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Via E-FILE

July 16, 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 REPLY 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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Jody Kyler Cohn, Esq.

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). :

REPLY COMMENTS OF THE OHIO ENERGY GROUP

The Ohio Energy Group (“OEG”) submits these Reply Comments in response to the filings of various parties arguing that The Dayton Power and Light Company’s (“DP&L” or “Company”) current Electric Security Plan (“ESP”) is not more favorable in the aggregate than the expected results that would otherwise apply under a Market Rate Offer (“MRO”).¹ While OEG’s initial comments addressed both the quantitative and qualitative aspects of the more favorable in the aggregate (“MFA”) test, in this reply, OEG will focus on a major qualitative benefit of opting for an ESP that many parties ignore – maintaining the Commission’s broad authority over generation assets and policy rather than ceding much of that authority to the Federal Energy Regulatory Commission (“FERC”) or PJM Interconnection, LLC (“PJM”).

The Commission asserted such authority in its July 15, 2020 Order in Case Nos. 16-776-EL-UNC *et al.* There, in an effort to address the pricing uncertainties currently surrounding the PJM capacity auctions, the Commission modified the current Standard Service Offer (“SSO”) auction structure adopted in each Ohio electric distribution utility’s ESP, establishing a dual auction structure for default supply under which each EDU will seek to acquire a long-term capacity product commencing with the June 2022 delivery year. One of the benefits of this approach, according to the Commission, would be to “*provide*

¹ See e.g. Initial Comments of Interstate Gas Supply, Inc.; Comments by the Office of the Ohio Consumers’ Counsel. OEG’s decision not to respond to comments filed by other parties should not be construed as agreement with those comments.

*stability to customers by taking action to lock-in historically low prices observed in recent auctions and thereby attempt to manage price volatility risks.”*²

The Commission’s desired capacity hedging approach finds sound legal support in the context of an ESP. Indeed, R.C. 4298.143(B)(2)(d) provides that as part of an ESP, the Commission may approve “[t]erms, conditions, or charges relating to...default service...as would have the effect of stabilizing or providing certainty regarding retail electric service.” The Commission’s dual auction structure is a term or condition relating to default service that would have the effect of stabilizing or providing certainty regarding retail electric service since it would reduce current wholesale capacity pricing uncertainties. Whether the Commission would have as solid a legal basis to adopt such a structure in the context of an MRO is much less clear.

The Commission also recently emphasized the importance of preserving Ohio’s authority over its generation portfolio in its January 21, 2020 Request for Rehearing at FERC in the Minimum Offer Price Rule (“MOPR”) Case.³ As the Commission correctly explained, “[t]he FPA reserves to the states authority to regulate generation; federal regulation extends only to those matters that are not subject to regulation by the states.”⁴ According to the Commission, this regulatory structure allows states to determine the generation resource mix that furthers their own particular objectives and advances “the health, safety and welfare of their respective citizens.”⁵ This structure also allows states to “take steps to preserve fuel diversity.”⁶ The Commission’s Request for Rehearing, *inter alia*, challenges FERC’s MOPR decision as intruding upon this state authority, noting that the Order “*interferes with the lawful exercise of state police power, fails to accommodate the lawful exercise of such police power, and contravenes authority reserved to the states by the FPA.*”⁷ Accordingly, the Commission asks FERC to

² Order, Case Nos. 16-776-EL-UNC *et al.* (July 15, 2020) at 18.

³ FERC Docket Nos. EL16-49-000 *et al.*

⁴ Request for Rehearing at 12.

⁵ Request for Rehearing at 20.

⁶ *Id.* at 13.

⁷ *Id.* at 5.

allow for a resource-specific Fixed Resource Requirement (“FRR”) option for state-subsidized generation (such as the Davis-Besse and Perry nuclear plants) that could accommodate state decisions with respect to their own generation mixes.

Within the context of an ESP, the legislature granted the Commission broad and flexible statutory authority to promote Ohio’s policy objectives. Should the Commission opt for an MRO approach, however, it will lose much of this expansive statutory authority - irrevocably.⁸ Under an MRO, the Commission may lose the ability to undertake the FRR option that it is advocating for at FERC since the MRO statute does not provide authority for the establishment of generation rate mechanisms that could facilitate the FRR approach. For instance, an FRR entity is required to satisfy certain capacity reserve requirements by PJM in order to retain that status. But it is unclear how Ohio utilities would be able to recover the costs associated with such requirements in the context of an MRO. Transitioning DP&L to an MRO could therefore jeopardize the state’s ability to implement the FRR alternative that the PUCO is advocating for at the FERC.

Accordingly, while parties push for an MRO based upon their own narrow, short-term interests, the Commission should reject that conclusion. Instead, Commission should approach this case with a more long-term perspective that preserves its broad authority as well as Ohio’s regulatory flexibility to construct its own particular generation mix rather than relying increasingly upon an ever-shifting and administratively-constructed wholesale “*market*” that is at times directly at odds with this state’s policy.

In conclusion, 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,

/s/ Michael L. Kurtz

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⁸ R.C. 4928.142(F).

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July 16, 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 16th day of July, 2020 to the following:

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Summary: Reply REPLY COMMENTS OF THE OHIO ENERGY GROUP electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group