

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
The Dayton Power and Light Company)
For the Creation of a Rate Stabilization)
Surcharge Rider and Distribution)
Rate Increase.)

Case No. 05-276-EL-AIR

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INDUSTRIAL ENERGY USERS-OHIO'S MEMORANDUM CONTRA
APPLICATIONS FOR REHEARING OF OCC AND OPAC

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Ohio

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I. INTRODUCTION AND BACKGROUND

Pursuant to Rule 4901-1-35(B), Ohio Administrative Code, Industrial Energy Users-Ohio ("IEU-Ohio") files this Memorandum Contra Applications for Rehearing filed by The Office of the Ohio Consumers' Counsel ("OCC") and Ohio Partners for Affordable Energy ("OPAE") for the reasons discussed below. The failure of IEU-Ohio to specifically address every issue raised by OCC or OPAE should not be construed as an endorsement or agreement with that position.

On December 28, 2005, the Public Utilities Commission of Ohio ("Commission") issued an Opinion and Order approving, in large part, a Stipulation and Recommendation filed on November 3, 2005, supported by the Dayton Power & Light Company ("DP&L"), IEU-Ohio, Cargill, Inc., Honda of America Mfg., Inc., and not opposed by Staff that addressed the full range of issues in this proceeding (hereinafter "Stipulation"). More specifically, the Stipulation addressed the lack of maturation of the wholesale electric market and other issues more broadly affecting energy markets and the relationship of these issues to the development of the retail market in Ohio by

extending DP&L's rate stabilization plan [established in *In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for The Dayton Power and Light Company, et al.*, Case No. 02-2779-EL-ATA, Opinion and Order (September 2, 2003) (hereinafter "RSP Order")] until 2010; keeping DP&L's Market-Based Standard Service Offer ("MBSSO") frozen through 2010; implementing an unavoidable Rate Stabilization Charge ("RSC") set at 11% of DP&L's generation rate to compensate DP&L for stabilizing prices and providing Standard Service Offer ("SSO") service; continuing the Voluntary Enrollment Process ("VEP") into 2006 and 2007; and, implementing an Environmental Investment Rider ("EIR") beginning on January 1, 2007 through December 31, 2010 to compensate DP&L for investments in its generation plants to comply with U.S. Environmental Protection Agency regulations. The Commission modified the EIR, which is set at 5.4% of DP&L's January 1, 2004 generation rate such that it is 100% avoidable for shopping customers for its entire duration (January 1, 2007 through December 31, 2010). Opinion and Order at 9.

On January 27, 2006, OCC and OPAE filed Applications for Rehearing. Because each of the arguments made by OCC and OPAE have been made in either or both of their respective Post Hearing and Reply Briefs, and for the reasons discussed more fully below, the Commission should deny the Applications for Rehearing filed by OCC and OPAE.

II. ARGUMENT

In support of the Applications for Rehearing, both OCC and OPAE argue that the Commission's Order is unreasonable and unlawful because it negates provisions of the RSP Order without demonstrating that the RSP Order was in error by including the

EIR, which was not contemplated in the RSP Order. Setting aside, for the sake of argument, the fact that this is neither a new argument for OCC and OPAE nor one that the Commission has not already fully considered in its Order, OCC and OPAE completely disregard the fact that the Commission modified the Stipulation such that the EIR is 100% avoidable for its entire duration for shopping customers. The practical result of this change is that it effectively increases the shopping credit for customers that choose a competitive retail electric service ("CRES") provider and, thus, promotes shopping. Thus, while OCC states that the Commission's Order "contribute[s] to further delay in the competitive supply of electric generation service," that is simply not the case. Moreover, because the EIR is 100% avoidable for shopping customers, OCC's argument that it is misplaced by including it in distribution rates is moot inasmuch as shopping customers do not pay any portion of the EIR regardless of its placement.

As importantly, OPAE and OCC also continue to disregard the provision of the Stipulation that gives customers the benefit of rate certainty through 2010 *and* an opportunity for the Commission to terminate the Stipulation should actual market performance provide better prices for customers. Stipulating Parties' Exhibit 1 at 6. Accordingly, even if, as OCC and OPAE argue, the approved Stipulation rates are above those that are produced by the market, the Commission can terminate the Stipulation and implement the provisions of Section 4928.14, Revised Code. Thus, customers get the benefit of the predictability of the RSP rates for the extended period or market rates should they prove lower than those produced by the extended RSP.

Ignoring these customer benefits, OCC and OPAE set forth disjointed and short-sighted arguments that fail to advocate a cohesive policy for the Commission to adopt.

For example, in attempting to discern OCC's position on whether the Commission should mitigate rate shock or let the market forces prevail, OCC states "At the very least...the Commission should reduce the resultant charges such that residential customers are not subjected to the shock of generation rate increases above 8% at the end of 2008." OCC Application for Rehearing at 8. However, in the very next sentence OCC states, "Testimony on behalf of the OCC dispelled the concept of 'rate shock' that is contained within the introductory paragraphs of the 05-276 Stipulation." OCC Application for Rehearing at 8.

Further, OCC states, "the retail price forecasts provided by DP&L support the existence of a viable competitive market for residential customers after the end of the existing RSP." OCC Application for Rehearing at 9. Nonetheless, OCC argues that additional spending on the Voluntary Enrollment Procedure ("VEP") in 2007, a program conceived to invigorate competition and which OCC played an important role in developing, would be "a pure waste of money" as none of the rounds undertaken to date have produced a single CRES provider bidder and the chances for success in 2007 are "virtually nonexistent." OCC Application for Rehearing at 13. It is unclear to IEU-Ohio what transformation will take place in the market over a period of one year that will change it from a market with virtually nonexistent chances for success to one in which there will be viable competition. OCC did not provide any evidence of how this change will take place.

OPAE makes similar conflicting claims. For example, OPAE states that there is no evidence that marketers will enter the DP&L market. OPAE Application for Rehearing at 10. However, OPAE also states that the "Commission has ample time to

observe the evolution of the marketplace through the period of the original RSP Stipulation and make modifications in the future....” OPAE Application for Rehearing at 5-6.

OCC and OPAE have made each of these arguments in either or both of their respective Post Hearing or Reply Briefs. As OCC and OPAE have not presented any new arguments for the Commission’s consideration, have not considered the Stipulation as an entire package by disregarding the provisions and Commission modifications that benefit customers and, accordingly, have not examined the Stipulation from the perspective called for by the Commission’s rules, the Commission should deny the Applications for Rehearing.

OCC and OPAE are really asking the Commission to produce outcomes that the market is not currently capable of producing and that act as barriers to competition, to hold DP&L to the 11% cap in the RSP Stipulation through 2008, and then to wait until the last minute to see if market prices in 2009 and 2010 are stable and below current estimates in the hope that customers are not scrambling to find relief from drastic rate shock. Yet, neither OPAE nor OCC have presented any evidence that the volatility and rate shock risks will be addressed by a robust market in the meantime or by 2009. Since the time that the RSP Stipulation was developed and filed in early 2003, we have more actual experience and knowledge that suggests that it would be foolish not to manage the risks and plan further out than the end of 2008. The approved Stipulation provides a balanced approach that eliminates the uncertainty confronting DP&L’s customers, CRES providers and DP&L alike on issues regarding the price and reliability of electricity for the period after December 31, 2008. The approved Stipulation also

recognizes that the actual pace of the market's emergence is not what was expected and allows the market to continue to develop safely while mindful of the General Assembly's and the Commission's goals.

Wherefore, IEU-Ohio respectfully requests the Commission deny OCC's and OPAE's Applications for Rehearing.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Memorandum Contra OCC and OPAE's Applications for Rehearing* was served upon the following parties of record this 6th day of February 2006, via electronic transmission.



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