

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the Dayton)	
Power and Light Company for Approval of Its)	Case No. 16-0395-EL-SSO
Electric Security Plan)	
In the Matter of the Application of the Dayton)	
Power and Light Company for Approval of)	Case No. 16-0396-EL-ATA
Revised Tariffs.)	
In the Matter of the Application of the Dayton)	
Power and Light Company for Approval of)	Case No. 16-0397-EL-AAM
Certain Accounting Authority Pursuant to)	
Ohio Rev. Code § 4905.13.)	

**DIRECT TESTIMONY OF ROY L. BOSTON
ON BEHALF OF NOBLE AMERICAS ENERGY SOLUTIONS LLC**

November 21, 2016

Noble Americas Energy Solutions LLC Exhibit No. _____

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1 **INTRODUCTION**

2 **Q.1 Please state your name and business address**

3 **A1.** My name is Roy L. Boston. My business address is 1901 Butterfield Road, Suite 660,
4 Downers Grove, Illinois 60515.

6 **Q2. By whom are you employed and in what capacity?**

7 **A2.** I am employed by Noble Americas Energy Solutions LLC as Regulatory Director.

9 **Q 3. What are your qualifications?**

10 **A 3.** I received a Bachelor of Science degree in Business Economics and Public Policy from
11 Indiana University and a Juris Doctorate degree from Southwestern University School of Law. I
12 was employed at the Illinois Commerce Commission and, after several years of service, left to
13 become Manager, State Government Affairs, for the Natural Gas Pipeline Company of America.
14 I was employed by MC2, Enron Corp., Dynegy Energy Services, and Illinois Power Company
15 prior to coming to Sempra Energy Solutions, now known as Noble Americas Energy Solutions
16 LLC (“Noble Solutions”), in 2005. My current responsibilities are to represent the regulatory and
17 legislative interests of Noble Solutions in the Midwest states, including Ohio.

19 **Q 4. Have you previously presented testimony before the Public Utilities Commission of**
20 **Ohio?**

21 **A4 .** No.

22

23

1 **PURPOSE OF TESTIMONY**

2 **Q.5. What is the purpose of your testimony?**

3 **A.5.** The purpose of my testimony is to address concerns raised by the proposal of Dayton
4 Power & Light Company (“DP&L”) to obtain a waiver to implement its proposed Transmission
5 Cost Revenue Recovery Rider – Nonbypassable (“TCRR-N”). Noble Solutions serves
6 Commercial and Industrial customers and does not market to residential and small commercial
7 customers. In Ohio, Noble Solutions primarily markets to mercantile customers and some
8 commercial customers. My testimony is directed solely to those markets that are business-to-
9 business in nature.

10
11 **TRANSMISSION COST REVENUE RECOVERY RIDER – NONBYPASSABLE**

12 **Q.6 Please describe DP&L’s TCRR-N.**

13 **A6.** DP&L seeks PUCO approval for a waiver to permit it to bill certain PJM transmission-
14 related charges that are used to provide delivery services to customers of Competitive Retail
15 Electric Service (“CRES”) providers on a non-bypassable basis. According to DP&L’s filed
16 tariff sheet T14, those charges include but are not limited to the following:

- 17
- 18 1. Network Integration Transmission Service (NITS)
 - 19 2. Schedule 1 (Scheduling, System Control and Dispatch Service)
 - 20 3. Schedule 2 (Reactive Supply and Voltage Control from Generation and Other
21 Sources Services)
 - 22 4. Schedule 6A (Black Start Service)
 - 23 5. Schedule 7 (Firm Point-To-Point Service Credits to AEP Point of Delivery)

6. Schedule 8 (Non-Firm Point-To-Point Service Credits)
7. Schedule 10-NERC (North American Electric Reliability Corporation Charge)
8. Schedule 10-REC (Reliability First Corporation Charge)
9. Schedule 10-Michigan-Ontario Interface (Phase Angle Regulators Charge)
10. Schedule 12 (Transmission Enhancement Charge)
11. Schedule 12A(b) (Incremental Capacity Transfer Rights Credit)
12. Schedule 13 (Expansion Cost Recovery Charge)
13. PJM Emergency Load Response Program – Load Response Charge Allocation
14. Part V – Generation Deactivation

The Commission first approved DP&L’s request for its TCRR in 2009 (Case No. 09-256-EL-UNC, Finding and Order and Second Finding and Order). On September 4, 2013, the Commission issued an order approving DP&L’s Electric Service Plan (“ESP”), which included an application to bifurcate the TCRR into two riders: Transmission Cost Recovery Rider – Bypassable (“TCRR-B”) and Transmission Cost Recovery Rider – Non-bypassable (“TCRR-N”) (Case No. 12-426-EL-SSO, Finding and Order, at 36). On March 14, 2014, DP&L filed an application to update TCRR-N to recover certain transmission-related costs charged by PJM, such as Network Integrated Transmission Service. Then, on May 1, 2014, DP&L filed an amended application to update TCRR-B and TCRR-N to recover through TCRR-N any deferral amounts in excess of 10% of the base costs of TCRR-B. In its Finding and Order dated March __, 2014, the Commission rejected DP&L’s application to shift the requested deferral amounts from TCRR-B to TCRR-N. In the current case, DP&L has requested a waiver of Rule 4901:1-36-04(B) of the Ohio Administrative Code (“OAC”), which requires that transmission costs be

1 recovered through a rider on a bypassable basis. If DP&L does not receive Commission approval
2 for this waiver, any transmission costs recovered by the Company through a rider must remain
3 bypassable.

4
5 **Q.7 Do you support the Commission's approval of the requested waiver?**

6 **A7.** No.

7
8 **Q.8 Please explain why you do not support this waiver application.**

9 **A.8** Noble Solutions believes that this waiver would directly and materially interfere with
10 Ohio retail customers' choice and ability to secure transmission services directly from or through
11 a CRES provider under the terms set forth in the PJM Open Access Transmission Tariff
12 ("OATT"). The type of non-bypassable surcharge implemented by TCRR-N is inconsistent with
13 fostering competition in the wholesale and retail power markets because it prevents CRES
14 providers from managing these charges for their retail customers. Such effects are unduly
15 discriminatory because the TCRR-N would make it impossible for CRES providers, such as
16 Noble Solutions, to continue to offer their existing products that manage such costs and to
17 compete in the market with the incumbent utility. Competition depends on a Load Serving
18 Entity's ability to offer innovative products and services for customers in the retail electric
19 market. Part of these creative products includes CRES providers' ability to model and forecast
20 PJM transmission charges and then to offer customers the option of having those included in a
21 bundled price. In contrast, if DP&L is permitted to bill these charges, those will simply be
22 passed through to customers without customers having the choice of whether to have those

1 managed by their supplier. Therefore, Noble Solutions supports the Commission's grant of relief
2 sought under the motion filed by the Industrial Energy Users ("IEU") to deny the waiver request.

3
4 **Q9. What would be the result if the Commission approved DP&L's request for the**
5 **waiver?**

6 **A.9** Non-bypassable charges, such as TCRR-N, circumvent and ignore existing market
7 structures by replacing the FERC-authorized PJM rate structures for such charges with a
8 different rate structure and charges and shift the risk of fluctuations in such charges to customers,
9 depriving them of specific benefits that they sought by entering into their supplier product
10 agreements in the first place. If the Commission grants DP&L's waiver request, customers will
11 not have the right under PJM's OATT to choose to be billed directly by PJM or indirectly
12 through their CRES providers for those PJM transmission charges included in DP&L's TCRR-N.
13 There are several other reasons why the Commission should deny this waiver application, on
14 which I elaborate below, but the most fundamental reason is that PJM transmission costs related
15 to load served by CRES providers should remain the billing responsibility of each CRES
16 provider. Noble Solutions believes that it is the role of CRES providers to manage such costs for
17 their customer base and to include appropriate charges for such service. Without such flexibility,
18 there can be no truly competitive retail electricity market and customers would suffer.

19
20 **Q.10 Can you provide an example of how a CRES provider may help create value for its**
21 **customer through managing PJM transmission charges?**

22 **A.10** Yes. In the case of the School District of Philadelphia, Noble Solutions created a product
23 that allowed that customer to save an estimated \$1.2 million per year beginning May 2016. This

1 specific product relates to the customer being able to manage its usage during peak times on the
2 system to control its demand-based charges for the following year. Since PJM bases Network
3 Capacity and Network Transmission requirements on each customer's usage during those peak
4 times, the School District was able to reduce its usage during that time, thereby reducing its Peak
5 Load Contribution and its Network Service Peak Load Obligation. In contrast, if that customer
6 were simply billed PJM transmission charges as a non-bypassable demand-based charge, the
7 customer would not have been able to manage its Peak Load Contribution and Network Peak
8 Load Obligations and would have paid \$1.2 million more annually than it does when it is billed
9 these charges directly by PJM or through its supplier of choice. Here is a link to a news release
10 about this specific example:

11 <http://finance.yahoo.com/news/noble-americas-energy-solutions-helped-200700689.html>

12
13
14 **Q.11 You mentioned that the non-bypassable TCRR-N would result in undue**
15 **discrimination because it would make it harder for your firm to compete. Can you**
16 **elaborate?**

17 **A.11** Permitting transmission charges to be billed through a non-bypassable rider favors
18 suppliers that do not want to manage such charges for their customers. In contrast, Noble
19 Solutions has, at considerable expense, invested in sophisticated systems that enable it to manage
20 PJM transmission charges on behalf of its customers. In sum, the non-bypassability of TCRR-N
21 benefits the business plans of certain, less conscientious CRES providers—to the detriment of
22 their customers—while effectively punishing other, more conscientious CRES providers and
23 their customers. Customers are best served when they have the flexibility to select CRES

1 providers that can offer them competitive products that manage the risk associated with these
2 transmission charges for them.

3
4 **Q.12 Do you oppose DP&L's TCRR-B?**

5 **A.12** No. My understanding of TCRR-B is that it would allow DP&L to bill its default service
6 customers for transmission charges related to their delivery service. Of course, the nature of this
7 rider is that it is bypassable for customers who switch from Standard Service Offer (SSO) service
8 to competitive service. For that reason, it appears to be a reasonable approach for DP&L to bill
9 directly for these fully bundled regulated services.

10
11 **Q.13 Does DP&L's TCRR-N cover all PJM transmission charges needed by CRES**
12 **providers to serve retail electric load?**

13 **A 13** No. DP&L arbitrarily distinguished between certain charges to include in TCRR-N and
14 those to be billed by PJM directly to either the customer or the customer's CRES provider.

15
16 **Q.14 What is the distinction between those transmission charges included in TCRR-N**
17 **and those to be directly billed by PJM to either the customer or its CRES provider?**

18 **A.14** The distinction drawn by DP&L between PJM charges that are to be billed through its
19 TCRR-N and those that are not lies in whether the former charges are "non-market-based." In
20 testimony provided in support of TCRR-N, DP&L's witness Claire Hale stated that "[DP&L]
21 also proposes to recover RTEP and other non-market-based costs via this rider" (Case No. 12-
22 X426-EL-SSO, *et al.*, Testimony of Claire Hale, lines 9 and 10). Significantly, she does not
23 articulate why the charges selected are "non-market based" while the others are not, much less

1 whether that distinction warrants impeding customers from choosing whether to be billed for
2 them directly by PJM or through an intermediary, such as their CRES provider, as allowed under
3 the PJM OATT. It is not clear what this label means in practical terms and, even if it is
4 ascertainable, whether making such a distinction warrants permission from the Commission for
5 DP&L to depart from the clear provisions of the PJM OATT.

6 PJM's OATT permits customers to be billed for PJM charges related to their service
7 either directly from PJM or indirectly through their competitive supplier. In this regard, any
8 distinction between "market-based" PJM charges and "non-market-based" PJM charges is
9 artificial and should be rejected; no PJM transmission charges attributable to load served by
10 CRES providers should be billed by the incumbent utility.

11
12 **Q.15 Do you have specific examples, drawn from the 14 PJM transmission-related**
13 **charges listed above for inclusion in TCRR-N, that show that such charges are improper**
14 **for a non-bypassable rider?**

15 **A.15** Perhaps the clearest example is the charge for Network Integrated Transmission Service
16 (NITS). NITS is the transmission service purchased by either a customer or a generation owner
17 to deliver electricity from its source to another location. Typically, that other location is the retail
18 customer. The PJM rate structure for NITS set forth in the PJM OATT is on a 1 coincident peak
19 (1CP) basis. This means that, annually, PJM selects its peak day and each customer's individual
20 pro-rata share of the total peak usage is calculated at that time, based upon the customer's usage
21 coincident with the PJM peak. This pro-rata share determines the allocation of total NITS
22 charges over the customer base. Comparatively speaking, if a NITS customer has a high load

1 factor, that customer benefits from NITS being charged on a 1CP basis, whereas a customer with
2 a comparatively low load factor would pay more under the 1CP rate structure.

3 In contrast, DP&L bills NITS for CRES provider load under its TCRR-N, but the
4 collection of these revenues does not use the 1CP rate structure. For DP&L's Demand Metered
5 customers, DP&L bases its NITS revenue collection on customer "billing demand." Billing
6 demand is determined as the greatest 75% of off-peak demand during the billing month, 100% of
7 on-peak demand during the billing month, or the higher of on- or off-peak demand during
8 specific months over the previous 11-month period (Tariff Sheet Nos. D17 through D25).
9 Application of these DP&L billing determinants clearly provides a different result in the level of
10 NITS charges paid to DP&L through TCRR-N for NITS with respect to the differing load factors
11 of its customers. Simply put, on balance, high-load-factor customers pay more for NITS than
12 they would under a 1CP rate structure, and customers with lower load factors under-pay for
13 NITS.

14 A customer's ability to manage its NITS costs enables the customer and supplier to
15 manage their load obligations effectively and allows for further development of product and
16 service offerings in the marketplace. Implementation of non-bypassable riders, such as TCRR-
17 N, requires suppliers to revise their customer contracts on the date of the implemented change to
18 prevent double collection of costs.

19 I would note that many large commercial and industrial customers are often willing to
20 pay a risk premium to their CRES provider to avoid market volatility and changes to PJM
21 transmission charge levels, but the implementation of TCRR-N removes that option because
22 DP&L charges the same rate to all customers.

1 **Q16. Based on your NITS example above, what observation can you make about the**
2 **propriety of DP&L's TCRR-N and its billing demand-based rate structure?**

3 **A.16** Under the Federal Power Act, authority over wholesale sales of electricity and interstate
4 transmission belongs solely to the Federal Energy Regulatory Commission (FERC). For NITS,
5 1CP is the rate structure proposed by PJM in its OATT and subsequently approved by FERC
6 under the rate authority granted by the FPA to FERC. Therefore, I can conclude only that
7 DP&L's billing demand-based rate structure is inconsistent with the rate structure approved by
8 FERC. Based on this inconsistency, the state rate not only is unjust and unreasonable but also
9 may be unlawful. However, I must emphasize that I am not providing a legal opinion on that last
10 point and will leave the question of legality to the lawyers to argue. I would simply conclude that
11 NITS and the other PJM transmission-related charges should not be billed by DP&L on a non-
12 bypassable basis.

13
14 **Q.17 Can you give additional examples of why it is inappropriate for PJM transmission**
15 **charges to be billed by DP&L on a non-bypassable basis?**

16 **A.17** Yes. Like NITS, other PJM transmission services such as Reactive Supply and Voltage
17 Control (PJM Schedule 2), Black Start Service (PJM Schedule 6A), and Transmission
18 Enhancement Charge (PJM Schedule 12) are all allocated on a 1CP basis. All of the reasons I
19 have raised in relation to NITS and why it is inappropriate for that charge to be billed on a basis
20 different from the FERC-approved 1CP basis apply to these three services specifically. From a
21 general policy perspective, CRES providers should be the entities to manage all PJM
22 transmission charges for their competitively served customers.

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RECOMMENDATION AND CONCLUSION

Q.18 What recommendation do you have for the Commission with respect to DP&L’s request for a waiver to allow TCRR-N to continue to bill certain PJM charges directly to electricity consumers?

A.18 I recommend that the Commission reject DP&L’s waiver request for TCRR-N as unjust, unreasonable, and inconsistent not only with federal regulations but also with sound public policy.

Q.19. Does this conclude your testimony?

A.19. Yes.

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Certain Accounting Authority Pursuant to)
Ohio Rev. Code § 4905.13.)

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the *Direct Testimony of Roy L. Boston*, filed on behalf of Noble Americas Energy Solutions, LLC, was served via electronic transmission to the persons listed below this 21st day of November 2016.

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Summary: Testimony Testimony of Roy L. Boston electronically filed by Mr. Justin M Dortch on behalf of Noble Americas Energy Solutions, LLC