**Before**

**The Public Utilities Commission of Ohio**

In the Matter of the Application of )

The Dayton Power and Light Company ) Case No. 12-426-EL-SSO

for Approval of Its Market Rate Offer. )

In the Matter of the Application of )

The Dayton Power and Light Company ) Case No. 12-427-EL-ATA

for Approval of Revised Tariffs. )

In the Matter of the Application of )

The Dayton Power and Light Company ) Case No. 12-428-EL-AAM

for Approval of Certain Accounting )

Authority. )

In the Matter of the Application of )

The Dayton Power and Light Company ) Case No. 12-429-EL-WVR

for Waiver of Certain Commission Rules. )

In the Matter of the Application of )

The Dayton Power and Light Company ) Case No. 12-672-EL-RDR

to Establish Tariff Riders. )

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**JOINT MOVANTS’[[1]](#footnote-1) REPLY TO THE DAYTON POWER AND LIGHT**

**COMPANY’S MEMORANDUM IN OPPOSITION TO JOINT MOVANTS’**

**MOTION SEEKING AN ORDER DIRECTING THE DAYTON POWER AND LIGHT COMPANY TO COMPLY WITH THE STANDARD FILING REQUIREMENTS**

**FOR AN ELECTRIC SECURITY PLAN**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 On October 5, 2012, the Dayton Power and Light Company (“DP&L”) filed an application (“Application”) to establish a standard service offer (“SSO”) in the form of an electric security plan (“ESP”). DP&L’s Application, however, does not comply with the standard filing requirements for an ESP as established by Rule 4901:1-35-03, Ohio Administrative Code (“O.A.C.”). Because the Application is non-compliant, on October 22, 2012, the Joint Movants filed a motion (“Motion”) seeking an order from the Public Utilities Commission of Ohio (“Commission”) directing DP&L to comply with the standard filing requirements and requested the Commission stay the procedural schedule until DP&L complies.

DP&L responded on November 6, 2012 acknowledging that its Application was not in compliance with several standard filing requirements.[[2]](#footnote-2) DP&L stated that it would remedy some of the violations identified by Joint Movants’ Motion at some point in the future through a supplemental filing. DP&L also incorrectly argues that it is in compliance with several of the areas of alleged non-compliance identified in Joint Movants’ Motion.

On November 8, 2012, DP&L filed its supplement to its Application (“Supplement”); however, the Supplement still fails to provide all of the information required by the standard filing requirements. As discussed in greater detail below, the Commission should direct DP&L to comply with the standard filing requirements, including, but not limited to, the requirements specifically addressed below.

# DP&L’s Supplement Still Fails To Comply With The Standard Filing Requirements.

Although DP&L acknowledged that its Application was in non-compliance and subsequently filed additional information through its Supplement, DP&L still has not satisfied the standard filing requirements. Specifically, the Supplement fails to include updated bill impacts and pro forma financial projections to account for the quantification of the costs associated with the Yankee Solar project and DP&L’s estimate of the impact of the switching tracker. This information is required by Rule 4901:1-35-03(C)(2)-(3), O.A.C. Further, DP&L has not demonstrated good cause why it should not have to update its pro forma financial projections and bill impacts. Accordingly, the Commission should grant Joint Movants’ Motion and direct DP&L to update its pro forma financial projections and bill impacts to include the effects of the costs associated with the Yankee Solar project and the switching tracker.

# DP&L Incorrectly Argues That It Has Complied With The Commission’s Rules Regarding (1) The Effect Its Esp Will Have On Large-Scale Governmental Aggregation, (2) Corporate Separation, (3) The Impact Of The Reconciliation Rider (“Rr”), And (4) Argues That It Does Not Need To File Pro Forma Financial Projections By Business Function.

DP&L’s Application and Supplement fail to present certain information required by the standard filing requirements. DP&L has failed to provide (1) “[a] description of how the electric utility proposes to address governmental aggregation programs and implementation of divisions (I), (J), and (K) of section 4928.20 of the Revised Code”[[3]](#footnote-3) and “[a] description of the effect on large-scale governmental aggregation of any unavoidable generation charge proposed to be established in the ESP,”[[4]](#footnote-4) (2) “a section demonstrating that its current corporate separation plan is in compliance with section 4928.17 of the Revised Code, Chapter 4901:1-37 of the Administrative Code, *and consistent with the policy of the state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code*,”[[5]](#footnote-5) (3) a complete quantification of the RR, and (4) pro forma financial projections by business function, *i.e.,* segregated on a distribution/generation/transmission basis.

First, DP&L’s Application is non-compliant because it fails to address the impact that non-bypassable riders will have on governmental aggregation programs and implementation of Section 4928.20(I)-(K), Revised Code. Although, DP&L’s Memorandum in Opposition states that the testimony of DP&L witness Seger-Lawson (at “page 18, lines 4 to 13”[[6]](#footnote-6)) satisfies Rule 4901:1-35-03(C)(6)-(7), O.A.C,[[7]](#footnote-7) Ms. Seger-Lawson’s testimony does not discuss the effect that non-bypassable charges will have on large-scale governmental aggregation, and does not discuss the implementation of Section 4928.20(I)-(K), Revised Code. Page 18, lines 4 to 13 of Ms. Seger-Lawson’s testimony, states:

**Q. Ohio Administrative Code §4901:1-35-03(C)(6) and (7) require the utility to discuss how its ESP plan impacts governmental aggregation programs. How does DP&L’s plan address governmental aggregation programs?**

A. DP&L’s ESP plan does not provide disincentives for municipal corporations or townships to implement governmental aggregation programs. DP&L has had a number of communities pass ballot issues allowing them to implement opt out governmental aggregation programs, and has several communities that have moved forward with government aggregation efforts in 2012. There is nothing in DP&L’s ESP plan that would provide disincentives for governmental aggregation programs to go forward with their plans to aggregate.

 Claiming that its proposed ESP will not provide a disincentive, and noting that aggregation has occurred in the past, simply does not satisfy Rule 4901:1-35-03(C)(6)-(7), O.A.C. The rule requires a discussion of the impact non-bypassable charges will have on the programs and requires DP&L to discuss how its ESP will comply with Sections 4928.20(I)-(K), Revised Code. DP&L’s Application and Supplement do not even mention non-bypassable riders or the requirements of Divisions I, J, and K of Section 4928.20, Revised Code. Thus, DP&L’s Application does not comply with the standard filing requirements.

 Second, DP&L’s Application is non-compliant because it fails to demonstrate that its corporate separation plan satisfies the state policies set forth in Section 4928.02, Revised Code, as required by Rule 4901:1-35-03(F), O.A.C. Although DP&L claims that it satisfied that Rule through the material contained on pages 1-30 of its “Third Amended Corporate Separation Plan, which is located in Book III, Appendix A ... ,”[[8]](#footnote-8) the only reference to the state policies in relation to DP&L’s corporate separation plan is contained at page 6 of Appendix A:

DP&L acknowledges the policy goals of the state of Ohio as described in Revised Code Section 4928.02. Accordingly, consistent with the corporate separation rules, DP&L will not extend any undue preference or advantage to any of its affiliates that engage in the business of providing a competitive retail electric service or a non-electric retail product or service without just compensation as provided herein. Further, DP&L will act so as to effectuate the policy specified in Revised Code Section 4928.02 and to satisfy the public interest in preventing unfair competitive advantage and abuse of market power.

As required by Revised Code Section 4928.17 and the corporate separation rules, DP&L will not engage, either directly or through an affiliate, in the business of supplying a noncompetitive retail electric service and either a competitive retail electric service or a product or service other than retail electric service, except as otherwise authorized by law and except pursuant to the provisions of this Third Amended Corporate Separation Plan as approved by the Commission.[[9]](#footnote-9)

This statement, however, does not satisfy Rule 4901:1-35-03(F), O.A.C. DP&L merely acknowledges that state policy exists and states that its plan will not violate those policies. There is a difference between “stating” and “demonstrating” with the latter requiring some level of analysis. It is this analysis that is missing from DP&L’s Application and Appendix A and which is required by Rule 4901:1-35-03(F), O.A.C.

 DP&L also states that it has in fact fully quantified the RR and argues that, in any event, the Joint Movants failed “to cite any statute or code provision that would require DP&L to disclose such information in its ESP Application.”[[10]](#footnote-10) Contrary to DP&L’s claims, the Joint Movants did provide citations to Rule 4901:1-35-03(C)(2)-(3), O.A.C., and to Section 4928.143(C)(1), Revised Code. The Rule requires DP&L to include pro forma financial projections and customer bill impacts, and the statute places a burden on DP&L to demonstrate that its ESP is more favorable than a market rate offer (“MRO”).[[11]](#footnote-11) Although DP&L has partially quantified the RR, it failed to include the costs of retail enhancements in the cost of the rider despite providing the projected cost of retail enhancements in the testimony of DP&L witness Seger-Lawson.[[12]](#footnote-12) The incomplete and understated cost of the RR, however, is what was used by DP&L in the pro forma financial information and bill impacts. If DP&L understates the cost of the rider, the pro forma financial projections and customer bill impacts will be incomplete and the cost of its proposed ESP will be understated. Thus, DP&L should be directed to update its pro forma financial projections and bill impacts.

 Finally, DP&L states that Joint Movants “fail to cite any statute or code provision that requires DP&L to break down pro forma financial projections in its ESP Application on a generation, distribution, and transmission basis.”[[13]](#footnote-13) As mentioned above, however, DP&L’s Application must demonstrate that it is in compliance with the state policies contained in Section 4928.02, Revised Code (as part of the corporate separation requirements).[[14]](#footnote-14) Among other things, that Section provides that state policy includes ensuring “effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates.” Thus, DP&L has an affirmative obligation to demonstrate that its proposed ESP, among other things, will not provide anti-competitive subsidies.

And DP&L has no excuse for why it cannot file the information by business unit inasmuch as DP&L admits Ohio law and the Commission’s rules require DP&L to keep its records separated by business function:

 As required by Revised Code Section 4928.17(A)(1) and corporate separation rule OAC Section 4901:1-37-04(B), DP&L and each affiliate or business unit in the DP&L group will maintain, in accordance with generally accepted accounting principles, an applicable uniform system of accounts, books, records, and accounts that are separate from the books, records and accounts of each other affiliate or business unit.[[15]](#footnote-15)

Because the Commission must determine that DP&L is not engaged in cross-subsidization, and because DP&L is required to keep the information by business function, the Commission should direct DP&L to file pro forma financial projections by business function.

Although DP&L asserts deficiencies in its Application “can be addressed in discovery,” IEU-Ohio has sought information specific to the segregated business functions to which DP&L objected and has provided less than complete answers. For instance, IEU-Ohio requested DP&L “[i]dentify any documents that describe or discuss the contribution to net income, earnings per share or margin associated with each of DP&L's business segments ... .”[[16]](#footnote-16) DP&L objected claiming that “business segments” was undefined and subject to varying interpretations; and then cited to the total company numbers referenced in the testimony of DP&L witnesses Jackson and Chambers. Therefore, in the matter of efficiency, fairness, because the standard filing requirements and Section 4928.143(C)(1), Revised Code, place the burden upon DP&L to produce such information, and because Section 4928.17, Revised Code, and the corporate separation rules require DP&L to keep the information separated by business unit, the Commission should grant Joint Movants’ Motion. Specifically, the Commission should direct DP&L to file its pro forma financial information on a segregated generation/transmission/distribution basis and should direct DP&L to include the uniform system of accounts information applicable to each business function.

# Conclusion

In summary, the Joint Movants have identified multiple areas where DP&L has failed to comply with the standard filing requirements. The Commission’s rules place a burden on DP&L to present accurate and complete information in its Application to allow the Commission and parties a meaningful opportunity to review DP&L’s proposal. Additionally, the Ohio Revised Code places a burden upon DP&L to demonstrate that its ESP is more favorable than an MRO. By filing an admittedly non-compliant Application, DP&L has effectively attempted to move its burden onto the Commission, Staff, and intervening parties. Although DP&L claims that deficiencies can be addressed through discovery, DP&L’s assertion would undermine the reasons for standard filing requirements and would unfairly shift DP&L’s statutory burden to the Commission, Staff, and intervening parties. Finally, if DP&L’s responses to IEU-Ohio’s first set of discovery are any indication of what parties can expect to receive through the discovery process, discovery will not alleviate the deficiencies contained in DP&L’s Application and Supplement.

Accordingly, the Commission should grant Joint Movants’ Motion and direct DP&L to comply with the standard filing requirements, including, but not limited to, the areas raised herein, and should direct DP&L to do so in a timely fashion.

Respectfully submitted,

/s/ Matthew R. Pritchard

Samuel C. Randazzo

Frank P. Darr

Joseph E. Oliker

Matthew R. Pritchard

McNees Wallace & Nurick LLC

21 East State Street, 17th Floor

Columbus, OH 43215

sam@mwncmh.com

fdarr@mwncmh.com

joliker@mwncmh.com

mpritchard@mwncmh.com

**Attorneys for Industrial Energy Users-Ohio**

/s/ Colleen L. Mooney

Colleen L. Mooney

Ohio Partners for Affordable Energy

231 West Lima Street

Findlay, OH 45839

cmooney2@columbus.rr.com

**Attorney for Ohio Partners for Affordable Energy**

/s/ David F. Boehm

David F. Boehm

Michael L. Kurtz

Boehm, Kurtz & Lowry

36 East 7th Street, Ste. 1510

Cincinnati, OH 45202

dboehm@BKLlawfirm.com

mkurtz@BKLlawfirm.com

**Attorneys for Ohio Energy Group**

/s/ M. Anthony Long

M. Anthony Long

Honda of America Mfg., Inc.

24000 Honda Parkway

Marysville, OH 43040

tony\_long@ham.honda.com

**Attorney for Honda of America**

**Manufacturing, Inc.**

/s/ J. Thomas Siwo

J. Thomas Siwo

Matthew W. Warnock

BRICKER & ECKLER LLP

100 South Third Street

Columbus, OH 43215

tsiwo@bricker.com

mwarnock@bricker.com

**Attorneys for the OMA Energy Group**

/s/ Melissa R. Yost

Melissa R. Yost

Joseph P. Serio

Office of the Ohio Consumers’ Counsel

10 West Broad St., Ste. 1800

Columbus, OH 43215-3485

yost@occ.state.oh.us

serio@occ.state.oh.us

**Attorney for the Office of the**

**Ohio Consumers’ Counsel**

**Certificate Of Service**

I hereby certify that a copy of the foregoing *Joint Movants’ Reply to the Dayton Power and Light Company’s Memorandum in Opposition to Joint Movants’ Motion Seeking an Order Directing the Dayton Power and Light Company to Comply with the Standard Filing Requirements for an Electric Security Plan* was served upon the following parties of record this 13th day of November 2012, *via* electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

 /s/ Matthew R. Pritchard

 Matthew R. Pritchard

Judi L. Sobecki

The Dayton Power and Light Company

1065 Woodman Drive

Dayton, OH 45432

judi.sobecki@dplinc.com

Charles J. Faruki

Jeffrey S. Sharkey

Faruki, Ireland and Cox PLL

500 Courthouse Plaza, SW

10 North Ludlow Street

Dayton, OH 45402

cfaruki@ficlaw.com

jsharkey@ficlaw.com

**On Behalf of the Dayton Power and Light Company**

Matthew W. Warnock

J. Thomas Siwo

Bricker & Eckler LLP

100 South Third Street

Columbus, OH 43215

lmcalister@bricker.com

mwarnock@bricker.com

tsiwo@bricker.com

**On Behalf of the OMA Energy Group**

Mark A. Whitt

Andrew J. Campbell

Whitt Sturtevant LLP

PNC Plaza, Ste. 2020

155 East Broad St.

Columbus, OH 43215

whitt@whitt-sturtevant.com

campbell@whitt-sturtevant.com

Vincent Parisi

Matthew White

Interstate Gas Supply, Inc.

6100 Emerald Parkway

Dublin, OH 43016

vparisi@igsenergy.com

mswhite@igsenergy.com

**On Behalf of Interstate Gas Supply, Inc.**

Joseph P. Serio

Melissa R. Yost

Office of the Ohio Consumers’ Counsel

10 West Broad St., Ste. 1800

Columbus, OH 43215-3485

serio@occ.state.oh.us

yost@occ.state.oh.us

**On Behalf of the Office of the**

**Ohio Consumers’ Counsel**

Amy B. Spiller

Jeanne W. Kingery

139 East Fourth Street

1303-Main

Cincinnati, OH 45202

Amy.spiller@duke-energy.com

Jeanne.kingery@duke-energy.com

Philip B. Sineneng

Thompson Hine LLP

41 S. High Street, Suite 1700

Columbus, OH 43215

Philip.Sineneng@ThompsonHine.com

**On Behalf of Duke Energy Retail**

**Sales, LLC and Duke Energy Commercial Asset Management, Inc.**

Robert A. McMahon

Eberly McMahon, LLC

2321 Kemper Lane, Ste. 100

Cincinnati, OH 45206

bmcmahon@emh-law.com

Rocco D’Ascenzo

Elizabeth Watts

139 East Fourth Street

1303-Main

Cincinnati, OH 45202

Elizabeth.Watts@duke-energy.com

Rocco.D’Ascenzo@duke-energy.com

**On Behalf of Duke Energy Ohio, Inc.**

David F. Boehm

Michael L. Kurtz

Boehm, Kurtz & Lowry

36 East 7th Street, Ste. 1510

Cincinnati, OH 45202

dboehm@BKLlawfirm.com

mkurtz@BKLlawfirm.com

**On Behalf of Ohio Energy Group.**

M. Anthony Long

Honda of America Mfg., Inc.

24000 Honda Parkway

Marysville, OH 43040

tony\_long@ham.honda.com

**On Behalf of Honda of America**

**Manufacturing, Inc.**

Mark A. Hayden

FirstEnergy Service Company

76 South Main Street

Akron, OH 44308

haydenm@firstenergycorp.com

James F. Lang

Laura C. McBride

N. Trevor Alexander

Calfee, Halter & Grisswold LLP

1400 KeyBank Center

800 Superior Avenue

Cleveland, OH 44114

jlang@calfee.com

lmcbride@calfee.com

talexander@calfee.com

David A. Kutik

Jones Day

North Point

901 Lakeside Avenue

Cleveland, OH 44114

dakutik@jonesday.com

Allison E. Haedt

Jones Day

325 John H. McConnell Blvd., Ste. 600

PO Box 165017

Columbus, OH 43216-5017

aehaedt@jonesday.com

**On Behalf of FirstEnergy Solutions Corp.**

Jay E. Jadwin

155 W. Nationwide Blvd., Ste. 500

Columbus, OH 43215

jejadwin@aep.com

**On Behalf of AEP Retail Energy Partners LLC**

Cathryn N. Loucas

Trent A. Dougherty

Ohio Environmental Council

1207 Grandview Avenue, Ste. 201

Columbus, OH 43215-3449

trent@theoec.org

cathy@theoec.org

**On Behalf of the Ohio Environmental**

**Council**

Richard L. Sites

155 E. Broad Street, 15th Flr.

Columbus, OH 43215-3620

ricks@ohanet.org

Thomas J. O’Brien

Bricker & Eckler LLP

100 S. Third St.

Columbus, OH 43215-4291

tobrien@bricker.com

**On Behalf of Ohio Hospital Association**

Joseph M. Clark

Direct Energy

6641 North High Street, Suite 200

Worthington, OH 43085

jmclark@directenergy.com

Christopher L. Miller

Gregory H. Dunn

Asim Z. Haque

Alan G. Starkoff

Ice Miller LLP

250 West Street

Columbus, OH 43215

christopher.miller@icemiller.com

gregory.dunn@icemiller.com

asim.haque@icemiller.com

alan.starkoff@icemiller.com

**On Behalf of Direct Energy Services, LLC and Direct Energy Business, LLC**

Matthew J. Satterwhite

Steven T. Nourse

American Electric Power Service Corp.

1 Riverside Plaza, 29th Floor

Columbus, OH, 43215

mjsatterwhite@aep.com

stnourse@aep.com

**On Behalf of the Ohio Power Company**

M. Howard Petricoff

Stephen M. Howard

Vorys, Sater, Seymour & Pease LLP

52 East Gay Street

PO Box 1008

Columbus, OH 43215

mhpetricoff@vorys.com

smhoward@vorys.com

Scott C. Solberg

Eimer Stahl LLP

224 S. Michigan Ave., Suite 1100

Chicago, IL 60604

ssolberg@EimerStahl.com

**On Behalf of the Retail Energy Supply Association, Exelon Generation Company, LLC, Exelon Energy Company, Inc. Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.**

Stephanie M. Chmiel

Michael L. Dillard, Jr.

Philip B. Sineneng

Thompson Hine LLP

41 South High Street, Ste. 1700

Columbus, OH 43215

Stephanie.Chmiel@ThompsonHine.com

Michael.Dillard@ThompsonHine.com

Philip.sineneng@ThompsonHine.com

**On Behalf of Border Energy Electric, Inc.**

Kimberly W. Bojko

Joel E. Sechler

Carpenter Lipps & Leland LLP

280 Plaza, Suite 1300

280 North High Street

Columbus, OH 43215

Bojko@carpenterlipps.com

sechler@carpenterlipps.com

**On Behalf of SolarVision, LLC**

Mark S. Yurick

Zachary D. Kravitz

Taft, Stettinius & Hollister LLP

65 East State Street, Ste. 1000

Columbus, OH 43215

myurick@taftlaw.com

zkravitz@taftlaw.com

**On Behalf of The Kroger Company**

Matthew R. Cox

Matthew Cox Law, Ltd.

4145 St. Theresa Blvd.

Avon, OH 44011

matt@matthewcoxlaw.com

**On Behalf of the Council of Smaller Enterprises**

Colleen L. Mooney

Ohio Partners for Affordable Energy

231 West Lima Street

P.O. Box 1793

Findlay, OH 45839-1793

cmooney2@columbus.rr.com

**On Behalf of Ohio Partners for Affordable Energy**

Gregory J. Poulos

EnerNoc, Inc.

471 E. Broad Street

Columbus, OH 43215

gpoulos@enernoc.com

**On Behalf of EnerNOC, Inc.**

Steven M. Sherman

Joshua D. Hague

Grant E. Chapman

Krieg DeVault, LLP

One Indiana Square, Suite 2800

Indianapolis, Indiana 46204-2079

ssherman@kdlegal.com

jhague@kdlegal.com

gchapman@kdlegal.com

**On Behalf of Wal-Mart Stores East, LP and Sam’s East, Inc.**

Ellis Jacobs

Advocates for Basic Legal Equality, Inc.

333 W. First Street, Suite 500B

Dayton, OH 45402

ejacobs@ablelaw.org.

**On Behalf of Edgemont Neighborhood Coalition**

Thomas McNamee

Devin Parram

Assistant Attorney’s General

Attorney General’s Office

180 East Broad Street

Columbus, OH 43215

Thomas.mcnamee@puc.state.oh.us

Devin.parram@puc.state.oh.us

**On Behalf of the Staff of the Public Utilities Commission of Ohio**

Mandy Willey

Gregory Price

Bryce McKenney

Attorney Examiners

Public Utilities Commission of Ohio

180 East Broad Street

Columbus, OH 43215

Mandy.willey@puc.state.oh.us

Gregory.price@puc.state.oh.us

Bryce.mckenney@puc.state.oh.us

**Attorney Examiners**

1. The Joint Movants filing this pleading are Industrial Energy Users-Ohio (“IEU-Ohio”), Ohio Partners for Affordable Energy (“OPAE”), the Ohio Energy Group (“OEG”), Honda of America Manufacturing, Inc. (“Honda”), the OMA Energy Group (“OMAEG”) and the Office of the Ohio Consumers’ Counsel (“OCC”). [↑](#footnote-ref-1)
2. *See* The Dayton Power and Light Company’s Memorandum in Opposition to the Joint Movants’ Motion Seeking an Order Directing the Dayton Power and Light Company to Comply with the Standard Filing Requirements for an Electric Security Plan and Memorandum in Support and Memorandum Contra the Dayton Power and Light Company’s Request for Waivers at 2 (Nov. 6, 2012) (refiled with docketing on Nov. 8, 2012) (hereinafter “DP&L Memorandum in Opposition”). [↑](#footnote-ref-2)
3. Rule 4901:1-35-03(C)(6), O.A.C. [↑](#footnote-ref-3)
4. Rule 4901:1-35-03(C)(7), O.A.C. [↑](#footnote-ref-4)
5. Rule 4901:1-35-03(F), O.A.C. (emphasis added). [↑](#footnote-ref-5)
6. DP&L Memorandum in Opposition at 4. [↑](#footnote-ref-6)
7. *Id.* [↑](#footnote-ref-7)
8. DP&L Memorandum in Opposition at 5. [↑](#footnote-ref-8)
9. The remainder of the material on pages 1-30 of Appendix A also do not contain any discussion of how DP&L’s corporate separation plan will comply with state policies. The only two other references to state policy in Appendix A can be found on pages 4 and 5 of that appendix. [↑](#footnote-ref-9)
10. DP&L Memorandum in Opposition at 5. [↑](#footnote-ref-10)
11. Joint Movants’ Motion at 2. [↑](#footnote-ref-11)
12. DP&L Memorandum in Opposition at 5 (citing Ms. Seger-Lawson’s testimony, which identifies the estimated cost of the retail enhancements at $2.5 million). [↑](#footnote-ref-12)
13. DP&L Memorandum in Opposition at 6. [↑](#footnote-ref-13)
14. Rule 4901:1-35-03(F), O.A.C. Section 4928.17(C), Revised Code (which allows an electric distribution utility (“EDU”) to operate under functional separation, as DP&L currently does), also requires DP&L to maintain ongoing compliance with Section 4928.02, Revised Code. [↑](#footnote-ref-14)
15. ESP Application, Appendix A at 8. [↑](#footnote-ref-15)
16. Objections and Responses of the Dayton Power and Light Company to Industrial Energy Users-Ohio’s Interrogatories, Requests for Production of Documents, and Requests for Admissions upon Dayton Power and Light Company ESP First Set, October 23, 2012 at 26 (Nov. 8, 2012). [↑](#footnote-ref-16)