

**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. 08-1094-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.))	Case No. 08-1095-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code Section 4905.13.))	Case No. 08-1096-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for Approval of its Amended Corporate Separation Plan.))	Case No. 08-1097-EL-UNC

**COMMENTS ON DP&L'S PROPOSED TARIFFS TO INCREASE CONSUMER RATES
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

At a time when 500,000 customers of Dayton Power and Light Company ("DP&L" or "Utility") should be receiving long overdue rate decreases, DP&L wants to increase monthly rates by about \$8 per month for residential customers.¹ Since January 1, 2014, DP&L has taken approximately \$285 million in subsidies from customers in the Dayton area--where there is financial distress and a poverty level of 35%--through its inaptly named service stability charge ("Rider SSR").

¹ See Attachment A, which shows a calculation of how DP&L is increasing consumers' rates.

But now the Supreme Court has ordered the PUCO to carry out its judgment that Rider SSR is an unlawful transition charge that customers should not be paying.² But instead of complying with the Supreme Court and reducing rates to customers, DP&L filed a plan that would increase customers' rates and allow it to continue collecting unlawful above-market transition charges from customers.

DP&L seeks to withdraw and terminate its three-year old application (under R.C. 4928.143(C)(2)(b)). DP&L filed a Motion to Withdraw Its Application, and a Motion to Implement Previously Authorized Rates ("Motions").³ To implement its unlawful plan, on August 1, 2016, DP&L filed a pleading entitled "Notice of Filing Proposed Tariffs." In that pleading DP&L claims that the Supreme Court of Ohio recently "reversed in total the Commission's decision approving the Application of The Dayton Power and Light Company ("DP&L") in Case No. 12-426-EL-SSO ["ESP II"]."⁴ Based on its claim, DP&L proposes that new tariffs should be approved that it alleges are "consistent" with previous tariffs the PUCO approved in this case ("ESP I") that were in effect before the PUCO's Order in ESP II. DP&L asks that the proposed tariffs (once approved) remain in effect until the PUCO issues a ruling in its currently pending electric security plan ("ESP") application in Case No. 16-395-EL-SSO ("ESP III").

On August 3, 2016, the Attorney Examiner issued an Entry allowing parties the opportunity to file comments on DP&L's proposed tariffs. OCC appreciates that

² See *In the Matter of the Application of the Dayton Power & Light Company for Approval of its Market Rate Offer*, Case No. 12-426-EL-SSO et al., Supreme Court mandate (July 19, 2016).

³ On August 11, 2016, OCC filed a Memorandum Contra DP&L's motions. There, OCC explained how DP&L's scheme defies the Court's ruling and is not permissible under Ohio law. Those arguments are incorporated by reference here.

⁴ *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 89-1094-EL-SSO, DP&L Notice of Filing Proposed Tariffs (Aug. 1, 2016).

opportunity to explain to the PUCO how DP&L's proposed tariffs are unreasonable and unlawful and will harm residential customers.

II. COMMENTS

- A. Because DP&L does not have the right to withdraw its application, the PUCO should outright reject DP&L's plan to increase rates to customers. The PUCO should order DP&L to stop charging consumers its \$9.85 per month service stability charge.**

As explained in OCC's Memorandum Contra DP&L's Motions, DP&L does not have the right to withdraw its ESP application.⁵ Because it has no right to do so, DP&L must maintain existing rates through December 31, 2016, minus the unlawful \$9.85 monthly service stability charge.

The Court reversed the PUCO on one issue -- the service stability charge.⁶ It is time for the PUCO to address the Court's mandate and reduce rates to DP&L's customers. OCC and the Industrial Energy Users filed a motion (that is still pending) asking the PUCO to stop the Utility from charging consumers for the service stability charge. Unfortunately, the PUCO has not ruled on that motion. Meanwhile, Dayton-area consumers continue to pay nearly \$10 per month for charges the Ohio Supreme Court rejected.⁷ The PUCO should act now and order DP&L to remove the service stability charge from customers' bills. Doing so will satisfy the Court's mandate and give DP&L customers much needed and overdue relief.

⁵ *In the Matter of the Application of the Dayton Power & Light Company for Approval of its Market Rate Offer*, Case No. 12-426-EL-SSO et al., OCC Memo Contra Motions of DP&L (Aug. 11, 2016).

⁶ There was no widespread reversal as DP&L claims. The facts do not bear out DP&L's claims. The Court's brief opinion referred to its earlier decision in the AEP Ohio case which addressed transition charges. See *In re: Application of Dayton Power & Light Co.*, Slip. Op. No. 2016-Ohio-3490, S.Ct. Case No. 2014-1505 (June 20, 2016). Otherwise, the PUCO's Opinion and Order was affirmed.

⁷ *In re: Application of Dayton Power & Light Co.*, Slip. Op. No. 2016-Ohio-3490, S.Ct. Case No. 2014-1505 (June 20, 2016).

B. If the PUCO grants DP&L's Motion to withdraw its ESP (which it should not do), the PUCO should reject DP&L's plan to charge customers a \$6.05 monthly Rate Stabilization Charge since it would allow DP&L to collect more unlawful transition charges, violating Ohio law.

Included in DP&L's plan to increase rates to customers is a proposal to charge customers a \$6.05 monthly rate stabilization charge that collects the very sort of transition charges the Ohio Supreme Court just rejected. This time DP&L calls its transition charge a "rate stabilization charge" ("RSC").

The rate stabilization charge that DP&L seeks to resurrect was paid by customers starting on January 1, 2007.⁸ The charge was originally described (in 2003) as relating to increased costs of production, physical security, and cybersecurity for power plants owned by DP&L and its affiliates.⁹ The PUCO, in Case No. 05-276-EL-AIR, adopted a rate plan for DP&L (agreed to by stipulation¹⁰) which included a provision that customers pay the rate stabilization charge through December 31, 2010. Annually, customers were to pay \$76 million under the charge.¹¹ The RSC was described in the stipulation (which the PUCO adopted) as a charge to compensate DP&L for providing stabilized rates for customers and Provider of Last Resort Service.¹²

⁸ *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*, Case No. 05-276-EL-AIR, Opinion and Order (Dec. 28, 2005)(adopting Stipulation with rate stabilization charge).

⁹ *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. 02-2779-EL-ATA, Stipulation at 13-14 , ¶IX E (May 28, 2003).

¹⁰ OCC was not a signatory party to the stipulation and opposed the stipulation.

¹¹ *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*, Case No. 05-276-EL-AIR, Opinion and Order at 11 (Dec. 28, 2005).

¹² *Id.* Stipulation and Recommendation at 5 ¶C (Nov. 3, 2005).

In a later case, Case No. 08-1094-EL-SSO, parties stipulated to extend DP&L's rate plan through December 31, 2012 and continue the RSC as a non-bypassable charge to customers.¹³ The PUCO approved that stipulation¹⁴ and for two more years customers paid \$76 million a year under the RSC charge. In total, DP&L customers have paid \$456 million to DP&L for the RSC charge through 2012.

In 2012 when DP&L filed its application for a market rate offer, it sought to continue its RSC charge but decided to change the name to an "electric service stability charge (ESSC)." In its application it noted that the ESSC charge would "equal the rate formerly charged as the rate stabilization charge."¹⁵ DP&L described the rate as compensating the company "for maintaining electric service stability for the Company and its customers."¹⁶ Later that year, DP&L withdrew its application for a market rate offer, and filed an ESP with a "service stability rider" to "ensure the Company's financial integrity."¹⁷ That proposed service stability charge was essentially no different than the two charges before it -- the ESSC charge and the RSC charge. However, the service stability charge sought to collect even more money from customers --this time \$137.5

¹³ *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 08-1094-EL-SSO, Stipulation and Recommendation at 4 (Feb. 24, 2009).

¹⁴ *Id.*, Opinion and Order (June 24, 2009).

¹⁵ *In the Matter of the Application of the Dayton Power & Light Company for Approval of its Market Rate Offer*, Case No. 12-426-EL-SSO et al., Application at 9 (Mar. 30, 2012).

¹⁶ *Id.*

¹⁷ *Id.* at 7. At the same time it proposed to withdraw the smaller RSC charge.

million per year throughout the ESP term.¹⁸ The service stability charge was the very charge the Ohio Supreme Court struck down as an unlawful transition charge.¹⁹

The RSC charge DP&L seeks to reinstate looks to be nothing more than a transition charge designed to subsidize DP&L and its power plants. The RSC was arbitrarily set at 11% of DP&L's generation rate.²⁰ That 11% RSC equated to \$76 million in revenues that consumers paid.²¹ Under the law (R.C. 4928.38, 4928.39 and 4928.40) following the market development period, DP&L is supposed to be "fully on its own in the competitive market." The market development period ended for DP&L in 2005.

The law prohibits the PUCO from approving the collection of transition revenues or "equivalent revenues" from DP&L customers after 2005. The recent Supreme Court precedent²² affirmed this principle when it struck down both AEP Ohio's and DP&L's stability charge.²³ The RSC charge gave DP&L transition revenues or equivalent revenues that were used to subsidize generation owned by it and its affiliates. Like DP&L's stability rider (SSR) that the Court just struck down, the RSC charge is an unlawful transition charge. The PUCO should revisit its earlier ruling approving the

¹⁸ *In the Matter of the Application of the Dayton Power & Light Company for Approval of its Market Rate Offer*, Case No. 12-426-EL-SSO et al., Opinion and Order at 25, citing to Confidential Testimony of C. L. Jackson at 11-13.

¹⁹ *In re: Application of Dayton Power & Light Co.*, Slip. Op. No. 2016-Ohio-3490, S.Ct. Case No. 2014-1505 (June 20, 2016).

²⁰ *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*, Case No. 05-276-EL-AIR, Direct Testimony of Ms. Seger Lawson at 4 (Nov. 10, 2005).

²¹ *Id.*, Opinion and Order at 11 (Dec. 28, 2005).

²² *In re: Application of Dayton Power & Light Co.*, Slip. Op. No. 2016-Ohio-3490, S.Ct. Case No. 2014-1505 (June 20, 2016); *In re: Application of Columbus S. Power Co.*, Slip Op. No. 2016-Ohio-1608.

²³ *Id.*

RSC, given the Court's recent rulings.²⁴ The Court's rulings justify a change in the PUCO's decision. The PUCO should reject DP&L's tariff in this respect.

Even if one were to conclude that the RSC charge is not a transition charge, but a POLR charge, the PUCO has ruled that POLR charges must be based on the cost to utilities to be the POLR and carry the risks associated with being the POLR.²⁵ The PUCO has further defined those risks to exclude migration risk, but include risks associated with standing ready to accept returning customers.²⁶ DP&L's RSC has not been shown to relate to POLR costs or the risks associated with POLR. The PUCO should respect the Court's ruling and not allow the RSC. The Court's rulings (and the PUCO's later rulings) compel the PUCO to reject Rider RSC.

C. If the PUCO grants DP&L's Motion to withdraw its ESP (which it should not do), the PUCO should not allow DP&L to charge customers an \$11.87 monthly Environmental Investment Charge since it is a transition charge and is already being collected through SSO generation rates charged to customers.

Part of DP&L's plan to increase rates to customers is based on reinstating an \$11.87 per month Environmental Investment Charge ("EIR" or "Environmental Charge"). The Environmental Charge was first approved by the PUCO in Case No. 05-276-EL-AIR, as part of continuing the Utility's earlier approved rate stabilization plan.²⁷ The EIR charge was to compensate DP&L for investments that it made in its power

²⁴ See *In re: Application of Ohio Power Co.*, 144 Ohio St.3d 1, 2015-Ohio-2056, ¶¶16, 17 (citations omitted)(affirming that the PUCO can modify earlier Orders so long as the PUCO explains the change and the new regulatory course is permissible).

²⁵ *In the Matter of the Ohio Power Company*, Case No. 08-917-EL -SSO, Opinion and Order at 40 (Mar. 18, 2009).

²⁶ *In the Matter of the Ohio Power Company*, Case No. 08-917-EL-SSO, Order on Remand at 32 (Oct. 3, 2011).

²⁷ *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*, Case No. 05-276-EL-AIR, Opinion and Order (Dec. 28, 2005).

plants to address U.S. Environmental Protection Agency regulations.²⁸ Over the objections of OCC, the PUCO approved the collection of the EIR charge starting January 1, 2007 through December 31, 2010.²⁹ The EIR charge was set at 5.4% of DP&L's generation rate on January 1, 2004, and increased an additional 5.4% each year.³⁰ At that time, it was estimated that DP&L would charge Dayton-area consumers a staggering \$374 million through the EIR during the four year period.³¹

DP&L's rate stabilization plan was extended through December 31, 2012, by agreement (approved by the PUCO) in DP&L's ESP I case.³² As part of the agreement the EIR charge continued to be collected from customers.³³ The tariffs, approved by the PUCO, confirm that the EIR charge was in effect and used to collect money from customers during 2011 and 2012.³⁴

In 2012, when DP&L filed its application for a market rate offer, it proposed to withdraw the EIR charge because "the rate has been included in the base generation rate contained in the Standard Offer Tariffs listed above."³⁵ That application was later withdrawn. But in its subsequent application (ESP II), the same proposal appeared:

²⁸ Id., Ms. Seger-Lawson Testimony in Support of Stipulation and Recommendation at 6 (Nov. 10, 2005).

²⁹ *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*, Case No. 05-276-EL-AIR, Opinion and Order (Dec. 28, 2005).

³⁰ Id. at 4.

³¹ Id., Ms. Seger-Lawson Testimony in Support of Stipulation, Attachment A (Nov. 10, 2005).

³² *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 08-1094-EL-SSO, Opinion and Order (June 24, 2009)(adopting Stipulation and Recommendation).

³³ Id., Stipulation and Recommendation at 3 ("the parties agree to extend DP&L's current rate plan through December 31, 2012, except as expressly modified herein.")(Feb. 24, 2009)).

³⁴ *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 08-1094-EL-SSO, Tariffs (June 29, 2009).

³⁵ *In the Matter of the Application of the Dayton Power & Light Company for Approval of its Market Rate Offer*, Case No. 12-426-EL-SSO et al., Application at 9 (Mar. 30, 2012).

withdraw the EIR charge "as that rate has been included in the base generation rate contained in the Standard Offer Tariffs listed above."³⁶ Ms. Seger Lawson described the proposal:

DP&L's base generation rates are fixed. Through this filing DP&L has merged its environmental investment rider into the base generation rates. The base generation rates as proposed in Tariff Sheet Nos. G10-G18 of this filing reflects the percentage of load that will be supplied by DP&L. In other words, the base generation rate for the period beginning January 1, 2013 and going through May 31, 2014 is designed to reflect 90% of DP&L's base generation rate and environmental investment rider as those charges are in place as of March 1, 2012.³⁷

The PUCO, in modifying and approving DP&L's ESP application, adopted DP&L's proposal to merge the EIR into base generation rates, referring to Ms. Seger-Lawson's testimony describing that approach.³⁸ In the tariffs filing to implement the ESP rates, DP&L withdrew the EIR charge,³⁹ and the PUCO approved the tariffs.⁴⁰

But now DP&L wants to go back to the EIR that was in place in 2012 and collect those revenues as part of its proposal to collect more money from customers. The PUCO should stop DP&L from doing this for two reasons.

First, the EIR charge is already being collected through DP&L's base generation rates, as discussed above. If the PUCO allows an additional EIR charge, it will be allowing DP&L to charge customers twice. That is unreasonable.

³⁶ Id., Application at 6 (Oct.5, 2012).

³⁷ In the *Matter of the Application of the Dayton Power & Light Company for Approval of its Market Rate Offer*, Case No. 12-426-EL-SSO et al., Direct Testimony of Ms. Seger Lawson at 10 (Mar. 30, 2012).

³⁸ *In the Matter of the Application of the Dayton Power & Light Company for Approval of its Electric Security Plan*, Case No. 12-426-EL-SSO et al., Opinion and Order at 12 (Sept. 4, 2013).

³⁹ Id., Tariffs (Nov. 15, 2013).

⁴⁰ Id., Entry (Dec. 18, 2013).

Second, charging customers for the EIR charge would be unlawful because the EIR collects the very sort of transition charges the Supreme Court just rejected. The EIR charge is a subsidy for DP&L (and its affiliates) power plants. It is intended to subsidize DP&L with consumer-funded transition revenues or equivalent revenues long after DP&L's market development period has ended (2005). But Ohio law (R.C. 4928.38, 4928.39 and 4928.40) prohibits the PUCO from approving the collection of transition revenues or "equivalent revenues" from DP&L customers after 2005. Two recent Supreme Court cases⁴¹ affirmed this principle when both AEP Ohio's and DP&L's stability charge were struck down.

The EIR charge gave DP&L transition revenues or equivalent revenues that were used as a consumer subsidy of investment in DP&L's power plants. Like DP&L's stability rider (SSR) that the Court just struck down, the EIR charge is an unlawful transition charge. The PUCO should revisit its decision approving the EIR charge. The PUCO should do so because of the Court's recent rulings on transition charges. The PUCO should reject DP&L's tariff in this respect.

And if the PUCO finds (which it should) that the EIR charge is an unlawful transition charge, based on the facts presented, the law, and the Court's holdings, it must also remove the EIR charge from the SSO rates paid by consumers. Only then will the Court's recent holdings be carried out to the benefit of customers.

⁴¹ *In re: Application of Dayton Power & Light Co.*, Slip. Op. No. 2016-Ohio-3490, S.Ct. Case No. 2014-1505 (June 20, 2016); *In re: Application of Columbus S. Power Co.*, Slip Op. No. 2016-Ohio-1608.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Maureen Willis

Maureen Willis (0020847), Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: Willis (614) 466-9567
maureen.willis@occ.ohio.gov
(will accept service via email)

CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments was electronically served via electric transmission on the persons stated below this 12th day of August 2016.

/s/ Maureen Willis
Maureen Willis
Counsel of Record

SERVICE LIST

Thomas.Lindgren@ohioattorneygeneral.gov
thomas.mcnamee@ohioattorneygeneral.gov
cfaruki@ficlaw.com
jsharkey@ficlaw.com
joliker@mwncmh.com
sam@mwncmh.com
drinebolt@aol.com
cmooney@ohiopartners.org
Ned.Ford@fuse.net
ricks@ohanet.org
wis29@yahoo.com
smhoward@vssp.com
mjsettineri@vorys.com
BarthRoyer@aol.com
Gary.A.Jeffries@dom.com
Bojko@carpenterlipps.com
sechler@carpenterlipps.com
fdarr@mwncmh.com
jlang@calfee.com
talexander@calfee.com
mkeaney@calfee.com
mswhite@igsenergy.com

Attorney General:
Gregory.Price@puc.state.oh.us

Amy.spiller@duke-energy.com
Jeanne.kingery@duke-energy.com
Elizabeth.watts@duke-energy.com
haydenm@firstenergycorp.com
mjsatterwhite@aep.com
stnourse@aep.com
judi.sobecki@dplinc.com
jbentine@cwslaw.com
mwhite@cwslaw.com
henryeckhart@aol.com
dboehm@bklawfirm.com
mkurtz@bklawfirm.com
jkyler@bklawfirm.com
Cynthia.A.Fonner@constellation.com
LGearhardt@ofbf.org
cmiller@icemiller.com
gdunn@icemiller.com
trent@theOEC.org
cathy@theoec.org
Williams.toddm@gmail.com
ejacobs@ablelaw.org
campbell@whitt-sturtevant.com
glover@whitt-sturtevant.com
whitt@whitt-sturtevant.com
myurick@taftlaw.com
stephen.chriss@wal-mart.com

Attachment A
Residential Customer Impact of DP&L Proposal

Rider Being Eliminated⁴²	Cost Per Month⁴³
Service Stability Rider	\$9.85

Riders Being Reinstated	Cost Per Month
Environmental Investment Rider	\$11.87
Rate Stability Charge	\$6.05
Total	\$17.92
Total Net Impact	\$8.07

⁴² Based on a typical residential customer using 1,000 kWh per month.

⁴³ Although DP&L proposes to eliminate the Competitive Bid True up rider (\$5.49/month), DP&L has stated that, at the end of the period the tariffs are in place, the Standard Offer Generation rates will be trued-up to the actual auction supply costs. This results in only a deferral, not a total elimination of this Rider.

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/12/2016 2:15:08 PM

in

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

Summary: Comments Comments on DP&L's Proposed Tariffs to Increase Consumer Rates by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Willis, Maureen Mrs.