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**Via E-FILE**

July 1, 2020

Public Utilities Commission of Ohio  
PUCO Docketing  
180 E. Broad Street, 10th Floor  
Columbus, Ohio 43215

**In re: Case No. 20-0680-EL-UNC**

Dear Sir/Madam:

Please find attached the COMMENTS OF THE OHIO ENERGY GROUP e-filed today in the above-referenced docket(s).

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,

/s/ Michael L. Kurtz

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**BOEHM, KURTZ & LOWRY**

MLKkew

Encl.

Cc: Certificate of Service

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton Power and :  
Light Company for a Finding That Its Current Electric :  
Security Plan Passes the Significantly Excessive Earnings : Case No. 20-680-EL-UNC  
Test and More Favorable in the Aggregate Test in R.C. :  
4928.143(E). :

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**COMMENTS OF THE OHIO ENERGY GROUP**

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The Ohio Energy Group (“OEG”) submits the following Comments on The Dayton Power and Light Company’s (“DP&L” or “Company”) request for a finding that the Company’s current Electric Security Plan (“ESP”), approved on December 18, 2019 in Case No. 08-1094-EL-SSO, passes the more favorable in the aggregate (“MFA”) test set forth in R.C. 4928.143(E). These Comments do not address the significantly excessive earnings inquiry required by that statute.

**1. DP&L Cannot Justify As “*Just and Reasonable*” An MRO Financial Integrity Charge At The Levels Projected In Its Testimony.**

DP&L projects that customers will experience cost savings under the current ESP, which includes a \$79 million Rate Stabilization Charge (“RSC”), as compared to an MRO that includes a financial integrity charge.<sup>1</sup> But that analysis is flawed for multiple reasons. As an initial matter, the level of potential MRO financial integrity charges contemplated by the Company’s MFA projections are untenable. Because a financial integrity charge adopted pursuant to R.C. 4928.142(D)(4) must be bypassable (“...*the commission may adjust the electric distribution utility’s most recent standard service offer price...*”), setting such charges at the levels projected by DP&L would quickly result in a “*death spiral*” and would be far from “*just and reasonable*” as required by the statute.

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<sup>1</sup> Direct Testimony of R. Jeffrey Malinak (“Malinak Testimony”) at 80:6-12.

If an MRO financial integrity charge of \$79 million (the same as the current RSC) was approved for DP&L, that amount would be recovered only from non-shopping customers. In 2019, non-shoppers represented only 27.8% of DP&L's total retail sales, or 3,908,506 MWh.<sup>2</sup> Recovering \$79 million from only non-shopping customers would result in a rate increase to those customers of \$20.2/MWh. DP&L's current Standard Offer Rate for a residential customer is \$46.0468/MWh. So the MRO financial integrity charge percentage rate increase would be 43.87%. A 43.87% rate increase cannot be considered "*just and reasonable*" as required by statute. And the level of that financial integrity charge would dramatically increase over a short period of time as customers hurry to migrate away from the charge. As this "*death spiral*" intensifies, any meaningful financial integrity benefit would be short-lived. To avoid the "*death spiral*," a very small financial integrity charge could possibly be justified, but a small fix would not solve the Company's problems. Given this likely outcome, DP&L's projected MRO financial integrity charge scenarios are unrealistic.

## **2. The Current RSC Is Unlawful Under Supreme Court Of Ohio Precedent And Cannot Survive.**

DP&L's future ESP projections should not include the RSC. The RSC is an unlawful charge providing the equivalent of transition revenue similar to the Ohio Power Company ("AEP") Retail Stability Rider ("RSR") and the DP&L Service Stability Rider ("SSR") charges previously ruled unlawful by the Supreme Court of Ohio. AEP's RSR was established in part "*to provide AEP with sufficient revenue to maintain its financial integrity and ability to attract capital during the ESP.*"<sup>3</sup> The Court found that the RSR overcompensated AEP for providing capacity and resulted in *the equivalent of transition revenue*" in violation of R.C. 4928.38.<sup>4</sup> The Court struck down DP&L's SSR on the same basis.<sup>5</sup> The

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<sup>2</sup> PUCO Shopping Statistics, *available at* <https://app.powerbigov.us/view?r=eyJrIjoizTliZDEzNGEtZjIhYi00YWZlThjZjktMGZmNDg4OWE4ZDFkIiwidCI6IjUwZjhmY2M0LTk0ZDgtNGYwNy04NGViLTM2ZWQ1N2M3YzhhMiJ9>; DP&L FERC Form 1 for 2019 (indicating that DP&L's total retail electric volume for 2019 was 3,912,648 MWh).

<sup>3</sup> *In re Application of Columbus Southern Power Co.*, 147 Ohio St. 3d 439, 441.

<sup>4</sup> *Id.* at 445.

<sup>5</sup> *In re Application of Dayton Power & Light Co.*, 147 Ohio St.3d 166 (2016).

Company's RSC is a similar ESP "*financial integrity*" charge overcompensating the Company for electric service and providing the equivalent of transition revenues to DP&L. Moreover, the RSC in its current iteration is also comparable to FirstEnergy's Distribution Modernization Rider, which was intended to help solidify the utility's financial footing in order to facilitate grid modernization efforts, but which was struck down by the Court since it was not expressly tied to actual grid modernization achievements.<sup>6</sup> Accordingly, the RSC is unlawful and should be removed from both the ESP and the MFA analysis, rendering the ESP quantitatively more favorable in the aggregate as compared to an MRO that includes any charges authorized under R.C. 4928.142(D)(4).

### **3. The Results Of The Quantitative MFA Test Depend Upon Whether The RSC Continues To Be Included In The ESP.**

For purposes of the MFA test, the appropriate quantitative inquiry is to compare the ESP - with and without the RSC - to an MRO under which DP&L receives a much smaller financial integrity charge or no financial integrity charge at all.

In the ESP without RSC scenario, the ESP would be quantitatively more favorable in the aggregate consistent with R.C. 4928.143(E). In addition to any small financial integrity charge that DP&L may receive under the MRO, 4928.142(D)(4) would allow the Company to seek recovery of environmental costs, such as the costs related to the Hutchings generation plant discussed in DP&L's Application, which would increase the costs of the MRO as compared to the ESP.<sup>7</sup> Additionally, under an MRO, the Company and customers would be forced to incur litigation expense associated with more frequent distribution rate cases since the Company would no longer recover distribution-related costs gradually in a streamlined manner through riders such as the storm rider. The same rationale applies to transmission-related costs.

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<sup>6</sup> *In re Application of Ohio Edison Co.*, 157 Ohio St. 3d 73 (2019).

<sup>7</sup> Malinak Testimony at 80:3-5.

Because the MRO statute does not explicitly authorize a transmission cost recovery rider, DP&L would have to file full rate cases to recover increased transmission expense.

In contrast, under the ESP with a \$79 million RSC scenario, the ESP would almost certainly not pass the quantitative MFA test. While the MRO may include additional environmental costs and transaction costs associated with increased rate case litigation (including the costs of litigating transmission rate cases that would otherwise not occur under the ESP), those costs would be outweighed by the \$79 million RSC. But even under that scenario, the ESP would still have the qualitative benefits discussed below.

#### **4. An ESP Is Inherently More Favorable Than An MRO On A Qualitative Basis.**

The qualitative benefits of the ESP over an MRO weigh heavily in favor of retaining the ESP. DP&L cites several such benefits, including: 1) prevention of the “*death spiral*” that could occur as the burden of a bypassable MRO financial integrity charge increases on a smaller and smaller base on non-shopping customers; 2) maintaining flexibility versus the irrevocability of MROs; 3) avoiding rate shock through gradual recovery of certain costs rather than through periodic base rate cases; 4) retaining protection of customers from excessive rates via the significantly excessive earnings test; and 5) incentivizing an additional \$150 equity investment by AES.<sup>8</sup> This list, while sound, is not exclusive. For instance, one critical benefit of retaining the ESP is preserving the Commission’s broad authority to approve a myriad of rate mechanisms that would otherwise be unavailable in the context of an MRO, including transmission cost recovery riders as well as mechanisms that enable alternative transmission billing (e.g. transmission pilot programs), economic development, and enhanced grid reliability. Without such broad authority, Ohio would cede much of its electric pricing power to PJM or the Federal Energy

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<sup>8</sup> Malinak Testimony at 14:3-15:12.

Regulatory Commission which, as the recent Minimum Offer Price Rule controversy demonstrates,<sup>9</sup> may not be in the best interests of Ohio.

**5. Any Revenue Deficiency Caused By The Loss Of The RSC Should Be Addressed In A Distribution And/Or Transmission Rate Case.**

Should DP&L experience significant financial hardship as a result of the loss of the RSC, then DP&L would always retain the option to file a new distribution rate case pursuant to R.C. 4909.18 or to request emergency rate relief pursuant to R.C. 4909.16. These options would be available under either an ESP or an MRO, however, and therefore do not impact the results of the MFA Test.

**6. If The Commission Finds That DP&L Does Not Pass the MFA Test, Then DP&L Should File A New ESP That Excludes The \$79 Million RSC Rather Than Adopting An MRO.**

R.C. 4928.143(E) provides that if the MFA test results are negative, then *“the commission may terminate the electric security plan, but not until it shall have provided interested parties with notice and an opportunity to be heard. The commission may impose such conditions on the plan's termination as it considers reasonable and necessary to accommodate the transition from an approved plan to the more advantageous alternative.”*

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<sup>9</sup> See FERC Docket Nos. EL16-49-000 *et al.*

Because the qualitative benefits of ESPs vastly outweigh those of MROs, the “*more advantageous alternative*” to DP&L’s current ESP would be a differently structured ESP without the \$79 million RSC. Accordingly, if the Commission finds that DP&L’s current ESP fails the MFA test, then DP&L should exercise its right to file a new ESP without the RSC, rather than adopting an MRO.

Respectfully submitted,

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July 1, 2020

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## CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 1<sup>st</sup> day of July, 2020 to the following:

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Summary: Comments Ohio Energy Group (OEG) Comments electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group