

**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 )	Case No. 20-680-EL-UNC
Earnings Test and More Favorable in The )	
Aggregate Test In R.C. 4928.143(E). )	

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**REPLY COMMENTS OF THE OHIO HOSPITAL ASSOCIATION**

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**I. INTRODUCTION**

Except for Dayton Power and Light Company (“DP&L”), every party that filed initial comments in this case has argued that DP&L’s electric security plan (“ESP”) fails the more favorable in the aggregate (“MFA”) test. The Ohio Hospital Association (“OHA”) joins these parties in their opposition to DP&L’s ESP and the unreasonable and unjustified imposition of the non-bypassable rate stability charge (“RSC”). OHA will not reiterate the various arguments of the parties that explain why the ESP is not more favorable than a hypothetical market rate offer (“MRO”). However, OHA submits the below limited reply comments regarding two specific issues.<sup>1</sup>

**II. COMMENTS**

**A. DP&L failed to demonstrate that it can lawfully charge customers a financial integrity charge (“FIC”) through an MRO.**

A number of parties filed comments arguing that DP&L’s proposed MRO is flawed because it contains a FIC. OHA agrees with these parties arguments. Ohio Revised Code Section (“R.C.”) 4928.142(D)(4) states that the “[C]ommission may adjust the electric distribution utility's most recent

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<sup>1</sup> Although OHA has limited its initial comments and reply comments to issues regarding the MFA test, OHA does not concede or agree that DP&L’s ESP passes the significantly excessive earnings test (“SEET”). Further, OHA does not waive its right to make any arguments regarding the SEET later in this proceeding.

standard service offer price by such just and reasonable amount that the commission determines necessary to address any emergency that threatens the utility's financial integrity.” DP&L relies on this provision of the MRO statute to support its claim that it can charge an FIC under an MRO.<sup>2</sup> However, DP&L has not demonstrated that it would be entitled to emergency rate relief under R.C. 4909.16.

DP&L argues that its credit ratings will be negatively impacted unless a FIC is approved by the Commission, however this alone does not mean that DP&L is facing a genuine emergency situation. Credit rating downgrades may simply mean that there is an increase in DP&L’s borrowing costs. DP&L fails to definitively prove why this would constitute an emergency. While DP&L claims that it needs the FIC to continue providing safe and reliable service, DP&L failed to demonstrate that the FIC would represent a “just and reasonable amount” necessary to allow DP&L to continue providing safe and reliable service. DP&L provides no explanation regarding how its utility operations and service would detrimentally impacted if the FIC is not granted.

Because DP&L has not clearly demonstrated that it would be entitled to emergency rate relief under R.C. 4906.16, DP&L’s hypothetical MRO should not include any FIC. And, without the FIC, DP&L’s MRO substantially outweighs the ESP.

**B. The RSC will exacerbate the harm being done to DP&L’s customers due to the COVID-19 pandemic.**

In its comments, DP&L states that the COVID-19 pandemic creates additional risks for DP&L.<sup>3</sup> DP&L claims that it expects to see reduced revenues due to customers using less electricity and/or not paying their bills.<sup>4</sup> The Commission should reject any claim by DP&L that impact of the COVID-19 pandemic justifies the RSC. The Commission recently issued an order authorizing DP&L

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<sup>2</sup> DP&L Comments at p. 9.

<sup>3</sup> DP&L Comments at p. 7.

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

to defer cost related uncollectable expenses and potentially recovery forgone revenues related to the pandemic.<sup>5</sup> The Order in Case No. 20-651-EL-UNC addresses DP&L's concerns regarding revenue losses due the pandemic, so the RSC is unnecessary to address the purported COVID-19 risk raised by DP&L.

Further, DP&L has failed to demonstrate that it is entitled to any certain amount due to purported revenue losses from the COVID-19 pandemic. It is long-standing precedent that the Commission's function is to provide utilities the opportunity to earn a fair rate return, not guarantee one.<sup>6</sup> While it may be true that DP&L has experienced losses in revenue from a reduction in customer usage, the Commission is not obligated to insulate DP&L from all risks and revenue losses, even those caused by a pandemic. If DP&L truly believes its financial situation constitutes an emergency, it should file for an emergency rate case. DP&L has failed to connect the dots between the alleged financial risks caused by the pandemic and DP&L's entitlement to approximately \$314 million in RSC charges.

Lastly, it is troubling to see DP&L use the COVID-19 pandemic as justification for imposing additional non-bypassable charges on customers. DP&L may be struggling financially due to the pandemic, *but so are its customers*. For years, DP&L's customers have been paying some form of non-bypassable rider, some which were ultimately determined to be unlawful.<sup>7</sup> Asking customers to pay another non-bypassable "financial integrity" charge is distasteful under normal circumstances. It is even harder to swallow when customers are facing the largest health and financial crisis in recent memory. As OHA explained in its initial comments, healthcare providers are experiencing financial

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<sup>5</sup> *In re Dayton Power and Light Company*, Case No. 20-651-EL-UNC, Finding and Order at p. 22 (May 20, 2020).

<sup>6</sup> *In the Matter of the Application of the W. Ohio Gas Co. for Auth. to Amend Its Filed Tariffs & to Increase the Rates & Charges for Gas Serv.*, Case No. 78-1445-GA-AIR, 1979 WL 446205, at \*7 (Nov. 28, 1979).

<sup>7</sup> *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, et al., Supplemental Opinion and Order at ¶ 110 (Nov. 21, 2019); and *In re Application of Dayton Power & Light Co.*, 147 Ohio St.3d 166, 2016-Ohio-3490, citing *In re Application of Columbus Southern Power Co.*, 147 Ohio St.3d 439, 2016-Ohio-1608.

distress because of the COVID19 pandemic much like other electric utility customers. It is unreasonable for DP&L to impose additional “financial integrity” charges on hospitals while these entities are fighting against the pandemic and suffering through their own economic crises. The Commission should determine the severe economic burden of the RSC during a pandemic is unjustified and, therefore, results in DP&L’s ESP failing the MFA test.

### **III. CONCLUSION**

DP&L’s customers have been subjected to unlawful and unsupported non-bypassable charges long enough. Customers should not be asked to continue paying charges that do not have a clear relation to the actual provision of utility service. The RSC is the fatal flaw in DP&L’s ESP because it is unlawful, unjustified, and unfair considering the financial difficulties DP&L’s customers are currently facing. Therefore, the Commission should terminate DP&L’s ESP and order DP&L to implement an alternative plan that does not include the RSC or similar “financial integrity” charge.

Respectfully submitted on behalf of  
THE OHIO HOSPITAL ASSOCIATION



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## **CERTIFICATE OF SERVICE**

In accordance with O.A.C. 4901-1-05, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing was sent by, or on behalf of, the undersigned counsel to the following parties of record this 16<sup>th</sup> day of July 2020.



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Summary: Reply Comments of The Ohio Hospital Association electronically filed by Teresa Orahoad on behalf of Devin D. Parram