

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The)	
Dayton Power & Light Company To)	Case No. 08-1094-EL-SSO
Establish a Standard Service Offer In The)	
Form of an Electric Security Plan)	
)	
In the Matter of the Application of The)	Case No. 08-1095-EL-ATA
Dayton Power & Light Company For)	
Approval of Revised Tariffs)	
)	
In the Matter of the Application of The)	Case No. 08-1096-EL-AAM
Dayton Power & Light Company For)	
Approval of Certain Accounting Authority)	
)	
In the Matter of the Application of The)	Case No. 08-1097-EL-UNC
Dayton Power and Light Company for)	
Waiver of Certain Commission Rules)	

**COMMENTS OF HONDA OF AMERICA MFG., INC. AND THE CITY OF DAYTON
REGARDING DAYTON POWER & LIGHT COMPANY’S PROPOSED TARIFFS**

I. INTRODUCTION

On June 24, 2009, the Commission issued its Opinion and Order in this proceeding, approving a stipulation and recommendation (“Stipulation”) to establish The Dayton Power & Light Company’s (“DP&L”) first Electronic Security Plan (“ESP”) (hereinafter, “ESP I”). Thereafter, on December 19, 2012, the Commission extended ESP I until it authorized a subsequent Standard Service Offer (“SSO”). On September 4, 2013, in Case No. 12-426-EL-SSO (hereinafter, “ESP II”), the Commission approved DP&L’s proposal for a second ESP with certain modifications. However, on June 20, 2016, the Supreme Court of Ohio reversed the Commission’s decision in ESP II.¹ In response, on July 27, 2016, DP&L filed a motion and memorandum in support to withdraw its application for ESP II, while contemporaneously filing

¹ *In re The Dayton Power and Light Co.*, 2016-Ohio-3490 (June 20, 2016).

a motion in the instant proceeding to implement its previously authorized rates from ESP I. Several days later, on August 1, 2016, DP&L filed proposed tariffs which DP&L contends are consistent with the tariffs the Commission approved in the ESP I Case. Two days later, on August 3, 2016, the Attorney Examiner issued an entry providing the parties an opportunity to file comments regarding DP&L's proposed tariffs to which Honda of America Mfg., Inc. and the City of Dayton ("Joint Movants") now respond.

Joint Movants request that the Rate Stabilization Charge ("RSC") be terminated because it may only be imposed for a defined, limited duration, which DP&L has already exceeded, and because the stated justification for Rider RSC is no longer applicable given that Provider of Last Resort ("POLR") service is now provided by competitive bidding process ("CBP") auction participants.

Joint Movants also request clarification from DP&L concerning the calculation of fuel costs under the FUEL Rider both before and after the current term expires in May of 2017. To date, DP&L has not provided any rate impacts showing the consequence of its proposal on non-shopping customers. While DP&L has stated that it is going to flow through CBP auction results through the FUEL Rider in the near term, Joint Movants have concerns about what will take place after those contracts terminate. It is unclear what other costs DP&L may attempt to include in the FUEL Rider both before and after May of 2017. It is also unclear whether DP&L believes certain provisions of ESP II still apply. For example, if DP&L does not believe it is still obligated to divest its generation by December 31, 2016, since it withdrew from ESP II, it is uncertain under what authority DP&L believes that it has a continued waiver of Ohio's corporate structural separation requirements. Therefore, Joint Movants request that the Commission provide timely guidance and a mechanism to ensure a timely continuation of the CBP process

after May 2017. Finally, given the extraordinary and novel issues related to this proceeding, as well as DP&L's pending distribution and ESP III cases, Joint Movants request that the Commission timely set a procedural schedule for each of these proceedings.

1. The RSC Has Expired By Its Own Terms.

The RSC should be terminated because the Commission never intended the RSC to operate without limitation or duration for over a decade, and the stated reason for justifying the imposition of the RSC is no longer applicable under current market conditions.

As background, almost sixteen years ago, on September 3, 2003, the Commission approved a stipulation which extended DP&L's market development period to December 31, 2005, and provided for a rate stabilization plan from January 1, 2006, through December 31, 2008 ("RSP Stipulation"). The RSP Stipulation also provided for the creation and implementation of a rate stabilization surcharge ("RSS").² On April 5, 2005, DP&L filed its application to establish the RSS. On December 28, 2005, the Commission approved a modified stipulation which, among other things, established the RSC now at issue.³ Several years later, DP&L filed an application in this proceeding for a SSO in the form of an ESP (*i.e.*, ESP I). On February 24, 2009, a stipulation in the ESP I proceeding was filed by DP&L and other parties, including Honda, which the Commission ultimately approved on June 24, 2009. In the ESP I Order, the Commission set a date certain for the expiration of the RSC: December 31, 2012.⁴ Moreover, the Order stated that customers of government aggregation who elected not to pay the

² *In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for the Dayton Power and Light Company*, Case No. 02-2279-EL-ATA, et al., Opinion and Order (September 2, 2003).

³ *In re Dayton Power and Light Company*, Case No. 05-276-EL-AIR, Opinion and Order (December 28, 2005) ("2005 Order"). See *In re Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 08-1094-EL-SSO, Opinion and Order, at 3, 5 (June 24, 2009) (hereinafter, "ESP I Order") (describing the rate stabilization charge approved in the 2005 Order as the RSC).

⁴ ESP I Order, at 5, 13. See also Stipulation and Recommendation, Case No. 08-1094-EL-SSO (Feb. 24, 2009) ("The current RSS charge will continue as a nonbypassable charge through December 31, 2012.").

RSC in 2011 and 2012 would return to electric utility service at market-based rates rather than at the SSO rate under the applicable tariff.⁵ Regardless, the Commission's Order made clear that the RSC would expire at the end of 2012.

On October 5, 2012, DP&L filed an application for its second ESP. One month later, on November 7, 2012, DP&L filed a motion to essentially postpone the expiration of the RSC until the Commission issued an order on the pending ESP II Case. Intervenors in the ESP II Case, including Honda, opposed extending the RSC beyond 2012. On December 19, 2012, the Commission permitted DP&L to continue to collect revenues from the RSC but only until a subsequent SSO was approved.⁶ On September 4, 2013, the Commission approved a modified stipulation in the ESP II Case. But when the Supreme Court of Ohio reversed the Commission's decision in the ESP II Case, DP&L sought to revive ESP I, including the controversial RSC.

The aforementioned history of the RSC makes it abundantly clear that the Commission intended to set an explicit expiration on the RSC. First, in ESP I, the Commission specifically scheduled the RSC to expire on December 31, 2012. Although the Commission eventually extended the RSC on a *temporary* basis (*i.e.*, until a subsequent SSO was approved), it did so with the knowledge and expectation that a subsequent SSO would be approved, thereby ending the RSC. This was also consistent with the stated purpose of the RSC, because DP&L was still providing POLR service at that time. The Commission never intended the RSC to continue in perpetuity, which is why the Commission has *always* circumscribed its duration either by setting a specific termination date (*i.e.*, December 31, 2012) or by setting a specific terminating event (*i.e.*, until a subsequent SSO is approved). DP&L's effort to continue imposing the RSC on

⁵ *Id.*

⁶ Cite.

customers, by reverting to ESP I, contravenes the Commission's prior orders imposing a defined, limited duration on the RSC.

Further, the essential purpose behind creating the RSC militates against its unqualified extension. On November 3, 2005, DP&L entered a Stipulation and Recommendation ("2005 Stipulation") creating the RSC "to compensate DP&L for providing stabilized rates for customers and Provider of Last Resort service."⁷ This is no longer applicable, as DP&L no longer bears this risk. Instead, this risk is the responsibility of CBP auction winners. Even if this risk were not the responsibility of CBP participants, DP&L has failed to explain how Rider RSC is a qualified POLR charge under Ohio precedent.⁸ In fact, it is highly doubtful that Rider RSC could meet this requirement because: (1) it is not based on any record evidence showing the cost of providing POLR service; and, (2) POLR service is currently provided by CBP participants. Rider RSC should not be continued, just like rates for other costs which have now been collected (such as cost recovery riders) should not be continued.

Moreover, when the Commission approved the 2005 Stipulation, with modifications, the Commission held that one of the goals of rate stabilization plans was to further develop competitive markets.⁹ But the marketplace for competitive retail electric service ("CRES") suppliers is far more diverse and plentiful today than it was over a decade ago when the RSC was first created. Today, customers in the DP&L service territory have a wide range of competitive choice in their electric supplier, through any of the fifty-plus CRES providers

⁷ *In the Matter of the Application of the Dayton Power and Light Company for the Creation of a Rate Stabilization Surcharge Rider and Distribution Rate Increase*, No. 05-276-EL-AIR, Stipulation and Recommendation, at 4 (November 3, 2005).

⁸ *In re Columbus Southern*, 128 Ohio St. 3d 512, 518-19 (2011) (finding the Commission erred by failing to base POLR charge on appropriate record evidence).

⁹ 2005 Order, at 9.

available in that area.¹⁰ An active and burgeoning CRES market in DP&L's service territory demonstrates that the RSC is no longer necessary given that the market conditions are far more favorable today than they were over a decade ago. As a result, the motivating force justifying the imposition of the RSC is no longer applicable.

In sum, the Commission should prohibit DP&L from continuing to reap the financial benefits of the RSC because it was specifically designed with limited duration and because the current economic conditions under which it was created no longer justify its continuation.

2. Joint Movants Request Clarification Concerning the Calculation of Fuel Costs Under the FUEL Rider and Requests the Continuation of the Competitive Bidding Process.

There is substantial uncertainty regarding DP&L's FUEL Rider. DP&L has offered to leave the FUEL Rider in place until May 2017 and flow existing CBP auction results through the FUEL Rider.¹¹ However, there is substantial uncertainty regarding how the FUEL Rider will be calculated both before and after May 2017. As prior cases have plainly demonstrated, ESP cases like this one can last several years before any final resolution is reached. Consequently, the Joint Movants request a timely Commission process to address several open issues.

Non-shopping customers are substantially impacted by the results of the CBP process. This process has resulted in lower prices in DP&L's service territory for non-shopping customers, including residents of the City of Dayton. It is currently unclear how non-shopping generation rates will be established both before and after May 2017, and this could have a significant impact on Dayton residents. Though DP&L has said that tariffs G10-G18 "will

¹⁰ *List Of Suppliers Certified To Do Business With DP&L Customers*, Dayton Power & Light <https://www.dpandl.com/customer-service/account-center/understand-your-bill/electric-choice-overview/registered-electric-generation-suppliers/> (last visited August 10, 2016).

¹¹ DP&L Notice of Filing, p. 2.

reflect the competitive bid rate”¹² through the end of the period, it is unclear whether any other costs could be included in the FUEL Rider. It is also unclear whether there is any difference in these FUEL Rider costs and the costs for the now withdrawn Competitive Bidding Rate (G19) and Competitive Bidding True Up Rider (G30) since the FUEL Rider was, understandably, not originally drafted with the intention that it would incorporate CBP auction results. The Joint Movants believe these critical issues, which could have a substantial impact on non-shopping customers, should be examined in detail in the very near future.

Similarly, it is also unclear what process DP&L anticipates it will follow after May 2017 if the proposed ESP III is not approved at that point. The FUEL Rider was last used during a period in which DP&L provided generation service to non-shopping customers using its own generation. That issue was resolved when ESP II ordered DP&L to divest its generation assets. DP&L collected hundreds of millions of dollars to assist in this divestment. It is now unclear whether DP&L still intends to divest its generation assets. If DP&L does not intend to divest its generation in this timeframe, it remains an open question whether DP&L plans to reinstate the FUEL Rider as it existed in 2008.¹³ Further, if DP&L refuses to follow the Commission directive that it divest its generation, it is uncertain if/how DP&L can justify (or cite to any authority) that it has a continued waiver of the Commission’s corporate separation requirements. As the competitive bidding process has resulted in substantial benefits to non-shopping customers, Joint Movants believe a timely Commission proceeding is appropriate to make clear that DP&L is still obligated to divest its generation and continue to procure generation service through the CBP process after May of 2017.

¹² Notice of Filing, p. 2.

¹³ For example, in its ESP proposal DP&L proposed changing the FUEL Rider from a “least cost” methodology to a “system average cost” methodology. The Commission rejected this proposal. Case 12-426, Opinion and Order, p. 41.

3. The Commission Should Establish Procedural Schedules In These Proceedings.

Given the extraordinary and unique issues related to this proceeding, Joint Movants believe the Commission should timely set a procedural schedule for this proceeding as well as the related distribution and ESP cases in the near future.

II. CONCLUSION

WHEREFORE, Joint Movants respectfully request that the Commission, in issuing any order implementing DP&L's proposed tariffs, specifically consider and adopt its foregoing comments and concerns.

Respectfully submitted,

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ATTORNEYS FOR HONDA AND CITY OF
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CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 12th day of August, 2016. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Mark T. Keaney
One of the Attorneys for Honda and City of
Dayton

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Case No(s). 08-1094-EL-SSO, 08-1095-EL-ATA, 08-1096-EL-AAM, 08-1097-EL-UNC

Summary: Comments of Honda of America Mfg., Inc. and the City of Dayton Regarding Dayton Power & Light Company's Proposed Tariffs electronically filed by Mr. Nathaniel Trevor Alexander on behalf of Honda of America Mfg., Inc. and City of Dayton