FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Tariff Changes Associated with Request to Implement a PJM Administration Fee Rider.	))))	Case No. 05-844-EL-ATA

REPLY MEMORANDUM TO THE DAYTON POWER AND LIGHT COMPANY'S MEMORANDUM CONTRA MOTION TO INTERVENE BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

On July 1, 2005, the Dayton Power & Light Company ("DP&L" or the "Company") applied to the Public Utilities Commission of Ohio ("PUCO" or "Commission") for authority to implement a transmission rider for the recovery of both current and deferred PJM administrative fees.[1] The Application preceded the recent Commission Entry on Rehearing that approved DP&L's application in Case No. 04-1645-EL-AAM ("Deferral Case") for accounting authority to defer PJM administrative fees.[2] In the above-captioned case, DP&L proposes to recover the deferred PJM administrative fees over a three year period, plus carrying charges at 10.93 percent, beginning January 1, 2006.[3]

[1] Application at Exhibit C-1.

[2] *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify its Accounting Procedures,* Case No. 04-1645-EL-AAM ("Deferral Case"), Entry on Rehearing (July 13, 2005).

[3] Application at Exhibit C-1. (The 10.93% carrying charge rate is DP&L's authorized rate of return from its last rate case, OCC believes this rate is too high and should be based upon DP&L's long-term debt rate, or approximately 7.27%.)

On August 29, 2005, the Office of the Ohio Consumers' Counsel ("OCC") filed a Motion to Intervene that challenged the Application filed by the Company in which DP&L proposed to modify its tariffs to include a PJM Administrative Fee Rider ("Rider"). On September 13, 2005, DP&L submitted a Memorandum Contra the OCC Motion to Intervene and Protest ("Memo Contra"). Pursuant to Ohio Adm.Code 4901-1-12(B)(2), the OCC submits this Reply Memorandum.[4]

II. ARGUMENT

DP&L's Memo Contra does not challenge OCC's Motion to Intervene, but the pleading contests arguments contained in OCC's protest. DP&L stated that this case is about "recovery *after the end of the MDP* of amounts deferred during the MDP."[5] OCC agrees, but that is where the consensus ends. The parties come to different conclusions regarding the legality of the recovery that results from the Commission's approval of DP&L's accounting deferral request.

DP&L's recovery of PJM administrative costs incurred during the market development period violates the rate cap provision pursuant to R.C. 4928.34(A)(6). DP&L unreasonably relies[6] upon the following language from the Commission's Finding and Order in the Deferral Case:

> PJM administration fees fall within R.C. 4928.35(A), which authorizes the Commission to approve adjustments to rate schedules *during the market development period* as authorized by federal law.[7]

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[4] Pursuant to Ohio Adm. Code 4901-1-12(B)(2) the OCC has seven (7) days to Reply to DP&L's Memo Contra. Because the OCC was served DP&L's Memo Contra by mail, pursuant to Ohio Adm. Code 4901-1-07(B) an additional three (3) days shall be added to the prescribed period of time.

[5] Memo Contra at 2 (emphasis sic).

[6] Memo Contra at 2.

[7] Id., Finding and Order at 4 (June 1, 2005) (emphasis added).

However, DP&L may not legally adjust its rate schedules during the MDP without compensating adjustments that recognize the rate cap located in R.C. 4928.34(A)(6). As a result, DP&L has attempted to evade the rate cap provision by seeking to defer costs incurred during the MDP and adjusting its rate schedules, through the Rider, after the MDP. DP&L's effort to render R.C. 4928.34(A)(6) a nullity should be rejected by the Commission.

If DP&L wants to recover costs incurred during the MDP, then this is the time that DP&L should adjust its rate schedules. If DP&L increases its transmission rates during the MDP to recover PJM administrative fees, it must also implement a compensating decrease to its distribution rates in order to adhere to the rate cap and the Commission-approved stipulations in the Company's electric transition plan ("ETP") case[8] and the post market development period ("Post-MDP") service case.[9] If DP&L had proposed that method of recovering its PJM administrative fees incurred during the MDP, there would be no objection from the OCC.

If DP&L recovered PJM administrative costs during the MDP, then DP&L would have been required to implement a compensating decrease to distribution rates to adhere to the rate cap and the approved stipulations in the ETP and Post-MDP service cases. Under that scenario, DP&L's customers would not experience a rate increase during the MDP or as the result of costs incurred during the MDP. If DP&L recovers the deferred PJM administrative fees after the MDP, then the rate cap located in R.C. 4928.34(A)(6) will have been rendered a nullity and the Company will have been able to abrogate the commitments it entered into to reach settlements in the ETP and Post-MDP service cases. It is difficult to conceive that this is how the General

[8] *In re Application of DP&L for Approval of Transition Plan Pursuant to 4928.31*, Case No. 99-1687-EL-ETP, et al., Stipulation (June 1, 2000).

[9] *In re Extension of DP&L Market Development Period*, Case No. 02-2779-EL-ATA, et al., Stipulation at 11 (May 28, 2003).

Assembly envisioned the rate cap and the electric transition plan process to work.

DP&L wrongly argues that "this case only deals with rate adjustments *after* the MDP."[10] DP&L's argument fails to recognize that there are costs included within the rate adjustment that were incurred *during* the MDP and the opportunity to claim recovery of such costs could have taken place during the MDP when they were incurred. In order to preserve the integrity of the rate cap, the Company's recovery should be limited to PJM administrative fees actually incurred after the end of the MDP (December 31, 2005).

III. CONCLUSION

DP&L's Application fails to abide by the treatment of PJM administrative fees that was addressed in the ETP and the Post-MDP service cases, and also contravenes Ohio law. In the interests of DP&L's approximately 450,000 residential customers, the Application to recover deferred PJM administrative fees of approximately $7.0 million should be rejected as unlawful.

Respectfully submitted,

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[10] *Id.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the OCC's *Reply Memorandum to DP&L's Memorandum Contra* was served on the persons stated below via first class U.S. Mail, postage prepaid, this 23rd day of September 2005.

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