BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company to Increase its Rates for Electric Distribution.	))))	Case No. 15-1830-EL-AIR
In the Matter of the Application of The Dayton Power and Light Company for Accounting Authority.	))))	Case No. 15-1831-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.	)))	Case No. 15-1832-EL-ATA

OBJECTIONS TO THE STAFF REPORT SUBMITTED BY THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP

I. Introduction

On October 30, 2015, the Dayton Power and Light Company (DP&L) filed a notice of intent to file an application to increase its electric distribution rates in its service area.[1] On November 18, 2015, the Public Utilities Commission of Ohio (Commission) granted DP&L a waiver of the requirement to file certain documents required by the Standard Filing Requirements and ordered that the test period begin June 1, 2015, and end on May 30, 2016, and set the date certain as September 30, 2015.[2] On November 30, 2015, DP&L filed its application to increase its electric distribution rates.[3] The Staff of the Commission (Staff) filed its Staff Report of Investigation (Staff Report) in the above-captioned proceeding on March 12, 2018.[4]

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1 Notice of The Dayton Power & Light Company's Intent to File an Application for an Increase in Rates (October 30, 2015).

2 Entry at 3 (November 18, 2015).

3 Application of The Dayton Power and Light Company for an Increase in its Electric Distribution Rates at 1 (November 30, 2015) (Application).

4 Staff Report (March 12, 2018).

The Ohio Manufacturers' Association Energy Group (OMAEG) filed a motion to intervene in this case on November 25, 2015.[5] Pursuant to R.C. 4909.19, and Ohio Adm. Code 4901-1-28, OMAEG hereby respectfully submits its objections to the Staff Report. OMAEG reserves the right to supplement or modify these objections in the event that Staff makes additional findings, conclusions, or recommendations with respect to the Staff Report. OMAEG also reserves the right to respond—either in support or opposition—to objections or other issues raised by other parties in these proceedings.

II. Objections

A. Staff's Revenue Requirement Recommendation

OMAEG objects to Staff's recommendation for an unjust and unreasonable revenue increase for DP&L of between $23.2 million and $28.1 million.[6] This recommendation equates to an increase of between 10.58% and 12.8% over the test year operating revenue.[7] Specifically, OMAEG objects to Staff's recommended rate of return of between 7.33% and 7.82% and recommended return on equity of 9.59% to 10.61%[8] because Staff failed to account for the reduced risk to DP&L as the sole provider of electric distribution service within its service territory and as the recipient of extensive, guaranteed cost recovery through the numerous non-bypassable riders that it charges to customers.

DP&L is the exclusive provider of electric distribution service within its service territory, facing no competition from other electric distribution utilities. Moreover, in Case Nos. 16-395-EL-SSO, et al., DP&L's most recent ESP proceeding, the Commission approved a number of

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5 See Motion to Intervene of the Ohio Manufacturers' Association Energy Group (November 25, 2015).

6 Staff Report at 6.

7 Id.

8 Id. at 18-19.

riders that guarantee DP&L full and timely recovery for many of its costs. For instance, the Commission approved a Regulatory Compliance Rider (RCR) to recover costs for its Consumer Education Campaign, its Retail Settlement System, its Green Pricing Program, Generation Separation, and Bill Format Redesign,[9] a placeholder Storm Cost Recovery Rider (SCRR) under which DP&L can apply to recover costs associated with major storms,[10] an Uncollectible Rider to recover uncollectible expense,[11] a Distribution Modernization Rider (DMR) that collects $105 million in revenue per year for the purpose of paying interest on debt, making discretionary debt prepayments, and positioning DP&L to make capital investments to modernize and/or maintain transmission and distribution infrastructure (with those revenues excluded from the Significantly Excessive Earnings Test),[12] and a Distribution Investment Rider (DIR) which the Commission approved to be initially set at zero and through which Staff now proposes to allow DP&L to collect over $175 million from customers by 2023.[13]

These Commission-approved riders effectively eliminate DP&L's risk of recovery for many costs associated with its distribution system by ensuring that the Company is able to recover its dollar-for-dollar costs on a timely basis. The substantial risk mitigation that these riders provide obviates the need for the Commission to adopt the excessive rate of return that Staff recommends. DP&L, having already secured guaranteed recovery from customers for many of its costs, does not also require a 7.33%-7.82% rate of return that results in a $23.2

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[9] See *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, et al.*, Case No. 16-395-EL-SSO, et al., Opinion and Order at 12 (October 20, 2017) (DP&L ESP III Order).

[10] Id. at 13.

[11] Id. at 14.

[12] Id. at 6-7.

[13] Id. at 7; Staff Report at 9-10.

million-$28.1 million increase in distribution rates. At a minimum, Staff should have recommended adoption of a rate of return at the low end of the range.

B. Impact of the Tax Cuts and Jobs Act of 2017

On December 20, 2017, the United States Congress enacted the Tax Cuts and Jobs Act of 2017 (TCJA). Among other changes to the federal tax law, the TCJA reduced the corporate income tax rate from 35% to 21%, thus significantly reducing DP&L's federal tax burden. The Commission recognized that enactment of the TCJA must be addressed in rates charged to customers and opened the Commission Investigation into the issue in Case No. 18-47-AU-COI.[14] The TCJA has already gone into effect. Yet, Staff did not account for the TCJA in drafting its recommendations for its Staff Report filed in this matter.[15] Therefore, OMAEG objects to Staff's recommendation for an unjust and unreasonable revenue increase for DP&L of between $23.2 million and $28.1 million,[16] which does not incorporate federal tax law changes.

Under established Ohio law, the Commission may not disregard the change in federal tax law when setting DP&L's distribution base rates in this proceeding. The Supreme Court of Ohio, in *East Ohio Gas Co. v. Public Utilities Commission* (*Eat Ohio Gas*), has held that it is the Commission's duty to consider changes in tax laws that occur after the test period of a pending rate case.[17] Since the Supreme Court's decision in *East Ohio Gas*, the Commission has held that an approach to a pending rate case that does not fully account for the new tax rates "misses the point" because, in a rate case, "rates are being set prospectively."[18]

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[14] See *In the Matter of the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Case No. 18-47-AU-COI, Entry (January 10, 2018).

[15] Staff Report at 2; see also Staff Report, Schedule C-4

[16] Staff Report at 6.

[17] See *East Ohio Gas Co. v. Public Utilities Commission*, 133 Ohio St. 212 (1938).

[18] *In re Application of the Toledo Edison Company for an Increase in Rates for Electric Service*, Case No. 86-2026-EL-AIR, Entry on Rehearing (December 16, 1987).

Although Staff states that the Staff Report is subject to the outcome of the investigation in Case No. 18-47-AU-COI,[19] accounting for the TCJA would be a more sound approach to ensure that customers timely receive the benefits of the TCJA to which they are entitled from DP&L. It is possible that this proceeding will be concluded prior to the resolution of the Commission's investigation into the effects of the TCJA, and, as OMAEG noted in pleadings filed in the Commission's tax investigation proceeding, a utility that has its rates set based on an outdated federal tax law could claim that Ohio law prevents them from implementing the new tax rates under the TCJA until its next rate case because of retroactive ratemaking or the filed rate doctrine.[20] DP&L, collectively with the other electric distribution utilities, has already made such claims.[21]

OMAEG understands that DP&L was not paying the reduced or modified tax rates under the TCJA during the test period that preceded Staff's investigation. However, DP&L will be paying the reduced or modified taxes under the TCJA when the new distribution rates go into effect, so the Commission should not approve any rates or an increase in rates based on a revenue requirement that does not fully account for the TCJA. OMAEG objects to the Staff Report as it failed to require that DP&L's distribution rates incorporate the modifications imposed by the TCJA in this case. The fact of the matter is that DP&L saw a 40% reduction in its federal corporate income tax as a result of the TCJA. Staff should have accounted for that fact in its Staff Report that recommends a revenue increase to be paid by DP&L customers.

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[19] Staff Report at 2.

[20] See *In the Matter of the Commission's Investigation of the Financial Impact of the tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Case No. 18-47-AU-COI (PUCO Tax Investigation), Reply Comments of the Ohio Manufacturers' Association Energy Group at 10-11 (March 7, 2018).

[21] PUCO Tax Investigation, Joint Application for Rehearing of Ohio Power Company, Ohio Edison Company, The Dayton Power and Light Company, Duke Energy Ohio, Inc., The Cleveland Electric Illuminating Company, and the Toledo Edison Company at 7, 10-11 (February 9, 2018).

C. Rate of Return

OMAEG objects to Staff's calculation of DP&L's rate of return and cost of common equity. In its Application, DP&L submitted a hypothetical cost of debt, stating in testimony that the actual cost of debt has been distorted due to other factors.[22] Rather than determining an actual embedded cost of debt for DP&L as required by R.C. 4909.15,[23] Staff recommended adopting the hypothetical cost of debt submitted by DP&L's witness, Jeffrey MacKay.[24] In calculating the Rate of Return, the Commission, Staff, and the Company should be using the actual embedded cost of debt, and not a hypothetical cost of debt based on the average cost of debt in other domestic electric utility rate cases over the past three years.[25] At the very least, Staff should have conducted its own separate analysis of an appropriate cost of debt rather than simply comparing the number submitted by DP&L to other utilities and accepting DP&L's number because it "was within ten basis points of both the mean and the median of those cases" to which Staff compared DP&L's figure.[26]

As such, OMAEG objects both to the use of a hypothetical cost of debt, and, assuming that a hypothetical number should be used, the deference that Staff afforded to DP&L's calculation.

D. Distribution Investment Rider

OMAEG objects to the establishment of the Distribution Investment Rider (DIR) rate, effective upon approval of the proposed distribution rate increase. DP&L requested this rider in both its ESP III and in this proceeding. The DIR was established in the ESP III case and set at

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[22] See testimony of Jeffrey K. MacKay at 10 (November 30, 2015).

[23] R.C. 4909.15(E)(2)(a) ("Including a fair and reasonable rate of return determined by the commission with reference to a cost of debt equal to the actual embedded cost of debt of such public utility").

[24] Staff Report at 18.

[25] Id.

[26] Id.

zero.[27] In The ESP case, the Commission determined that recovery of the revenue requirement through the DIR will be determined in the distribution rate case proceeding and that all other issues related to the DIR would also be resolved in this case.[28] OMAEG objects to several of Staff's recommendations regarding the DIR. Namely, OMAEG objects to the determination that DP&L be permitted to immediately collect revenue from customers under the DIR, the level of the revenue caps, the lack of customer protections regarding audits of the DIR, the term of the DIR, and the date by which DP&L must file its next distribution rate case application.

First, OMAEG objects to the immediate collection of any funds under the DIR. Staff's recommendation to implement the DIR *in this proceeding* through October 31, 2023, or November 1, 2022 if a rate case application is not filed by October 31, 2022, is inconsistent with the statutory framework governing an application to increase electric distribution rates pursuant to R.C. 4909.18 and the fixation of those rates.[29] The purpose of a distribution rate case is to set base rates paid by customers going forward. Under R.C. 4909.18, when an electric utility submits an application to increase rates, it must submit a "complete operating statement *of its last fiscal year*, showing in detail all its receipts, revenues, and incomes from all sources, all of its operating costs and other expenditures, and any analysis such public utility deems applicable to the matter referred to in said application" (emphasis added). Thus, DP&L's expenses included in its DIR proposal should already be incorporated in the base rates it will collect after this case is resolved. It is therefore unnecessary to impose additional costs on DP&L customers through the DIR at this time. The fact that DP&L's rate case has been pending for an unusual amount of time should not create a burden for customers.

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[27] ESP III Order at 7.

[28] Id.

[29] See R.C. 4909.15.

Second, the revenue caps recommended by Staff are excessive. As an initial matter, like the rest of the Staff Report, it appears that the DIR caps do not account for the TCJA, as discussed above. Staff is proposing that DP&L be allowed to collect revenue from customers without considering the fact that DP&L is now paying a lower tax rate than the one used to calculate the revenue caps in the first place. Moreover, Staff also recommends a rate of return that, as discussed above, is not calculated by using DP&L's actual cost of debt but rather a hypothetical figure. Staff should have accounted for these realities and advocated for lower caps as less revenue is needed to recover the same expenditures.

Third, OMAEG objects to Staff's recommendation regarding future audits of the DIR and the failure to recommend incorporating language regarding refunds. Staff recommends that the DIR be subjected to an annual compliance audit by an independent auditor.[30] While OMAEG agrees that any costs collected under the DIR should be audited, OMAEG objects that Staff did not include any recommendation that the tariffs for the DIR include language that the monies collected be subject to refund in the event that the independent auditor or Commission determines that DP&L improperly collected charges under the DIR. In the case *In re Rev. of Alternative Energy Rider Contained in Tariffs of Ohio Edison Co.*, Slip Opinion No. 2018-Ohio-229, the Supreme Court of Ohio held that customers' monies could not be refunded upon an auditor's determination that a utility improperly collected charges unless the rider under which the charges were collected provides for refunds to customers. Since that decision, other utilities in the state have filed updates to their tariffs to include language making the charges collected under the tariffs subject to refund.[31] Currently, DP&L's placeholder DIR tariff does not include

[30] Staff Report at 9.

[31] See, e.g., *In the Matter of the Application of the Tariff Update on Rider DCR*, Case No. 17-1920-EL-RDR, Tariff Update (April 2, 2018) (adding language that FirstEnergy's Delivery Capital Investment Rider is subject to refunds); *In the Matter of the Reports Enclosing Quarterly Rider DCI Schedules and tariffs of Duke Energy*

any language making charges collected under the rider subject to refund.[32] The Commission should require DP&L to include language subjecting charges over-collected under the DIR to refunds. This is the only way to ensure that the annual audit Staff proposes can meaningfully protect customers, especially given that Staff recommends that DP&L's annual filings under the DIR be automatically approved.[33]

Fourth, OMAEG objects to Staff's proposed term of the DIR. Staff proposes that DP&L be permitted to collect charges from customers, in increasing amounts, under the DIR until October 31, 2023, so long as DP&L meets its reliability commitments and files a new distribution rate case application by October 31, 2022.[34] The Commission should consider, however, the possibility that at some point during the term of the DIR, collection of these costs from customers might no longer be necessary to meet reliability commitments. In the event that this happens, the Commission should provide a procedure through with the DIR could be terminated prior to the sunset date recommended by Staff.

Finally, OMAEG objects to requiring DP&L to file a new rate case application by October 31, 2022 as that is an insufficient period of time to resolve the matter prior to the expiration of the ESP. The time that it has taken to review the current DP&L rate case application is telling and should be a guide (approximately 2.5 years). Moreover, given the expiration of the ESP period, requiring DP&L to file a distribution rate case around the same time that DP&L will need to file its next ESP or MRO filing will cause the filings to be pancaked and will create an unreasonable and unnecessary burden on all parties.

Ohio, Inc., et al., Case Nos. 17-2088-EL-RDR, et al., Finding and Order at 2 (March 28, 2018) (approving Duke's update to its Deliver Capital Investment Rider which made that rider subject to reconciliation, including refunds to customers).

[32] See DP&L Distribution Tariffs, Second Revised Sheer D36.

[33] Staff Report at 9.

[34] Id. at 9-10.

With regard to the DIR, OMAEG does support Staff's recommendation that revenue caps for the DIR be set to zero following any periods of noncompliance by DP&L and its position that the DIR should sunset one year early if DP&L does not timely file a new distribution rate case.[35]

E. Storm Cost Recovery Rider

OMAEG objects to the Staff's recommendation to include the Storm Cost Recovery Rider in this case. OMAEG notes that this rider was approved as a placeholder in DP&L's latest ESP case, Case Nos. 16-395-EL-SSO, et al.[36] In approving the Storm Cost Recovery Rider, the Commission directed DP&L to file a future application to seek recovery of costs of major storms.[37] The Commission specifically stated that the Storm Cost Recovery Rider would be for the recovery of costs *incremental to base rates*.[38] DP&L filed an application in a separate proceeding to recover costs through this rider on March 30, 2018.[39] OMAEG presumes that the issues surrounding the recovery of those costs will be determined in that separate proceeding. Therefore, given that the Storm Cost Recovery Rider has already been approved in the ESP proceeding, is currently being litigated in a separate case, and is for costs incremental to base rates, it should be withdrawn from this proceeding.

More broadly, OMAEG objects to this sort of single issue ratemaking in a distribution rate case. OMAEG believes that the costs associated with storms affecting DP&L's distribution system are sufficiently embedded in the base rates DP&L will recover in this case. OMAEG believes that storm-related costs of electric utilities should generally be included in distribution

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[35] Staff Report at 10.

[36] See DP&L ESP III Order at 13.

[37] Id.

[38] Id.

[39] See *In the Matter of the Application of The Dayton Power and Light Company for Authority to Recover Certain Storm-Related Service Restoration Costs*, Case No. 18-381-EL-RDR, Application (March 30, 2018).

base rates, along with the rest of the utility's costs, with the allowance for emergency rate cases in the event of storms that cause an extraordinary amount of damage and expense. As such, OMAEG objects to the inclusion of the Storm Cost Recovery Rider in the Staff Report and recommends that it be withdrawn from this distribution rate case.

F. Regulatory Compliance Rider

As Staff notes in its Report, the Commission already addressed the Regulatory Compliance Rider in the latest ESP Case.[40] Staff states that it has "no further recommendations" regarding that rider.[41] However, because the Regulatory Compliance Rider was addressed as part of the ESP III case, it should be affirmatively withdrawn from DP&L's application in this case. Moreover, DP&L cannot show that it actually incurred costs associated with regulatory compliance during the test period, rendering this rider inappropriate for inclusion in a distribution rate case under R.C. 4909.18. OMAEG objects to the Staff Report's failure to recommend that the Regulatory Compliance Rider be withdrawn from this case.

G. Uncollectible Rider

As Staff notes in its Report, the Commission already approved the establishment of the Uncollectible Rider in the latest ESP Case.[42] As with the Regulatory Compliance Rider, because the Uncollectible Rider was addressed in the ESP III case, it should be affirmatively withdrawn from DP&L's application in this case. OMAEG objects to the Staff Report's failure to recommend that the Uncollectible Rider be withdrawn from this case.

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[40] See Staff Report at 26; ESP III Order at 12.

[41] Staff Report at 26.

[42] See Staff Report at 26; ESP III Order at 14.

III. Conclusion

OMAEG submits these objections to the Staff Report in this matter, which frame the major issues in the case, and looks forward to a full discussion of these issues presented herein with Staff, DP&L, and other stakeholders as this matter continues.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon all parties of record via electronic mail on April 10, 2018.

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Summary: Objection Objections To The Staff Report Submitted By The Ohio Manufacturers' Association Energy Group electronically filed by Mrs. Kimberly W. Bojko on behalf of OMA Energy Group