BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval to Defer Distribution Decoupling Costs.	))))	Case No. 20-0140-EL-AAM

COMMENTS OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP

I. INTRODUCTION

On January 23, 2020, the Dayton Power and Light Company (DP&L or the Company) filed an Application with the Public Utilities Commission of Ohio (Commission), requesting accounting authority to defer "distribution decoupling costs" from December 19, 2019 forward as a regulatory asset or liability.[1] DP&L also sought authority to recover carrying costs on the deferred balance pursuant to DP&L's most recently approved cost of long-term debt established in its distribution rate case in Case No. 15-1830-EL-AIR, et al.[2] On April 29, 2020, Staff filed its Staff Report, recommending that the Commission deny DP&L's Application because the Application did not satisfy the regulatory accounting standards necessary to defer revenues.[3] On June 8, 2020, the

---

1 *In the Matter of the Application of The Dayton Power and Light Company for Approval to Defer Distribution Decoupling Cost*, Case No. 20-0140-EL-AAM, Application at ¶¶ 1, 6 (January 23, 2020).

2 Id. at ¶ 12 (referencing *In the Matter of the Application of The Dayton Power and Light Company to Increase Its Rates for Electric Distribution*, Case Nos. 15-1830-EL-AIR, et al., Stipulation and Recommendation (June 18, 2018) (supplemented July 12, 2018), adopted by Opinion and Order (September 26, 2018) (hereinafter, Rate Case)).

3 Staff Review and Recommendation at 3 (Staff Report) (April 29, 2020) (Please note that the Staff Report does not include page numbers. Thus, for purposes of this filing, we have manually numbered the page numbers, beginning with the page containing the title "Summary." The cover page is excluded from the numbering.).

Commission directed interested parties to file comments by July 6, 2020 and reply comments by July 20, 2020 to assist the Commission in its review of DP&L's Application.[4]

The Ohio Manufacturers' Association Energy Group (OMAEG) moved to intervene on May 22, 2020.[5] As OMAEG explained in its intervention and as explained further below, DP&L's request is an unlawful attempt to defer, for future recovery from customers, revenues that it would have otherwise been authorized to receive through the Decoupling Rider had the Company not voluntarily chosen to withdraw its third Electric Security Plan (ESP III).[6]

II. COMMENTS

A. The Commission Should Deny DP&L's Request to Defer the Company's Decoupling Revenues for Subsequent Recovery.

1. DP&L's Request Conflicts with the Plain Language of the Stipulation that Authorizes the Company to Implement Revenue Decoupling.

On October 20, 2017, the Commission approved a settlement agreement, which established DP&L's ESP III and authorized the Company to implement revenue decoupling through the nonbypassable Decoupling Rider.[7] Upon approving the ESP III settlement agreement, the Commission determined that DP&L made several commitments that were beneficial to ratepayers and the public interest.[8] Although the Commission authorized the Decoupling Rider upon its approval of ESP III, all other details regarding the rider were to be addressed in DP&L's Rate Case

---

4 Entry at ¶ 10 (June 8, 2020).

5 See OMAEG's Motion to Intervene (May 22, 2020).

6 See Id. at 3-4 (citing *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 Nos. 16-395-EL-SSO, et al., Opinion and Order (October 20, 2017) (ESP III Order).

7 ESP III Order at ¶¶ 14, 130.

8 Id. at ¶ 79.

pending at the time or its next energy efficiency case.[9] Parties filed a Stipulation in the Rate Case,[10] which the Commission subsequently adopted on September 26, 2018.[11] The adopted Stipulation established the Decoupling Rider's cost allocation, term and rate design.[12]

On November 26, 2019, DP&L filed a notice of withdrawal of its ESP III,[13] which the Commission later granted, resulting in ESP III's termination.[14] Thereafter, DP&L unlawfully sought to continue the Decoupling Rider through its ESP I,[15] despite ESP I never including this rider. On December 18, 2019, the Commission issued a Second Finding and Order in the ESP I Case, denying DP&L's request to continue the Decoupling Rider.[16] The Commission stated that DP&L could not continue the Decoupling Rider, and other riders created in ESP III, because DP&L already withdrew its ESP III and it was terminated.[17]

Despite the demise of the Decoupling Rider, DP&L once again attempts to resurrect it and recover its lost distribution revenues. This time, DP&L uses the deferral mechanism in an attempt to circumvent the Commission's order denying the continuation of the Decoupling Rider. DP&L asserts that it is "entitled to defer," for subsequent recovery, decoupling revenues pursuant to the Stipulation in the Rate Case.[18] Specifically, DP&L argues that it should be granted deferral

---

9 Id. at ¶ 14.

10 Rate Case, Stipulation.

11 Rate Case, Order at ¶ 104.

12 Id. at ¶ 54.

13 ESP III Case, Notice at 1 (November 26, 2019).

14 ESP III Case, Finding and Order at ¶ 1 (December 18, 2019).

15 *In the Matter of the Application The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 08-1094-EL-SSO, et al., Notice of Filing of Proposed Tariffs (November 26, 2019) (ESP I Case).

16 ESP I Case, Second Finding and Order at ¶ 36 (December 18, 2019).

17 Id.

18 Application at ¶ 1 (January 23, 2020).

authority pursuant to the Stipulation because parties agreed that "DP&L could recover those base distribution amounts in a specific way, the Commission approved the Stipulation, and no party sought rehearing on that issue."[19]

DP&L's request for deferral authority, however, ignores the plain language of the Stipulation to which the Company relies upon and is bound. DP&L correctly explained the Stipulation authorized the Company to recover lost distribution revenue in a specific way. The Stipulation states, however, that "DP&L shall be permitted to implement Revenue Decoupling *through its existing Decoupling Rider*…."[20] The Stipulation further provided for the Decoupling Rider's cost allocation, term and rate design.[21] A clear reading of the Stipulation's language demonstrates that the then-existing Decoupling Rider was the intended mechanism for DP&L to implement revenue decoupling. The parties took care to include several details of the Decoupling Rider in the agreement, supporting that the Decoupling Rider was an essential component of this provision. Unfortunately for DP&L (but by its own actions), the Decoupling Rider is no longer a valid, existing mechanism to implement revenue decoupling. Since DP&L's request for deferral authority and subsequent recovery of decoupled revenue must proceed through the Decoupling Rider, which is no longer possible, it must fail.

If DP&L seeks deferral authority to recover decoupling revenues through another mechanism other than the Decoupling Rider, DP&L's actions would directly conflict with the Stipulation's plain language. Nowhere in the Rate Case Stipulation do the parties agree that DP&L is "entitled to defer" or should be granted broad authority to propose a deferral mechanism to implement revenue decoupling as DP&L argues. If the Company desired to implement revenue

---

19 Id. at ¶ 6.

20 Rate Case, Stipulation and Recommendation at ¶ 3(June 18, 2018) (emphasis added).

21 Id.

decoupling independent of its Decoupling Rider, the Company should have bargained for that provision at the time the parties negotiated the Stipulation. Similarly, DP&L never filed for rehearing of the Commission's Order which approved the Stipulation. Granting DP&L deferral authority unrelated to its Decoupling Rider would effectively allow the Company to unilaterally and retroactively rewrite the Stipulation that it is bound to follow. Consequently, DP&L's Application should be rejected because the Company only has authority to implement revenue decoupling through its Decoupling Rider, which no longer exists.

2. DP&L's Request for Deferral Authority Ignores the Commission's Prior Order in the ESP I Case, which Eliminated the Decoupling Rider.

Since the Stipulation's adoption in 2018, the Commission has expressly prohibited DP&L from recovering lost distribution revenues through the Decoupling Rider and ordered that the rider be eliminated.[22] R.C. 4928.143(C)(2)(b) dictates that after a utility terminates an application for an ESP "the Commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent SSO...until a subsequent SSO could be authorized." Pursuant to this statutory requirement, the Commission reexamined the provisions of ESP III after DP&L withdrew its ESP plan.[23] The Commission correctly reasoned that the Decoupling Rider, along with other riders approved in the ESP III case, "should not be continued with the withdrawal of ESP III."[24] The Commission further determined that "although DP&L has proposed to continue the decoupling rider and the RCR, these two riders were created in ESP III and should be eliminated."[25]

22 ESP I Case, Second Finding and Order at ¶ 36 (December 18, 2019).

23 Id. at ¶ 4.

24 Id. at ¶ 36.

25 Id.

Despite this clear directive, DP&L asks that the Commission revisit its prior order and allow the Company deferral authority to later recover decoupled revenues, deferring for future recovery the same lost revenues that it could have collected through the Decoupling Rider had it still existed. Granting DP&L deferral authority in this instance would render the Commission's prior order meaningless. Although DP&L filed its request to revisit the Commission's order in the form of an application, DP&L's request is in reality an untimely rehearing request of the Commission's Second Finding and Order in the ESP I Case. Pursuant to R.C. 4903.10, "[a]fter any order has been made by the public utilities commission, any party…may apply for a rehearing in respect to any matters determined in the proceeding. Such application shall be filed *within thirty days* after the entry of the order upon the journal of the commission."[26] The Supreme Court of Ohio has made it clear that the Commission has "no power to entertain an application for rehearing filed after the expiration of such 30-day period."[27] DP&L requested deferral authority in this proceeding on January 23, 2020, well after the deadline expired for the Company to request rehearing of the Commission's ESP I Second Finding and Order issued on January 18, 2019. Accordingly, the PUCO fundamentally lacks jurisdiction on this matter and DP&L's untimely rehearing request should be rejected in its entirety.

3. Granting DP&L's Application Would Unreasonably Provide Benefits to DP&L who has Not Honored the ESP III Settlement Agreement.

The Commission originally authorized DP&L's implementation of revenue decoupling upon approval of the settlement agreement in the ESP III case.[28] Since then, DP&L has chosen to

---

26 R.C. 4903.10 (emphasis added).

27 *Greer v. Pub. Util. Comm.*, 172 Ohio St. 361, 362, 176 N.E.2d 416 (1961); *Pub. Util. Comm.,* 126 Ohio St. 438, 438, 185 N.E. 833 (1933).

28 ESP III Case, Opinion and Order at ¶¶ 14, 130 (October 20, 2017).

withdraw its ESP III,[29] and has denied customers incentives and other benefits bargained for and included in the ESP III settlement. DP&L is attempting to still receive the benefits of the Decoupling Rider established by the ESP III settlement, while it denies customers the benefits that they obtained in exchange. DP&L voluntarily chose to terminate the ESP III. DP&L should not be permitted to resurrect certain provisions of the ESP III that favor DP&L under the guise of a new application and deferral mechanism. As such, the Commission should reject DP&L's Application for deferral authority and not unreasonably confer benefits on the Company that it could not otherwise obtain after it chose to terminate its ESP III that provided the benefit it now seeks (i.e., recovery of lost distribution revenues).

4. The Commission Should Adopt Staff's Recommendation and Deny DP&L's Application for its Failure to Meet the Required Accounting Standards.

DP&L's Application stated that the Company sought "the accounting authority to defer as a regulatory asset/liability the Company's distribution decoupling *costs*."[30] However, as Staff explained, DP&L's requested deferral amounts constitute the difference between the actual revenues that DP&L collected during the period and the revenues that DP&L had been authorized to collect through its Decoupling Rider that was established pursuant to a settlement of DP&L's ESP III Case.[31] Additionally, as Staff noted, AES Corporation's filed 10-K describes DP&L's Application as a request to defer *revenues* for subsequent recovery through the Decoupling Rider.[32]

---

[29] ESP III Case, Notice at 1 (November 26, 2019).

[30] Application at ¶ 1 (January 23, 2020) (emphasis added).

[31] Staff Report at 2.

[32] Staff Report at 2, n.4.

As such, Staff deemed the decoupling revenue requested by DP&L to be an alternative revenue program under the applicable accounting standards.[33]

The accounting standards applicable to alternative revenue programs prescribe specific requirements for whether a regulated utility can defer revenues for later recovery. As explained by Staff,[34] Accounting Standards Codification (ASC) 980-605 only permits a utility to recover additional revenues if all of the following conditions are met:

(1) The program is established by an order from the utility's regulatory commission that allows for automatic adjustment of future rates;

(2) Verification of the adjustment to future rates by the regulator would not preclude the adjustment from being considered automatic;

(3) The amount of additional revenues for the period is objectively determinable and is probable of recovery; and

(4) The additional revenues will be collected within 24 months following the end of the annual period in which they are recognized.

Although DP&L bears the burden of proof for its Application submitted in this proceeding,[35] DP&L failed to address the required criteria applicable to alternative revenue programs. For this reason alone, the Commission should deny DP&L's Application for failure to satisfy its burden of proof.

---

33 Staff Report at 2.

34 Id.

35 *See, e.g. In the Matter of the Filing By Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company of a Grid Modernization Business Plan*, Case Nos. 16-481, et al., Opinion and Order ¶ 106 (July 17, 2019) ("Utilities continue to bear the burden of proof for any application submitted for our consideration.").

After reviewing the required criteria, Staff concluded that DP&L's Application failed to address the accounting standards that must be met for a utility to establish a regulatory asset involving revenues.[36] Staff, therefore, recommended that the Commission deny DP&L's request for deferral authority.[37] OMAEG agrees with Staff and urges the Commission to adopt Staff's recommendation and deny DP&L's Application.

B. If the Commission Grants DP&L Deferral Authority, it Should Ensure that No Double Recovery Occurs and it Should Deny Carrying Costs.

While OMAEG opposes DP&L's Application, if the Commission grants the Company deferral authority it should ensure that no double recovery occurs. Pursuant to the Stipulation in the Rate Case, DP&L committed that it "shall not be entitled to double collect the same revenue reductions through lost distribution revenues and decoupling charges simultaneously."[38] The Commission should hold DP&L to its commitment if it allows DP&L to implement revenue decoupling through a deferral mechanism and ensure that double recovery does not occur. Furthermore, to the extent DP&L seeks to defer costs, the Commission should verify that any costs deferred for future recovery from customers are just, reasonable, properly calculated, and prudently incurred. Lastly, if the Commission approves DP&L's request to create a deferral mechanism, it should deny DP&L's request to receive carrying costs on the deferred amounts.

---

36 Staff Report at 2.

37 Id. at 3.

38 Rate Case, Stipulation and Recommendation at 12 (June 18, 2018).

III. CONCLUSION

For the aforementioned reasons, OMAEG requests that the Commission adopt the recommendations set forth in its comments and deny DP&L's unlawful request to defer distribution decoupling revenues.

Respectfully submitted,

/s/ *Kimberly W. Bojko*

Kimberly W. Bojko (0069402) (Counsel of Record)
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4100
bojko@carpenterlipps.com
(willing to accept service by email)

Counsel for the Ohio Manufacturers' Association Energy Group

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio'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 the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on July 6, 2020 upon the parties listed below.

/s/ Kimberly W. Bojko
Kimberly W. Bojko

ambrosia.logsdon@occ.ohio.gov

amy.botschner.obrien@occ.ohio.gov

john.jones@ohioattorneygeneral.gov

michael.schuler@aes.com

paul@carpenterlipps.com

Attorney Examiners:
Michael.Williams@puco.ohio.gov

Patricia.Schabo@puco.ohio.gov