

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan.	:	Case No. 12-426-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.	:	Case No. 12-427-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority.	:	Case No. 12-428-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for the Waiver of Certain Commission Rules.	:	Case No. 12-429-EL-WVR
In the Matter of the Application of The Dayton Power and Light Company to Establish Tariff Riders.	:	Case No. 12-672-EL-RDR

**POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Michael DeWine
Ohio Attorney General

William L. Wright
Section Chief

Thomas W. McNamee
Werner L. Margard III
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215-3793
614.466.4397 (telephone)
614.644.8764 (fax)
thomas.mcnamee@puc.state.oh.us
werner.margard@puc.state.oh.us

May 20, 2013

TABLE OF CONTENTS

Page

INTRODUCTION	1
DISCUSSION.....	2
A. A switching tracker (ST) should be rejected.....	2
B. A Service Stability Rider (SSR) mechanism is permissible in an ESP.	5
C. The Standard for an SSR	6
D. The Commission must decide if the financial integrity of DP&L is endangered.	8
E. The Level of the SSR	9
F. The ESP term should be three years.....	10
G. DP&L debt/equity ratio should be adjusted.	13
H. Staff Adjustments to Company Projections	13
I. Competitive Bidding Process (CBP).....	16
J. No Adjustment Needed for Switch Rates	17
K. SSR is Not a Transition Charge	18
L. Ringfencing the SSR	21
M. SSR Allocation	22
N. Maximum Charge Provisions.....	23
O. Riders.....	24
1. FUEL Rider	24
2. Storm Damage Recovery Rider	25
3. Competitive Bid True-Up Rider.....	26
4. Reconciliation Rider.....	26
P. MRO v. ESP	28

TABLE OF CONTENTS (cont'd)

Page

Q. An AER Cost Cap should not be considered in this case. 29

CONCLUSION 32

PROOF OF SERVICE..... 33

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan.	:	Case No. 12-426-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.	:	Case No. 12-427-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority.	:	Case No. 12-428-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for the Waiver of Certain Commission Rules.	:	Case No. 12-429-EL-WVR
In the Matter of the Application of The Dayton Power and Light Company to Establish Tariff Riders.	:	Case No. 12-672-EL-RDR

POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

INTRODUCTION

This case revolves around the financial stability of the Dayton Power and Light Company (DP&L or the company). It is an integrated utility, that is to say Dayton Power and Light owns generating, transmission, and distribution assets. It claims that it is necessary that this Commission provide it with a switching tracker (ST) and a system stability rider (SSR) in its Electric Security Plan (ESP) for five years (among other steps) to assure that DP&L can maintain financial integrity during the period of time that will be

required for the company to spin its generating assets off into a separate affiliate. The Staff of the Public Utilities Commission of Ohio (Staff) agrees with some of the proposals of the company and disagrees with others. Each topic will be explored in the sections that follow.

DISCUSSION

A. A switching tracker (ST) should be rejected.

The Company proposes a switching tracker which would provide it with an amount of revenue which would replace the amount of margin that it would lose for switching that occurs beyond the 62% level.¹ Essentially, under the Company's proposal, it would receive the same amount of profit whether or not switching occurs above the 62% level. If switching does not rise above the 62% level, the Company would achieve its margin from its continued sales. If switching would rise above this level, the Company would achieve the same margin through the ST. It would be insulated from the financial impacts of increased switching.

It is assuredly true that one of the sources of the Company's increased financial stress is the increased levels of switching already observed.² It is likewise true that the proposed ST mechanism would eliminate this one source of increased financial stress that

¹ This level of switching was essentially achieved by August 30, 2012. Prefiled Testimony of H.M. Choueiki (Staff Ex. 10) at 7.

² The others are low capacity and energy prices.

the Company will likely experience.³ Despite these facts, the ST proposal should be rejected.

In implementing Chapter 4928, the Commission is charged to do a number of things, including:

* * *

(B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;

(C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;

* * *

(H) Ensure 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. . . .⁴

The proposed ST works at cross-purposes with all of these policies.⁵ DP&L is *supposed* to be subject to the stresses of shopping. This is not new. Thirteen years ago the General

³ The Staff and the Company disagree about the projections of the level that switching will achieve over the term of the plan as well as the length of the plan itself. The Staff projects lower levels of switching than the Company and advocates a shorter term.

⁴ R.C. 4928.02.

⁵ Prefiled Testimony of H.M. Choueiki (Staff Ex. 10) at 9.

Assembly determined that retail electric generating service was competitive.⁶ All shopping begins with a customer leaving the standard service offer. That this leaving would have financial ramifications for the utilities was not lost on the General Assembly. SB 3 included the possibility of transition charges intended to “...assist it in making the transition to a fully competitive retail electric generation market.”⁷ DP&L received such transition charges.⁸ Further the Company has charged into the competitive markets by opting into the PJM capacity markets when prices were high rather than opting for the alternative construct.⁹ The Company has had sufficient time and resources to come to grips with the occurrence of switching. Assuring the profit margin of one player in a competitive market is clearly anti-competitive. The ST does this and should not, therefore, be authorized.

Even if the ST were a good idea, and it is not, including such a mechanism within an ESP is problematic. For an ESP to be approved, it must be more favorable in the aggregate than a Market Rate Offer (MRO) would be if there was one.¹⁰ Given the adjustable nature of the proposed ST, it is remarkably difficult to establish what it would cost were it authorized. Indeed, if there were no additional switching over the term, the

⁶ R.C. 4928.03.

⁷ R.C. 4928.37(A)(1).

⁸ *See, In re Dayton Power and Light*, Case No. 99-1687-EL-ETP (Opinion and Order at 27, *et seq.*) (September 21, 2000).

⁹ Prefiled Testimony of H.M. Choueiki (Staff Ex. 10) at 9.

¹⁰ R.C. 4928.143(C)(1).

ST would cost nothing. Alternatively if every customer switched, the cost could be huge. The elusive nature of the ST would make it very difficult to evaluate in the ESP/MRO comparison.

B. A Service Stability Rider (SSR) mechanism is permissible in an ESP.

An ESP may contain a variety of terms including:

Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service....¹¹

It is clear that the Commission has wide powers to approve mechanisms to stabilize or provide certainty regarding retail electric service. It is equally clear that these mechanisms can include non-bypassable charges and deferrals. The statute simply says this.

This power is fundamentally different than the power granted to the Commission in an MRO context. In an MRO the Commission may:

... adjust the electric distribution utility's most recent standard service offer price by such just and reasonable amount that the commission determines necessary to address any emergency that threatens the utility's financial integrity or to ensure that the resulting revenue available to the utility for providing the standard service offer is not so inadequate as to result, directly or indirectly, in a taking of property without

¹¹

R.C. 4928.143(B)(2)(d).

compensation pursuant to Section 19 of Article I, Ohio Constitution.¹²

In the MRO context, the Commission’s power is premised on the existence of either an “emergency”¹³ or the possibility of an unconstitutional taking of utility property. This is a much higher standard than is the case for the availability of the Commission’s powers under R.C. 4928.143(B)(2)(d) which only requires that the action have “...the effect of stabilizing or providing certainty regarding retail electric service.” By comparing the two sections it is obvious that the General Assembly granted the Commission much broader powers in an ESP than it did in the MRO context.

In this case, DP&L seeks approval of a non-bypassable SSR to assure its financial integrity. Should the Commission find that such a charge would have “...the effect of stabilizing or providing certainty regarding retail electric service”, the charge is permissible under the Revised Code.

C. The Standard for an SSR

As has been seen, the General Assembly has set rather a low bar for the availability of an SSR-type charge. This low bar must still be squared with the requirement that, in anything the Commission does under Chapter 4928, it must:

Ensure 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

¹² R.C. 4928.142(D).

¹³ This term is undefined. It may be a reference to R.C. 4909.16.

electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates.¹⁴

This is not a simple task.

DP&L is an integrated utility. It owns transmission, generation, and distribution assets. Any effort to stabilize DP&L inherently stabilizes all three activities. At this time it is not possible to separate them. Thus, to accomplish the tasks assigned to the Commission by the General Assembly it must simultaneously provide sufficient support to a utility so as to accomplish "...stabilizing or providing certainty regarding retail electric service" but simultaneously avoiding anticompetitive subsidies. This could be accomplished by providing an SSR at a level which is sufficient, but only just sufficient, to maintain the utility's financial integrity.¹⁵

By financial integrity more is meant than just avoiding a cash flow emergency, as contemplated by an emergency filing under R.C. 4909.16, or bankruptcy. It is important that a utility be able to function in a normal way, serving its obligations and maintaining its normal operations. In this case the Commission will be presented with arguments that ignore this need. Some parties will be indifferent to the need to maintain a functioning utility entity. The Commission cannot be so cavalier. The Commission must balance the needs of all constituents and the utility is a constituent as well. Further, no party is bene-

¹⁴ R.C. 4928.02(H).

¹⁵ It will be argued that the SSR is anti-competitive like the ST. This is incorrect. The two are different. The switching tracker goes to switching and is, therefore, inherently anti-competitive. The SSR goes to financial integrity and thus does not harm competitors if properly limited. Tr. V at 1865-6.

fitted by a utility that is financially hobbled. The difficult task is to find the sweet spot where the utility's ability to provide service is not threatened but the utility is not enriched.

D. The Commission must decide if the financial integrity of DP&L is endangered.

The Staff takes no position as to the threshold issue, that is, whether DP&L's financial situation is sufficiently dire so as to require Commission intervention to accomplish "stabilizing or providing certainty regarding retail electric service" within the meaning of the statute.¹⁶ In the absence of an SSR, DP&L would be in a position of having losses in several years.¹⁷ Even with the \$73 million in the form of a Rate Stabilization Charge (RSC)¹⁸ that the Company is receiving, its financial situation is deteriorating.¹⁹ There are many factors which may impact this determination.²⁰ Whether this obvious deterioration is sufficient to warrant Commission action is something that the Commission must determine as a factual matter.

¹⁶ Prefiled Testimony of H.M. Choueiki (Staff Ex. 10) at 12.

¹⁷ Tr. I at 221-222.

¹⁸ The RSC was established as a POLR charge but the reason for its existence is irrelevant for current purposes. It is simply a current source of revenue.

¹⁹ OCC Ex. 3 (Standard & Poor's Ratings Direct); OCC Ex. 4 (Fitch Ratings); and, OCC Ex. 5 (Moody's Investor's Service).

²⁰ Redacted Prefiled Testimony of S. Mahmud (Staff Ex 1) at 6-7.

E. The Level of the SSR

Should the Commission find that an SSR is factually required by DP&L's financial circumstances, the Staff has computed essentially a reasonable range for the level of SSR to be awarded, from \$133 to 151 million per year.²¹ The Staff developed this range through a complex calculation described in the following paragraphs.

Staff started with Company data, specifically WJC-3.B, DP&L Ex. 4.²² This chart was developed by Company witness Chambers who in turn had used Company witness Jackson's data which was then adjusted to eliminate the ST and to adjust for a change in the Company debt/equity ratio. This was the appropriate base from which to work as it reflected the Staff's opposition to the ST (discussed above) and the Staff's preference for a more normal debt structure for DP&L (discussed subsequently).

Having determined the appropriate base from which to work, the Staff then made adjustments to the Company assumptions to create a more reasonable framework. The first of these was to truncate the analysis to reflect a three year term.²³ The rationale will be discussed in a following section. The second adjustment was to change the Company assumed levels of general revenue, fuel cost, and dispatch cost.²⁴ These changes reflect

²¹ There may be adjustments to Staff's computation that would be appropriate. For example, it became clear through the hearing that the Company can achieve certain cost savings in operations and maintenance. These would amount to \$45 million in the first year, \$20 in the second and \$30 in each subsequent year. Tr. I at 141.

²² Redacted Prefiled Testimony of S. Mahmud (Staff Ex 1) at 3.

²³ *Id.* at 4.

²⁴ *Id.* at 5.

the more reasonable assumptions of the Staff's modeling and will be discussed in a later section.

Having adjusted the Company's assumptions, the Staff then used essentially a mechanical process to create an SSR which would, based on those assumptions, result in an ROE within what Staff had already determined to be the reasonable range. If the Commission finds that the Company's financial situation is sufficiently weak that intervention is warranted and that a particular ROE is needed to address that situation, an SSR between the values suggested by the Staff would be a reasonable means to address that situation.

F. The ESP term should be three years.

DP&L has requested that its ESP, and therefore its SSR, be approved for five years. This request should be denied. The quality of the available information for years four and five is insufficient to warrant committing ratepayer dollars at this time. There are, essentially, three reasons for this.

The first reason is that capacity prices for years four and five of an ESP cannot be known today. These prices are set through the RPM auction process and the auctions for those years have not yet happened.²⁵ The one thing that is certain about the RPM process is that its results are volatile.²⁶ Capacity payments are a very large source of revenue for DP&L, the same order of magnitude of the Staff's recommended SSR. A change in the

²⁵ Prefiled Testimony of H.M. Choueiki (Staff Ex. 10) at 5.

²⁶ *Id.* at 9.

RPM capacity results could have a huge impact on the Company's finances. Whether that change would be positive or negative cannot be known today. The Company tacitly requests that real ratepayer dollars be committed today against its estimates of where the RPM market will be in years four and five. There is no reason to make this gamble. The results will be known in the future and the Commission can act on that real knowledge when it exists.

The second reason to shorten the term of the ESP is the capital expenditure assumptions presented by DP&L. For years four and five the amounts are very large, indeed larger than the Staff proposed SSR in this case.²⁷ There is, simply stated, no reason to believe these values. By this observation Staff does not mean to suggest that DP&L is misstating or attempting to mislead this Commission. Rather, projections of this sort, so far into the future, are not meaningful. A comparison with the treatment of the current O&M savings by the Company underscores this. This is revealed by the confused treatment of the Operations and Maintenance savings instituted by the Company. And this confusion is about expenditures *this year*. How can one trust projected expenditures three years out when one can't even get a handle on current expenditures? Even Company witness Herrington, who reviews these budgets, admits that projections become progressively less reliable as they are more distant in the future.²⁸ Fundamentally it cannot be known today what DP&L's capital expenditures will be in years four and five.

²⁷ Prefiled Redacted Testimony of W.J. Chambers (DP&L Ex. 4) at Second Revised WJC1A, line 15.

²⁸ Tr. IV at 1174-5.

This situation will be much clearer in three years. Ratepayer dollars should not be committed now against speculation.

Finally it is simply unnecessary to establish a five year ESP today. A three year plan accomplishes what is needed now, based on the information that is available now. When this three year plan is up, the world does not end. The three year plan will be replaced by either another ESP or an MRO. Whatever action the Commission pursues at that point will be based on much more accurate information. Capacity prices will be known and a much better understanding of capital investment requirements will be had. The actual trajectory of shopping will be known. Perhaps the strongest reason to reject the five year term is the existence of the SSR proposal at all. That the Company is before the Commission today claiming financial distress when only a short time ago it was among the most profitable utilities in the country²⁹ shows that things can change radically in unanticipated ways in a year or two. Given this volatility and unpredictability, a shorter timeframe should be used.

The Company will argue that it needs a five year plan for the revenue assurance that such a plan would provide. While it is true that a longer plan would provide greater assurance, that assurance comes at too high a price for ratepayers.

²⁹

Tr. I at 113.

G. DP&L debt/equity ratio should be adjusted.

In its analysis, the Staff's base incorporated an adjustment to the Company's current debt/equity ratio.³⁰ The current debt/equity ratio is outside the norm for the utility industry. It is too heavily composed of equity. This has the effect of unnecessarily raising the cost of capital for the Company. The Staff has adjusted the capital structure to reflect the industry norm of approximately 50/50.

H. Staff Adjustments to Company Projections

To develop its recommendation the Staff reviewed the Company projections regarding the revenues expected from generating facilities.³¹ To accomplish this, the Staff utilized a sophisticated modeling software package, PROMOD IV. This software essentially models the Eastern Interconnection in all of its parts and dispatches all units based on known production costs.³² As the bulk electric power system is in fact dispatched dynamically and regionally, the Staff's approach obviously reflects the reality of the electric grid in its actual operation.

To enhance the realism of its analysis, the Staff adjusted a number of inputs to more accurately reflect current conditions. Current low natural gas future prices were

³⁰ Redacted Prefiled Testimony of S. Mahmud (Staff Ex. 1) at 5.

³¹ Prefiled Testimony of T.W. Benedict (Staff Ex. 3).

³² *Id.* at 2.

utilized.³³ Additionally retirements were checked to assure accuracy.³⁴ Having run the model, the Staff adjusted the output in several ways, again to enhance the accuracy of the results. Two station results were corrected for special circumstances and a purchase power contract was inserted.³⁵ In sum, the Staff modeled the dynamic system in a dynamic way with appropriate adjustments to assure reliability of the outcome.

DP&L unfortunately does not use this sort of system. Rather it considers its assets in isolation.³⁶ Modeling the use of assets in this isolated manner has the obvious problem of not capturing the dynamic relationship between the Company's generation fleet and the overall wholesale electric market. It leads to less accurate modeling. This can be seen in the outputs of the two models. The Company projects that several of its large units will, inexplicably, be dispatched at lower levels over the ESP term than has ever been observed for these plants. There is no reason to believe that this will be true. Indeed, this is exactly the sort of error one might expect from the Company's sub-optimal isolated approach.³⁷ In an overall environment where electricity demand is trending up, one would expect that DP&L's production would be trending up as well or at least remaining static. The Staff's analysis is consistent with this. The Company projections are not. This difference reveals the shortcoming of the Company approach.

³³ Prefiled Testimony of T.W. Benedict (Staff Ex. 3) at 4.

³⁴ *Id.*

³⁵ *Id.* at 5.

³⁶ *Id.* at 3.

³⁷ *Id.*

Using the Staff's superior method reveals that the Company's generation sales will actually be higher than expected through its modeling. To reflect this increase in its ROE calculation, it was necessary to adjust the projections of fuel cost and operating and maintenance costs commensurately. Staff accomplished these changes and the resulting values were used in the computation of the ROE recommendation.³⁸

In his rebuttal testimony, company witness Jackson attempted to recalculate the ROE requirement using all of Staff's corrections including the elimination of the ST, a faster move to market, and reflecting Dr. Choueiki's switching rate estimate.³⁹ In performing his analysis company witness Jackson neglected to adjust for the change in the debt/equity ratio.⁴⁰ He further incorrectly failed to include 5/12 of Staff witness Benedict's correction for the planning year 2015-2016.⁴¹ Rectifying these oversights results in a Staff range of \$126 to 143 million annually.

In sum, the Staff has presented a reasonable method of assessing the Company's future wholesale generation sales and this method should be utilized by the Commission.

³⁸ Prefiled Testimony of T.W. Benedict (Staff Ex. 3) at 10.

³⁹ Public Rebuttal Testimony of C.L. Jackson (DP&L Ex. 16).

⁴⁰ Tr. XII at 2963.

⁴¹ *Id.* at 2962.

I. Competitive Bidding Process (CBP)

At the outset, Staff notes that the Company has addressed many of its concerns about the competitive bidding process as initially proposed. But some concerns remain. Most significantly, although the Company has indicated that the CBP could be modified during the ESP term, no process for modification has been presented. Equally important, the Commission must be the ultimate arbiter of the outcome of the CBP auction.⁴²

While the Staff would prefer to move to an SSO entirely sourced through a competitive bid immediately, this is not possible. A flashcut would result in massive harm to the utility. Conversely, moving as slowly as the Company proposes would slow the benefit to customers of the current low electricity price. To address these competing, yet valid, concerns the Staff recommends a 40, 60, 100 percent approach over its recommended three year term.⁴³ This assumption is built into the Staff's overall analysis supporting its SSR recommendation and, therefore, it has been shown that its adoption will preserve the Company's financial integrity (within the ranges discussed previously). It would simultaneously bring the benefits of low electricity prices to SSO customers more quickly than the Company proposal. In Staff's view, this strikes the correct balance between the competing concerns of low prices and financial stability. Departing from these assumed percentages would have a major impact on the SSR calculation and should not be done without a new analysis to quantify that effect.

⁴² Prefiled Testimony of R.W. Strom (Staff Ex. 2) at 3.

⁴³ *Id.* at RWS-1.

Finally, the proposed CBP would permit DP&L to participate in its own auction. This would discourage participation from other potential bidders. Exelon witness Fein, for example, testified that allowing an incumbent utility owning generation assets to participate in the auction would have an effect on their willingness to participate.⁴⁴ Because robust participation is important for the auction to be successful, DP&L should not be permitted to participate in the auction while the SSR is in place.

J. No Adjustment Needed for Switch Rates

Having discussed adjustments made by Staff, it is necessary to mention an adjustment not made. The Company has projected quite high switching rates over the ESP term.⁴⁵ Although the Staff disagrees with the Company estimate of future switching rates, finding them too high and inconsistent with historically observed rates,⁴⁶ no adjustment was made for this item.

Adjustment was not required because Staff also recommends, as discussed previously, a faster move to market. A faster move to market would reduce DP&L's revenues while a lower, reasonable switch rate assumption would increase the Company's projected revenues. By coincidence, calculation shows that these two effects, both embodied in the Staff's analysis, are of the same magnitude, but as they are opposite in direction, they wash and no adjustment is required.

⁴⁴ Tr. V at 1213.

⁴⁵ Prefiled Redacted Testimony of A. Hoekstra (DP&L Ex. 2) at 8.

⁴⁶ Prefiled Testimony of H.M. Choueiki (Staff Ex. 10) at 13, fn 4 and HMC-1.

K. SSR is Not a Transition Charge

It will be argued that the SSR is a transition charge and, therefore improper under R.C. 4928.38. There is no merit to this argument. As the Commission is aware, transition revenues were monies to be collected by electric utilities under transition plans approved prior to the beginning of the transition period created under S.B. 3. They were to be allowed so as to “...provide an electric utility the opportunity to receive transition revenues that may assist it in making the transition to a fully competitive retail electric generation market.”⁴⁷ The criteria for designation as transition costs (those amounts to be collected to create transition revenues) were:

- (A) The costs were prudently incurred.
- (B) The costs are legitimate, net, verifiable, and directly assignable or allocable to retail electric generation service provided to electric consumers in this state.
- (C) The costs are unrecoverable in a competitive market.
- (D) The utility would otherwise be entitled an opportunity to recover the costs.⁴⁸

As should be fairly plain from the express language of these sections, transition charges were intended to collect *historic costs*, specifically those historic costs incurred by utilities prior to the introduction of competition in Ohio. The concern existed that such costs, properly incurred prior to the change in law with the

⁴⁷ R.C. 4928.37(A)(1).

⁴⁸ R.C. 4928.39.

expectation of recovery, would no longer be recoverable in the new, competitive market. The transition mechanism was created to resolve this concern.

As should also be quite obvious, the above has nothing to do with the proposed SSR. The SSR proposal has nothing to do with historic cost. It is entirely related to future solvency. The SSR is not intended to collect any cost, rather it is structured so as to maintain the financial stability of the utility to allow it to continue to function and provide reliable service. History, in the sense of historic cost, is not relevant to this goal and is not used in its determination.

Transition revenues were allowed to right a perceived wrong. The SSR is proposed for an entirely different purpose, keeping the utility viable. There is no relation between the two and arguments to the contrary should be rejected.

Earlier Separation of Generation Plant

Much as the Staff would prefer that DP&L separate its generating assets into a free-standing corporation, whether affiliated or held by a third party, it is simply not feasible to do this currently. As clearly shown through the testimony, the Company's debt is secured by bonds which have claims to all the utility's property and are not callable until 2016.⁴⁹ The ability to transfer DP&L's generating plant to a new corporation is held by the bondholders who are not subject to the control of this Commission or DP&L. Until these no-call features lapse with the passage of time, there is simply no mechanism which would allow an earlier transfer of ownership of the generating assets.

⁴⁹

Tr. I at 131.

DP&L will be criticized for having recreated the above problem. It was recognized in DP&L's 1999 ETP case that no-call financing prevented the transfer of DP&L's generating assets at that time.⁵⁰ Subsequently all of the debt that existed then has been refinanced with new no call provisions. On this basis it will be argued that the Company made its own problem. This argument ignores history and should be rejected.

In fact the world changed between 1999 and when the debt was refinanced. It appeared that transferring the generating plant was unnecessary, even unwise. The Commission itself approved the debt issuances which included the new no-call provisions. The general assembly repealed the provision mandating transfer of generating plant ownership and replaced it with a requirement that Commission approval be obtained before any generating plan *could* be transferred.⁵¹ Given this change in circumstance, and the fact that no-call provisions lower the required debt rate,⁵² the refinancings were reasonable at the time. That the world has changed yet again, making it appear necessary to transfer to generating plant as soon as possible, does not mean that the Company has done anything wrong; it is merely Monday morning quarterbacking.

Indeed the proper conclusion to be drawn from these two radical changes in the common wisdom about the fundamental structure of the industry, reversing twice in such

⁵⁰ Transfer of generating assets was *required* at that time by S.B. 3 unless the Commission granted an exemption. The Commission granted such exemptions for all Ohio utilities at that time.

⁵¹ See, R.C. 4988.17(E).

⁵² Tr. III at 772.

a short period, underscores the need to keep the ESP term short. A five year term is very, very long in this business. Given the sea changes that happen continually in this area, the Commission should refrain from limiting its own ability to respond. A shorter term does this and the Staff's recommended three year term is the superior approach.

In sum, there is no possibility of transferring the generating plant early. No amount of wishing will make it otherwise. The facts are the facts. They arise through no fault of the Company and we must all simply live with the situation.

L. Ringfencing the SSR

The Commission will be presented with many arguments suggesting that providing the Company with an SSR of any amount will be anti-competitive. While the Staff believes that there is no merit to these claims, the SSR being directed to financial survival rather than competitive advantage, to eliminate even the possibility that there could be incidental and unintended anti-competitive impacts, the Staff recommends ringfencing.⁵³ Specifically "[s]taff recommends that the revenues collected stay with DP&L and not be transferred to any of DP&L's current, or future-formed, affiliates or subsidiaries."⁵⁴ Taking this additional step will help the Commission to assure that the twin goals, preserving both a viable electric distribution utility (EDU) and a viable competitive market will be achieved.

⁵³ Prefiled Testimony of H.M. Choueiki (Staff Ex. 10) at 15.

⁵⁴ *Id.*

M. SSR Allocation

Should the Commission determine that an SSR should be approved, it will be necessary to determine how to allocate it across the rate classes. The Commission will be presented with three ideas about how to accomplish this, all should be rejected.

The Company has proposed collecting a portion of the SSR through a customer charge although none exists currently for the RSC.⁵⁵ Indeed no other Ohio EDU has a customer charge for a non-bypassable charge.⁵⁶ Additionally the Commission will see competing proposals for the allocation, one from industrials seeking to shift a portion of the SSR to residential and another from residential seeking to shift a portion to industrials. There is no merit to any of these ideas. The better course is to maintain the allocation used currently for the RSC.⁵⁷ There is no basis to change the allocation, no cost of service study has been done and none is really feasible given the nature of the SSR.⁵⁸ Shifting responsibility only creates the possibility of unwarranted and unexpected rate impacts without any countervailing benefit. The status quo should be maintained.

⁵⁵ Tr. V at 1274.

⁵⁶ *Id.* at 1278.

⁵⁷ Prefiled Testimony of T.S. Turkenton (Staff Ex. 8) at 14.

⁵⁸ Tr. V at 1305.

N. Maximum Charge Provisions

For at least twenty two years the tariffs of DP&L have included what are termed maximum rate provisions.⁵⁹ These provisions limit the total amount of increase that particularly low load factor customers might experience in a given billing period. The Company proposes to eliminate these provisions.

The lack of information about these provisions is striking. It is unknown how many customers benefit.⁶⁰ It is unknown how these customers change from month to month.⁶¹ It is unknown what the rate effect would be of the elimination of these provisions.⁶² Although the total value of these provisions can be estimated at a few million dollars per year (\$5M), it is unknown whether portions of these costs are paid by other ratepayers or the Company carry this cost.⁶³ Staff believes that approximately 15% is being borne by ratepayers and 85% is being borne by DPL shareholders.⁶⁴ The best course of action is no action at all and to continue to have DPL shareholders bear the cost of the maximum charge provision.⁶⁵ Eliminating the provision as the Company seeks is simply too risky. Based on this record it is impossible to know who might be affected,

⁵⁹ Tr. III at 889.

⁶⁰ It does appear to be 3000 a month, but the beneficiaries change from month to month so the total number affected is unknown. *Id.* at 890.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 891-2.

⁶⁴ Prefiled Testimony of T.S. Turkenton (Staff Ex. 8) at 12.

⁶⁵ *Id.* at 13.

how they might be affected, or even when they might be affected. Taking the extreme step of eliminating the charge presents the possibility of very negative consequences that cannot be predicted. It should not be done.

Should the Commission determine to phase out the maximum rate provision, a much slower approach is warranted. Even the Company itself recognizes the merit of the concept of gradualism.⁶⁶ Staff witness Turkenton lays out a much more measured approach, actually only a quarter of the speed suggested by the Company.⁶⁷ While this is not favored by the Staff, the slower approach would allow more time to address the problems that will assuredly crop up.

O. Riders

1. FUEL Rider

The Company currently has a fuel rider in effect. In this case, it is proposing to change the methodology for calculating the rider from a least cost to a system average cost methodology. Staff opposes this change. The Company's proposal will result in higher rates to SSO customers, and result in a subsidization of non-SSO customers.⁶⁸ Average cost will always be higher than least cost. The Company's generation assets should be used primarily to provide DP&L SSO customers with the lowest cost generation.

⁶⁶ Tr. III at 880.

⁶⁷ Prefiled Testimony of T.S. Turkenton (Staff Ex. 8) at 14.

⁶⁸ Prefiled Testimony of V.P. Gallina (Staff Ex. 5) at 3.

But even the Company's current least cost methodology results in a cross-subsidization of non-jurisdictional load. The fuel rider should be set based on least cost to SSO customers, and should exclude the load of DPL Energy Resources (DPLER), DP&L's affiliate. That load, which serves non-SSO customers, is currently included in the determination of "least cost."⁶⁹ Staff does, however, support the Company's proposal to change the rider's reconciliation periods to include the most current data available when calculating the rider.

2. Storm Damage Recovery Rider

The Company currently recovers costs associated with destructive or major storms by requesting accounting authority to defer those expenses as a regulatory asset. While it has recovered those expenses through a rider in the past, it is not presently. Staff recommends that the Company be ordered to establish a Storm Damage Recovery Rider on a going-forward basis to defer storm-related costs that exceed an annual baseline. A rider would both reduce delays in seeking deferral authority, and minimize carrying charges associated with those deferrals.⁷⁰ Any rider should also provide refunds in years when costs are below the baseline.

Staff recommends that the Commission establish an annual baseline of \$4,000,000 in this case. As demonstrated by Staff witness Lipthratt, this amount is roughly equal to the average annual level of storm damage cost experienced by the Company during the

⁶⁹ Prefiled Testimony of V.P. Gallina (Staff Ex. 5) at 3.

⁷⁰ Prefiled Testimony of D.M. Lipthratt (Staff Ex. 6) at 5.

10-year period from 2002 to 2011, and consistent with its most recent three-year average.⁷¹

3. Competitive Bid True-Up Rider

The Company is proposing a Competitive Bid True-Up Rider to recover the difference between amounts paid to suppliers for the delivery of SSO supply as a result of the CBP auction(s), and amounts billed to customers through the Competitive Bidding Rate. While Staff generally supports the proposal, it recommends a different timeline to reflect its recommended three-year term.⁷² The Company should work with Staff to develop an audit timeline and process.

4. Reconciliation Rider

The Company has proposed a non-bypassable Reconciliation Rider (RR), to be trued-up quarterly, to recover certain costs and deferrals. The RR would recover the costs of administering and implementing the competitive bid process (CBP) auction costs, CBP consultant fees, PUCO consultant fees, audit costs, supplier default costs and carrying costs. The Company would also begin to recover the cost of its proposed competitive retail enhancement projects through the RR. In addition, the Company has proposed to include recovery of certain deferral balances (any deferred balance exceeding 10% of the base recovery rate associated with riders FUEL, RPM, TCRR-B, AER and

⁷¹ Prefiled Testimony of D.M. Lipthrott (Staff Ex. 6) at 6.

⁷² *Id.* at 11.

CBT) in the RR. Further, any deferral (or credit) balances remaining when the FUEL, RPM, and TCRR-B riders are eliminated would also be included in the RR.

While Staff supports recovery of these costs, it recommends that recovery be had through separate riders, not all of them non-bypassable. Specifically, Staff believes that recovery of the auction costs should be through a bypassable rider.

While Staff does not have a position on which Competitive Enhancements should be adopted by the Commission, the cost of any approved enhancements should be recoverable, once used and useful, through a non-bypassable Reconciliation Rider, RR-N.

Those costs, not to include maintenance costs, should be split between Competitive Retail Electric Service (CRES) providers (60%), the Company (15%) and customers (25%).

This division of cost responsibility fairly reflects the relative burdens of and benefits to these different groups.⁷³

The CBP auction cost should be recoverable through a new proposed bypassable Reconciliation Rider, RR-B. Because shopping customers would not receive any benefit or services from the auction process, they should not have to pay for those costs.⁷⁴

To the extent that any deferred balance exceeds 10% of the base recovery rate associated with riders FUEL, RPM, TCRR-B, AER, and CBT, that balance should be recoverable through the RR. This would, however, permit the recovery of bypassable

⁷³ Prefiled Testimony of P. Donlon (Staff Ex. 7) at 7-9.

⁷⁴ *Id.* at 5.

rider balances through a non-bypassable charge.⁷⁵ Staff doesn't oppose the recovery of these deferrals, but believes that it should not be accomplished through a non-bypassable charge. The Company should be permitted to petition the Commission to true-up any over or under recovery of bypassable riders at the end of the ESP term. The Commission should be free to determine at that time how best to permit recovery of those costs to avoid a "death spiral."⁷⁶

P. MRO v. ESP

To approve an ESP for DP&L the Commission must find "...that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code."⁷⁷ Staff has performed a number of analyses considering a variety of permutations of ESP and MRO structures.⁷⁸ These analyses consider only quantifiable costs and benefits. Regardless of the assumptions used by the Staff, these quantifiable effects show that the ESP is not more favorable than the MRO.

This is not the end of the story.

⁷⁵ Prefiled Testimony of P. Donlon (Staff Ex. 7) at 9.

⁷⁶ *Id.* at 10.

⁷⁷ R.C. 4928.143(C)(1).

⁷⁸ Prefiled Testimony of T.S. Turkenton (Staff Ex. 8) at 3-12.

Whether the unquantifiable benefits of the ESP counterbalance the quantifiable costs is a question that the Commission must answer. The Staff takes no position on this question. As noted in its testimony, if the Commission wishes to approve the ESP it must:

- reduce the SSR rate calculated by the Staff;
- conclude that the Staff-projected market rates are too high; or
- consider other qualitative benefits of the ESP.⁷⁹

Staff takes no position as to whether any of these steps, or a combination of them, are appropriate in this case.

Q. An AER Cost Cap should not be considered in this case.

Statute requires that:

An electric distribution utility or an electric services Company need not comply with a benchmark under division (B)(1) or (2) of this section to the extent that its reasonably expected cost of that compliance exceeds its reasonably expected cost of otherwise producing or acquiring the requisite electricity by three per cent or more. The cost of compliance shall be calculated as though any exemption from taxes and assessments had not been granted under section 5727.75 of the Revised Code.⁸⁰

⁷⁹ Prefiled Testimony of T.S. Turkenton (Staff Ex. 8) at 12.

⁸⁰ R.C. 4928.64(C)(3).

The Company has proposed that this section should be implemented in this case by establishing a cut off of 3% of the expected auction result.⁸¹ The Company proposal should be rejected.

There are two other contexts in which the question of the implementation of R.C. 4928.64(C)(3) should be considered. It is a current topic in case number 11-5201-EL-RDR, a case that has been initially briefed. There are a number of parties to that case that are not involved in this case including: Toledo Edison, Cleveland Electric Illuminating, Ohio Edison, Nucor Steel, the Environmental Law and Policy Center, Citizen Power, Sierra Club, and the Midatlantic Renewable Energy Coalition. It would be inappropriate to pull the 3% cap issue out of that docket and decide it here among different parties. In addition, the rule addressing the implementation of the 3% cap, O.A.C. 4901:1-40, will be reviewed this year in case number 13-0652-EL-ORD and that would be the proper context within which to review this question.⁸² Further, the Company has indicated that it does not expect to exceed its proposed 3% AER threshold in this filing, and therefore it is not critical that this question be answered at this immediate time. Neither the Company nor its customers would be harmed by seeking resolution of the 3% provision in these other more appropriate contexts referenced by Staff.

Even if there were no better setting for examining the AER question, the Company proposal is not reasonable. The Company would peg a single number

⁸¹ Prefiled Testimony of S.M. Siegfried (Staff Ex. 4) at 4.

⁸² *Id.* at 5.

for the cap, based on an estimate of the first future auction and then never change it, regardless of the first or any late actual auction result.⁸³ This is unreasonable. In addition, the Staff believes it may be inappropriate to rely exclusively on auction results for years in which the Company is not 100% competitively bid.

In sum there are two appropriate vehicles for the determination of the implementation of the 3% cap. This case is not one of them. The Company proposal should be rejected.

⁸³

Tr. III at 832.

CONCLUSION

In conclusion, the Staff asks that the Commission adopt the recommendations included above.

Respectfully submitted,

Michael DeWine
Ohio Attorney General

William L. Wright
Section Chief

/s/ Thomas W. McNamee _____

Thomas W. McNamee
Werner L. Margard III
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215-3793
614.466.4397 (telephone)
614.644.8764 (fax)
thomas.mcnamee@puc.state.oh.us
werner.margard@puc.state.oh.us

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Post-Hearing Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following Parties of Record, this 20th day of May, 2013.

/s/ Thomas W. McNamee

Thomas W. McNamee
Assistant Attorney General

Parties of Record:

Service List:

cmooney@ohiopartners.org
judi.sobecki@dplinc.com
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
joliker@mwncmh.com
amy.spiller@duke-energy.com
jeanne.kingery@duke-energy.com
bmcMahon@emh-law.com
elizabeth.watts@duke-energy.com
rocco.dascenzo@duke-energy.com
stephanie.chmi@thompsonhine.com
philip.sineneng@thompsonhine.com
michael.dillard@thompsonhine.com
matt@matthewcoxlaw.com
bojko@carpenterlipps.com
sechler@carpenterlipps.com
bill.wells@wpafb.af.mil
chris.thompson.2@tyndall.af.mil
gmeyer@consultbai.com
cfaruki@ficlaw.com
jsharkey@ficlaw.com
mswhite@igsenergy.com

dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com
jkyler@bkllawfirm.com
myurick@taftlaw.com
zkravitz@taftlaw.com
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com
mhpetricoff@vorys.com
smhoward@vorys.com
ssherman@kdlegal.com
jhague@kdlegal.com
mwarnock@bricker.com
tsiwo@bricker.com
tony_long@ham.honda.com
asim_haque@ham.honda.com
haydenm@firstenergycorp.com
jiang@calfee.com
lmcbride@calfee.com
talexander@calfee.com
jejadwin@aep.com
gpoulos@enernoc.com
ricks@ohanet.org
cmooney2@columbus.rr.com

christopher.miller@icemiller.com
gregory.dunn@icemiller.com
chris.michael@icemiller.com
trent@theoec.org
mchristensen@columbuslaw.org
stnourse@aep.com
ssolberg@eimerstahl.com
stephen.bennett@exeloncorp.com
cynthia.brady@constellation.com

tobrien@bricker.com
vparisi@igsenergy.com
cathy@theoec.org
joseph.clark@directenergy.com
dakutik@jonesday.com
aehaedt@jonesday.com
ejacobs@ablelaw.org
mjsatterwhite@aep.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/20/2013 2:21:45 PM

in

Case No(s). 12-0426-EL-SSO, 12-0427-EL-ATA, 12-0428-EL-AAM, 12-0429-EL-WVR, 12-0672-EL-RDR

Summary: Brief Post-Hearing Brief submitted by Assistant Attorney General Thomas
McNamee on behalf of the Staff of the Public Utilities Commission of Ohio. electronically filed
by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio