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 Test and More Favorable in the Aggregate Test in R.C. 4928.143(E).	))))))	Case No. 20-0680-EL-UNC

REPLY COMMENTS
OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP

I. INTRODUCTION

The Dayton Power and Light Company (DP&L) submitted comments on July 1, 2020, supporting its April 1, 2020 request for a determination by the Public Utilities Commission (Commission) that DP&L's current modified electric security plan (Modified ESP I)[1] passes the prospective significantly excessive earnings test (SEET) and the more favorable in the aggregate (MFA) test as required by R.C. 4928.143(E). The Office of the Ohio Consumers' Counsel (OCC), the Ohio Hospital Association (OHA), Interstate Gas Supply (IGS), Honda of America Manufacturing, Incorporated (Honda) and the City of Dayton (Dayton), the Ohio Energy Group

[1] *In the Matter of the Application of the Dayton Power and Light Company for Approval of its Electric Security Plan*, Case Nos. 08-1094-EL-SSO, et al., Second Finding and Order, ¶¶ 8-9, 26-42 (Dec. 18, 2019); *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); *In re Ohio Edison Co.*, 157 Ohio St.3d 73, 2019-Ohio-2401. (The Commission approved DP&L's application to revert back to charges from ESP I and ESP II, removing several riders approved as part of ESP III (such as the reconciliation rider, the regulatory compliance rider, and the uncollectible rider), while reinstating the unlawful transition charge, the RSC (hereinafter, "Modified ESP I")).

(OEG), the Industrial Energy Users-Ohio (IEU), and the Kroger Company (Kroger) also filed comments on DP&L's Application on July 1, 2020. Through its Application, as supplemented by its initial comments,[2] DP&L continues to fail to sustain its burden of proof in demonstrating that its Modified ESP I passes either the MFA test or the SEET review pursuant to R.C. 4928.143(E). In its comments, DP&L claims that Modified ESP I is more favorable than a hypothetical market rate offer (MRO) because any hypothetical MRO would contain a financial integrity charge (FIC). However, DP&L fails to provide either legal or factual support for this alleged FIC. As a result, DP&L's MFA calculation is incorrect as its conclusion rests on a faulty premise. DP&L also fails to show that it will not collect significantly excessive earnings, because its calculations again rest on unsupported assumptions—namely, a $300 million "planned" equity investment over the next two years and projected grid modernization investments. Lastly, DP&L fails to provide a legal or factual basis for the continuation of the unlawful RSC.

The Ohio Manufacturers' Association Energy Group (OMAEG) filed initial comments on July 1, 2020, and, in accordance with the Commission's April 23, 2020 Entry, hereby submits the following reply comments.

II. REPLY COMMENTS

A. Modified ESP I is not more favorable than a MRO.

DP&L's Modified ESP I is not more favorable in the aggregate than the expected results of a MRO. Modified ESP I requires all DP&L customers to pay a nonbypassable charge that would otherwise be deemed an unlawful transition charge, and contains several qualitative

[2] See Initial Comments of the Dayton Power and Light Company (July 1, 2020) ("DP&L Comments").

shortcomings compared to a hypothetical MRO. Nevertheless, in its comments, DP&L attempts to highlight nonexistent quantitative and qualitative benefits of Modified ESP I.[3]

DP&L claims that Modified ESP I is more favorable than a hypothetical MRO because it includes certain quantitative benefits. But in drawing this conclusion, DP&L incorrectly adds an unjustified and unlawful FIC to the hypothetical MRO.[4] As explained in OMAEG's initial comments, DP&L fails to sustain its burden of proof in making this assumption.[5] Other stakeholders also raised concerns with DP&L's incorrect assumption and calculation of the quantitative benefits of Modified ESP I compared to a hypothetical MRO.[6]

To support inclusion of the unlawful FIC in its MRO calculation, DP&L relies on its own testimony pointing to an earlier order concerning a completely different ESP and a different charge, the distribution modernization rider (DMR), in which the Commission explained that the DMR should be excluded from a quantitative analysis as a charge like the DMR *may* be available under either a MRO or an ESP.[7] However, that case only stands for the proposition that a DMR *may* be *available* under a hypothetical MRO under a different set of facts. DP&L failed to demonstrate that a FIC *would* apply under a hypothetical MRO in *this* case. DP&L also failed to demonstrate that if a FIC would apply, what amount or level of any hypothetical FIC may or may not be authorized under a hypothetical MRO.

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[3] See DP&L Comments at 9-14.

[4] DP&L Comments at 9-12.

[5] See Comments of the Ohio Manufacturers' Association Energy Group at 4-5, 10 (July 1, 2020) ("Initial Comments").

[6] See Comments of IEU-Ohio at 7-15 (July 1, 2020) ("IEU Comments"); Comments by OCC at 4-10 (July 1, 2020) ("OCC Comments"); Initial Comments of IGS at 13-21 (July 1, 2020) ("IGS Comments"); Initial Comments of Honda and Dayton at 12-20 (July 1, 2020) ("Honda/Dayton Comments"); Comments of the Kroger Co. at 7-11 (July 1, 2020) ("Kroger Comments").

[7] DP&L Comments at 9-10; Testimony of Gustavo Garavaglia M. at 9-10 (April 1, 2020).

Furthermore, DP&L asserts that it could collect a FIC under a hypothetical MRO because DP&L would face financial integrity issues without the unlawful RSC.[8] Without support, DP&L claims that the reduction in its cash flow resulting from the elimination of the RSC would cause financial problems.[9] OMAEG agrees with other stakeholders who explain that DP&L has not sustained its burden of proof to demonstrate a financial emergency sufficient for emergency rate relief will in fact exist.[10] DP&L has only shown that loss of the RSC would result in decreased cash flow—hardly a groundbreaking argument, since removing any charge will invariably result in lower rates for customers. Although DP&L cannot justify a hypothetical FIC by demonstrating an actual financial emergency, it attempts to justify the FIC by pointing to its alleged reliance on cash flow from existing, unlawful charges. Under DP&L's calculations, a hypothetical FIC would be calculated to fully compensate DP&L for losing an unlawful charge, not for resolving any alleged emergency.[11]

DP&L ignores the statutory text that it relies on to assert that Ohio law authorizes emergency rate adjustments through an MRO. DP&L fails to relate the FIC to a "just and reasonable amount . . . necessary to address any emergency that threatens [DP&L's] financial integrity"[12] under R.C. 4928.142(D)(4).[13] Instead, DP&L starts with the amount it currently recovers under the unlawful RSC, and bases the FIC on matching that amount.[14] By suggesting that the entirety of the RSC is necessary to address a hypothetical emergency that may threaten

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[8] See DP&L Comments at 9-12.

[9] See Garavaglia Testimony at 13, Malinak Testimony at 50-51.

[10] See Honda/Dayton Comments at 16-18; IEU Comments 11-13.

[11] See Honda/Dayton Comments at 22-24 ("DP&L's calculation of the financial integrity charge is unrelated to the amount of funding DP&L needs to avert an emergency or survive to the next case.").

[12] R.C. 4928.142(D)(4).

[13] See DP&L Comments at 9.

[14] See id. at 11-12.

DP&L's financial integrity, DP&L seems to suggest that lowering its current cash flows by even a few dollars would result in a financial collapse. This seems dubious at best.

DP&L also presents an alternative, yet equally unrealistic method of calculating the alleged FIC.[15] DP&L states that its parent company, AES, "plans" to make a $300 million equity infusion under Modified ESP I over the next two years.[16] However, under DP&L's hypothetical MRO, AES arbitrarily cuts that supposedly planned investment in half.[17] DP&L then asserts that under an MRO, without the additional $150 million investment from AES, DP&L would need a higher FIC to obtain the same cash flow levels, and sets the FIC under a hypothetical MRO to reach these same levels.[18]

DP&L's witness asserts that AES will not invest at the same level under a MRO because such an investment would be "uneconomic" due to the loss of the RSC.[19] However, if DP&L argues that it can set a FIC in a hypothetical MRO to a level *higher* than the existing RSC in order to make up for lost revenue, then there is nothing making the additional investment uneconomical under the hypothetical MRO in the first place, and no valid reason to set the FIC at a higher rate to make up for the difference in cash flow. It seems that by choosing to invest the additional $150 million under Modified ESP I, but *not* under a hypothetical MRO, AES and DP&L seek to ensure that any hypothetical FIC is necessarily higher than the current, unlawful RSC in order for the Modified ESP I to be more favorable in the aggregate than the expected results of an MRO.

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[15] Id.

[16] See DP&L Comments at 8; OCC Comments at 18; Malinak Testimony at 45.

[17] Malinak Testimony at 53.

[18] See DP&L Comments at 11-12.

[19] Malinak Testimony at 8.

DP&L's Modified ESP I also fails the MFA test on qualitative terms. DP&L makes several incorrect claims about the alleged qualitative benefits of Modified ESP I. As discussed above, DP&L alleges that Modified ESP I would include an additional $150 million investment that a hypothetical MRO would lack.[20] AES makes no firm commitment to this "planned" investment.[21] Once again, DP&L and AES have made an arbitrary choice to invest in one plan, and not the other, effectively ensuring that the Modified ESP I is more favorable than their poorly-designed MRO. OCC explains that DP&L attempts to make ESP I more favorable by *claiming* it will invest, even though it may very well never do so.[22] OMAEG echoes this comment. Permitting DP&L to influence the outcome of the MFA test through arbitrary and vague promises of equity infusions obscures a legitimate comparison between the Modified ESP I and a hypothetical MRO.

DP&L also claims that SEET protections are a qualitative benefit of ESP I.[23] However, as other intervenors have noted, SEET review does not provide robust protections, and hardly makes up for the disadvantages inherent in an ESP.[24] Customers can theoretically recover refunds for significantly excessive charges under SEET review, but in practice, this rarely occurs.[25] Additionally, customers will only recover significantly excessive—not excessive—earnings, and only after a months-long SEET review. Under a MRO, rather than charging customers excessive rates and allowing them to later recover those amounts deemed significantly excessive, customers are charged competitive, market rates for electricity. Under a MRO, customers are not required to pay excessive charges and then wait for the possibility of refunds later.

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[20] DP&L Comments at 12-13.

[21] Id.

[22] OCC Comments at 11-12.

[23] DP&L Comments at 13.

[24] See OCC Comments at 12-14; IEU Comments at 17.

[25] See OCC Comments at 13.

DP&L also attempts to argue that a bypassable FIC is less favorable than the nonbypassable RSC as customers could avoid paying the charge by shopping. But avoiding the FIC charge would be a clear benefit to customers as nonbypassable charges force shopping customers to subsidize DP&L.

B. DP&L understates its projected return on equity.

DP&L's SEET calculations of Modified ESP I[26] significantly understate DP&L's potential future return on equity (ROE). Other interested parties also have raised various concerns with DP&L's erroneous SEET calculations, which OMAEG supports.[27] DP&L erroneously includes "planned" equity infusions and grid modernization expenditures in their calculations, without any guarantee of actually receiving the infusions or making the capital expenditures. Removing these speculative numbers from the SEET calculation will result in a much higher, and much more accurate, ROE.

First, DP&L includes a "planned" $300 million equity infusion over two years by parent company AES in its SEET calculations.[28] However, neither DP&L nor AES makes any firm or binding commitment to this equity infusion, or even any specific dates regarding the "planned" investment.[29] As noted by OCC, any decrease in expected equity will lead to a proportional increase in ROE, due to the method of calculating ROE.[30] Without such an infusion, DP&L's equity will drop by $300 million, and, consequently, the average ROE will prove much higher than DP&L projects.

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[26] See DP&L Comments at 16.

[27] See Honda Comments at 26-28; IEU Comments at 18-21; OCC Comments at 17-19.

[28] See DP&L Comments at 8; OCC Comments at 18; Malinak Testimony at 45.

[29] See DP&L Comments at 12-13.

[30] OCC Comments at 18.

Second, DP&L includes speculative grid modernization expenditures in its SEET calculations.[31] DP&L previously collected a DMR,[32] with funds specifically intended for grid modernization. However, DP&L's witness focuses on the pressing need to upgrade DP&L's infrastructure, and the vague plans to do so, without mentioning any specifics, or explaining how DP&L spent the already-collected DMR funds.[33] Additionally, DP&L fails to mention that any future grid modernization expenditures will need to be approved by the Commission, including the level and timing of the expenditures, which has not yet occurred.

Allowing DP&L to deflate its projected ROE based on speculative grid modernization expenditures would fly in the face of the Supreme Court of Ohio's recent ruling on DMR charges and noncommittal grid modernization plans.[34] The Court found that a DMR that "does not require the companies to take any action in exchange for receiving the DMR funds" and that has "no discernable consequences or repercussions if [the utility] fails to" make the promised implementation and deployment of grid modernization programs was invalid, and failed to sufficiently protect consumers.[35] Allowing DP&L to include grid modernization expenditures in its SEET calculations without any requirements that it actually make those projected capital investments would similarly fail to protect consumers. Given that the Commission authorized DP&L to collect a DMR for two years, and yet DP&L still claims it is "woefully behind its brethren utilities" in capital investments,[36] there is little reason to believe DP&L will actually make these

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[31] See Honda Comments at 27.

[32] See Garavaglia Testimony at 11 (noting that the Commission authorized DP&L to collect a DMR from an October 20, 2017 order, until invalidating the DMR over two years later).

[33] See Garavaglia Testimony at 2-4.

[34] See *In re Ohio Edison Co.*, 157 Ohio St.3d 73, 2019-Ohio-2401, 131 N.E.3d 906.

[35] *Id.* at ¶¶ 14-22.

[36] Garavaglia Testimony at 3.

investments in the future. Instead, DP&L makes vague promises of future capital expenditures in an attempt to artificially deflate its future ROE at the expense of consumers and in order to pass the SEET review.

Removing speculative "planned" equity infusions and capital expenditures from DP&L's calculation will result in a significantly higher ROE. DP&L includes these speculative equity investments in its SEET calculation in order to arrive at an artificially and incorrectly deflated ROE. The Commission should therefore reject DP&L's SEET calculations.

C. The Commission should eliminate the RSC.

DP&L asks that the Commission not invalidate the RSC, even if it finds that ESP I fails either test.[37] DP&L alleges it would face cash flow issues without the RSC.[38] As discussed above, the Commission should invalidate the RSC due to the Court's general prohibition of similar financial stability charges as illegal transition revenue.[39]

DP&L attempts to avoid the transition revenue issue by inaccurately portraying the RSC as a provider of last resort (POLR) charge.[40] This argument fails. First, DP&L does not actually provide POLR service to its customers.[41] In fact, as noted by Honda and Dayton in their comments, in past ESP cases, DP&L has not even attempted to present any evidence of POLR costs.[42] DP&L also does not provide evidence for the actual *amount* of those costs here.[43] Therefore, even if

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[37] DP&L Comments at 16-19.

[38] Id.

[39] *See In re Columbus S. Power Co.*, 147 Ohio. St.3d 439, 2016-Ohio-1608, 67 N.E.3d 734; *In re Application of Dayton Power & Light Co.*, 147 Ohio St.3d 166, 2016-Ohio-3490, 62 N.E.3d 179.

[40] Garavaglia Testimony at 13, Malinak Testimony at 65-66.

[41] See Kroger's Comments at 9; see also IGS Comments at 28.

[42] Honda/Dayton's Comments at 7.

[43] See Malinak Testimony at 65-66.

DP&L attempts to incorrectly tie the RSC to POLR costs, DP&L fails to meet its burden of proof in justifying any recovery under the RSC, since it has not and cannot demonstrate any actual POLR costs.

Additionally, since DP&L already recovers the equivalent of POLR costs in another rider,[44] any POLR cost recovery under the RSC would prove duplicative and unlawful. Perhaps due to the weakness of this argument, in its comments DP&L attempts to pivot yet again, and also attempts to justify the RSC on financial integrity grounds.[45]

Similarly, the RSC is not justifiable or lawful on financial integrity grounds. As discussed above and in OMAEG's initial comments, the RSC illegally collects transition revenues.[46] When DP&L applied to replace the original version of ESP I with ESP II, the Commission allowed DP&L to replace the RSC with the similar SSR.[47] Subsequently, the Court struck down the SSR for illegally collecting transition revenues.[48] The RSC and the SSR collect equivalent revenues by design, making each unlawful under the Court's precedent.

Additionally DP&L has failed to sustain its burden of proof to demonstrate a financial emergency that would allow the RSC to be justified under current circumstances were DP&L to apply for it today. Instead, DP&L only provides unsupported statements that loss of the unlawful RSC would decrease cash flow.[49] The reduction in cash flow in and of itself does not justify the

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[44] See Kroger's Comments at 9.

[45] DP&L Comments at 16-19.

[46] See Initial Comments at 6-7, *citing citing In re Application of Columbus Southern Power Co.*, 147 Ohio St.3d 439, 2016-Ohio-1608 at ¶¶ 21 ("R.C. 4928.38 bars the receipt of transition revenues or any equivalent revenues.").

[47] *In re The Dayton Power and Light Co. for Approval of its Electric Security Plan*, Case No. 12-0426- EL-SSO, et al., Opinion and Order (Sept. 4, 2013).

[48] *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.

[49] See DP&L Comments at 17-18.

RSC. Allowing utilities to substitute unlawful charges with FIC equivalents, on the grounds that losing revenue from unlawful charges damages the utility, would make it functionally impossible to rescind any unlawful charge, and violate the Court's ban on collecting equivalent financial integrity charges. Furthermore, if decreasing DP&L's cash flow by removing the RSC creates a financial emergency as DP&L suggests, DP&L's recourse is to file a new ESP, file an application for an increase in distribution rates, or seek emergency rate relief under R.C. 4909.16. Continuing an unlawful charge, which causes DP&L to recover significantly excessive earnings and causes the Modified ESP I to fail the MFA test, is not an appropriate option.

Given that DP&L is unable to justify the lawfulness of the RSC (as a transition charge, POLR charge, or a financial integrity charge), the Commission should, at a minimum, eliminate the RSC charge from the Modified ESP I.

III. CONCLUSION

As demonstrated in OMAEG's Initial Comments and Reply Comments, DP&L's current, Modified ESP I is less favorable in the aggregate than the expected results of a MRO, and enables DP&L to recover significantly excessive earnings from customers. As such, OMAEG respectfully requests that the Commission adopt the recommendations set forth in its Initial Comments and Reply Comments and deny DP&L's Application, finding that DP&L's Modified ESP I fails the SEET review and the MFA test.

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

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/s/ Kimberly W. Bojko
Kimberly W. Bojko

william.michael@occ.ohio.gov
amy.botschner.obrien@occ.ohio.gov
jsharkey@ficlaw.com
djireland@ficlaw.com
chollon@ficlaw.com
michael.schuler@aes.com
mkurtz@bkllawfirm.com
kboehm@bkllawfirm.com
jklercohn@bkllawfirm.com
dparram@bricker.com
dstinson@bricker.com
jspottswood@bricker.com
slesser@calfee.com
alexander@calfee.com
mkeaney@calfee.com
khehmeyer@calfee.com
mpritchard@mcneeslaw.com
rglover@mcneeslaw.com
bethany.allen@igs.com
joe.oliker@igs.com
michael.nugent@igs.com
fdarr2019@gmail.com

Stephanie.Chimel@ThompsonHine.com

Kevin.Oles@ThompsonHine.com

Attorney Examiners:

patricia.schabo@puco.ohio.gov
michael.williams@puco.ohio.gov

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