

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Dayton Power & Light Company for)	Case No. 16-0395-EL-SSO
Approval of Its Electric Security Plan.)	

In the Matter of the Application of The)	
Dayton Power & Light Company for)	Case No. 16-0396-EL-ATA
Approval of Revised Tariffs.)	

In the Matter of the Application of The)	
Dayton Power & Light Company for)	
Approval of Certain Accounting Authority)	Case No. 16-0397-EL-AAM
Pursuant to Ohio Rev. Code § 4905.13.)	

**MEMORANDUM CONTRA
TO THE INDUSTRIAL ENERGY USERS-OHIO’S MOTION TO DISMISS, IN PART**

The Retail Energy Supply Association (“RESA”)¹ hereby opposes the pending request from the Industrial Energy Users-Ohio (“IEU”) to dismiss outright the Transmission Cost Recovery Rider – Nonbypassable (“TCRR-N”) proposal contained in the amended third electric security plan (“ESP III”) filed by The Dayton Power and Light Company (“DP&L”). IEU also seeks an up-front order from the Commission to require DP&L to propose a bypassable rider for the recovery of all transmission costs. Additionally, IEU moved to dismiss five other rider proposals in the amended ESP III proposal. RESA takes no position at this time on those other pending IEU requests and only addresses IEU’s motion as it relates to the recovery mechanism for transmission costs.

¹ The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

The TCRR-N proposal should not be dismissed at this time; nor should DP&L be required to propose a new bypassable rider at this time for several reasons. First, IEU's dismissal/re-filing request is premature – it is asking for a substantive ruling before DP&L and other parties have the opportunity to present their evidence and arguments about the TCRR-N proposal. Second, IEU's request ignores that the TCRR-N is an existing rider that has been authorized by the Commission. Third, IEU's request would be harmful to the competitive marketplace.

A. IEU's request to dismiss the TCRR-N proposal is premature.

IEU claims that judicial economy and preventing a “waste of resources” warrant Commission action now to reject the TCRR-N proposal.² IEU has long opposed the TCRR-N and other utilities' similar riders, and this is another attempt by IEU to eliminate the mechanism by which non-market-based transmission costs are recovered. IEU's request would remove the TCRR-N proposal from consideration before hearing. In other words, the parties would have no opportunity to present their evidence about the TCRR-N proposal or present their full arguments based on that evidence. Importantly, dismissal of the TCRR-N proposal at this time would preclude all interested parties from presenting evidence and arguments in this proceeding on the issue. IEU's motion to dismiss the TCRR-N is premature.

B. The TCRR-N proposal should not be dismissed at this time because nothing has changed to warrant a revamping of the recovery of transmission costs.

IEU claims that the TCRR-N proposal is unlawful and cannot be authorized.³ IEU makes this claim even though DP&L has a TCRR-N rider in place now and its TCRR-N proposal in this proceeding is a *continuation* of that existing TCRR-N.⁴ The existing TCRR-N was established

² IEU Motion at 2.

³ IEU Motion at 2,

⁴ IEU Motion at 13.

by the Commission in DP&L's ESP II proceeding.⁵ It was continued when the ESP II was terminated earlier this year.⁶ Nothing has occurred since the Commission approved the TCRR-N – and IEU cites to no intervening event – that justifies an outright rejection of the proposal before hearing, or for the Commission to direct DP&L to propose a bypassable transmission rider for its ESP III. IEU is raising legal arguments against the TCRR-N, but the Commission has considered and rejected IEU's position against such riders in the past.⁷ There is no reason for the Commission to conclude, at this time, that DP&L cannot carry its burden of proof regarding the TCRR-N proposal, which is the basis cited by IEU upon which to dismiss the TCRR-N proposal, or to require the ESP III to include a bypassable transmission rider proposal.

C. A ruling on the TCRR-N proposal should not cause harm to the competitive retail electric service market.

The Commission was persuaded, when it established the TCRR-N, that bifurcating the TCRR into bypassable and non-bypassable riders would more accurately reflect how transmission costs are billed to customers.⁸ This is because the TCRR-N collects non-market-based transmission costs on a flow-through basis, leaving the market-based transmission costs to be recovered by the competitive retail electric service providers. IEU's request to dismiss the TCRR-N proposal and require a bypassable TCRR will revamp collection of non-market-based

⁵ *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case Nos. 12-426-EL-SSO et al, Opinion and Order at 36 (September 4, 2013) and Second Entry on Rehearing at 25. While that decision was reversed by the Supreme Court of Ohio, the reversal was based on completely separate issue. *In re Application of Dayton Power & Light Co.*, Slip Opinion No. 2016-Ohio-3490 (June 30, 2016).

⁶ *DP&L*, Case No. 12-426-EL-SSO, *supra*, Motion to Withdraw its Application (July 27, 2016) and Finding and Order (August 26, 2016).

⁷ *See, e.g., DP&L, supra*, Case No. 12-426-EL-SSO et al., Opinion and Order at 36 and Entry on Rehearing at 25; *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO et al, Opinion and Order at 67-68 (February 25, 2015) and Second Entry on Rehearing at 31-31 (May 28, 2015).

⁸ *DP&L*, Case No. 12-426-EL-SSO, *supra*, Opinion and Order at 36 (September 4, 2013) and Second Entry on Rehearing at 25.

transmission costs – upsetting and negatively interfering with existing customer contracts, existing prices and customer relationships.

In addition, the Commission can avoid the negative impacts to the competitive retail marketplace and the market participants by maintaining certainty as to cost components, including transmission, in any order the Commission issues in the matters at bar (after a full deliberation of evidence and arguments).

The Commission recently emphasized the importance of not harming the competitive market from changes in the electric security plan:⁹

[T]he Commission finds that DP&L’s proposed tariffs should be approved as it relates to honoring existing contracts with winning competitive bid suppliers and maintaining current PJM obligations for all suppliers. This will maintain the integrity of the competitive bid process and allow non-shopping customers to continue to benefit from market-based rates.

That rationale should continue to apply in this proceeding as well. The Commission should protect and ensure certainty in the competitive retail marketplace. IEU has presented nothing in its motion to warrant harming the competitive retail electric market.

D. Conclusion

The Commission should not grant IEU’s motion to dismiss the TCRR-N or grant its request to require DP&L to propose a bypassable transmission rider. To dismiss the TCRR-N proposal at this time and require a new transmission rider proposal would prematurely decide certain issues, revamp the recovery of transmission costs without justification, and harm the

⁹ *In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case No. 08-1094-EL-SSO, et al., Finding and Order at ¶ 21 (August 24, 2016).

competitive retail electric market. For all of these reasons, IEU's motion should be denied as to the TCRR-N.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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Case No(s). 16-0395-EL-SSO, 16-0396-EL-ATA, 16-0397-EL-AAM

Summary: Memorandum Contra to IEU Motion to Dismiss, In Part electronically filed by Mr. Michael J. Settineri on behalf of Retail Energy Supply Association