Zachary D. Kravitz (0084238)

Email: zkravitz@taftlaw.com

Direct Dial: (614) 334-6117

TAFT STETTINIUS & HOLLISTER LLP

65 East State Street, Suite 1000

Columbus, Ohio 43215-4213

(614) 221-2838 (Main Number)

(614) 221-2007 (Facsimile)

Attorneys for The Kroger Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing pleading was served October 31, 2013, via electronic mail upon the following:

yost@occ.state.oh.us
grady@occ.state.oh.us
berger@occ.state.oh.us
Thomas.mcnamee@puc.state.oh.us
Devin.parram@puc.state.oh.us
Judi.sobecki@dplinc.com
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
joliker@mwncmh.com
Arny.spiller@duke-energy.com
Jeanne.kingery@duke-energy.com
BMcMahon@emh-law.com
Elizabeth.watts@duke-energy.com
Rocco.DAscenzo@duke-energy.com
dboehm@BKLLawfirm.com
mkurtz@BKLLawfirm.com
jkyler@BKLLawfirm.com
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com
mhpetricoff@vorys.com
smhoward@vorys.com
ssherman@kdlegal.com
jhague@kdlegal.com
Stephanie.Chmiel@ThompsonHine.com
Philip.Sineneng@ThompsonHine.com
Michael.Dillard@ThompsonHine.com
matt@matthewcoxlaw.com
Bojko@carpenterlipps.com
Sechler@carpenterlipps.com
bill.wells@wpafb.af.mil

chris.thompson.2@tyndall.af.mil
gnneyer@consultbai.com
cfaruki@ficlaw.com
jsharkey@ficlaw.com
mwarnock@bricker.com
tsiwo@bricker.com
tony_long@harn.honda.com
asim_haque@ham.honda.com
haydenm@firstenergycorp.com
ilang@calfee.com
lmcbride@calfee.com
tallexander@calfee.com
jeiadwin@aep.com
gpoulos@enernoc.com
ricks@ohanet.org
cmooney2@columbus.rr.com
tobrien@bricker.com
vparisi@igsenergy.com
mswhite@igsenergy.com
Christopher.miller@icemiller.com
Gregory.dunn@icemiller.com
Chris.michael@icemiller.com
trent@theoec.org
cathy@theoec.org
joseph.clark@directenergy.com
dakutik@jonesday.com
aehaedt@jonesday.com
ejacobs@ablelaw.org
mjsatterwhite@aep.com
stnourse@aep.com


Mark S. Yurick

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/31/2013 4:49:35 PM

in

Case No(s). 12-0426-EL-SSO

Summary: Response to Applications for Rehearing Submitted on Behalf of The Kroger Co.
electronically filed by Mark Yurick on behalf of The Kroger Company