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Via E-File

May 20, 2013

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

In re: Case Nos. 12-426-EL-SSO, 12-427-EL-ATA, 12-428-EL-AAM, 12-429-EL-WVR, 12-672-EL-RDR

Dear Sir/Madam:

Please find attached the POST HEARING BRIEF OF THE OHIO ENERGY GROUP for filing in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,

David F. Boehm, Esq.
Michael L. Kurtz, Esq.
Jody Kyler Cohn, Esq.
BOEHM, KURTZ & LOWRY

DFB/kew
Encl.
Cc: ALJ Bryce McKenney
ALJ Gregory Price
Certificate of Service

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Dayton Power And Light Company For Approval of its Market Rate Offer	:	Case No. 12-426-EL-SSO
In the Matter of the Application of Dayton Power And Light Company For Approval of Revised Tariffs	:	Case No. 12-427-EL-ATA
In the Matter of the Application of Dayton Power And Light Company For Approval of Certain Accounting Authority	:	Case No. 12-428-EL-AAM
In the Matter of the Application of Dayton Power And Light Company For Waiver of Certain Commission Rules	:	Case No. 12-429-EL-WVR
In the Matter of the Application of Dayton Power And Light Company to Establish Tariff Riders	:	Case No. 12-672-EL-RDR

POST-HEARING BRIEF OF THE OHIO ENERGY GROUP

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COUNSEL FOR OHIO ENERGY GROUP

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POST-HEARING BRIEF OF THE OHIO ENERGY GROUP

The Ohio Energy Group ("OEG") hereby submits this Brief in support of its recommendations in this proceeding. OEG is a non-profit entity organized to represent the interests of large industrial customers in electric and gas regulatory proceedings before the Public Utilities Commission of Ohio ("PUCO" or "Commission"). OEG's members who are participating in this intervention are: Cargill, Incorporated, E.I. DuPont de Nemours & Co., General Motors LLC and The Timken Company. These companies take electric service from The Dayton Power and Light Company ("DP&L" or "Company").

For the reasons discussed below, the Commission should flatly reject DP&L's proposal to effectively "reregulate" its generation by establishing a Service Stability Rider ("SSR") and Switching Tracker. Forcing customers to subsidize the Company's generation business is unreasonable given Ohio's move to deregulation as well as the fact that DP&L's generation has been effectively unregulated since 2001 (during which time, the Company enjoyed *supra*-normal returns on equity consistently in the range of 18% to 20% per year). Moreover, DP&L failed to prove that either the SSR or the Switching Tracker would result in or improve retail rate "stability" or "certainty" in accordance with R.C. Code §4928.143(B)(2)(d). And DP&L's projected financial statements, upon which its SSR and Switching Tracker proposals are based, suffer from a number of major errors that make them unreliable for purposes of establishing those mechanisms.

If the Commission disregards these arguments and establishes an SSR at some level, the Commission should limit that level to no more than the present $73 million Rate Stabilization Charge ("RSC"). The Commission should also remedy the unreasonable cost allocation and rate design proposed by DP&L for the SSR, which is based upon the RSC methodology. Though the RSC may serve as an appropriate cap on the level of the SSR, it is improper to base the SSR cost allocation and rate design on the RSC since the nature of the costs collected under each of those riders differs significantly. Instead, because the SSR is intended to recover demand-related production costs, the SSR revenue requirement should be allocated to rate classes using a 1 coincident peak ("1 CP") production demand allocator. Similarly, for demand-metered rate classes, the entirety of the allocated SSR costs should be recovered through the kW demand charge. These modifications properly reflect the nature of the costs being recovered through the proposed SSR and are necessary to ensure that customers are provided reasonably priced retail electric service in accordance with R.C. 4928.02(A).

I. The Commission Should Reject the Company's Proposal to Establish a Service Stability Rider and a Switching Tracker.

Though its request has fluctuated during the course of this proceeding, DP&L's most recent proposal requests that the Commission establish a nonbypassable SSR "[t]*o permit DP&L to maintain its financial health and to give DP&L an opportunity to earn a reasonable return on equity*."[1] If the proposed SSR was established, the Company would collect $137.5 million annually beginning January 1, 2013 and continuing through the ESP term (or $687.5 million over a five-year ESP period).[2]

[1] DP&L Second Revised Application (Dec. 12, 2012), Book I at 8.
[2] Id. DP&L requests that the ESP term would run from January 1, 2013 to December 31, 2017. Id at 2.

DP&L also proposes that the Commission establish a nonbypassable Switching Tracker to allow the Company to defer lost revenues resulting from customer shopping exceeding 62% and to recover those deferred amounts in a subsequent year.[3] This would result in an additional rate increase commencing on January 1, 2014, which would be adjusted annually and recovered from all customers. The Company estimates that, if customer switching increased to 70%, the Switching Tracker would result in an increase of $41 million on January 1, 2014.[4] Given that future customers shopping levels are unknown, however, the ultimate financial impact of the proposed Switching Tracker on customers is likewise unknown.

For multiple reasons, the Company's requests should be rejected.

A. There is no valid reason for the Commission to effectively "reregulate" DP&L's generation by allowing the Company to recover lost revenues resulting either from reductions in market revenues or from customer switching through the proposed SSR or the Switching Tracker.

DP&L's generation has not been regulated since 2001, though the Company is allowed to recover limited generation-related costs specifically set forth by statute (such as fuel costs).[5] And from 2001 to 2012, the Company benefitted from this status, enjoying twelve years of *supra*-normal returns on equity (including earned returns on equity of approximately 20% after-tax in most years) and excessive recoveries, all while its generation function was statutorily deregulated and its retail rates were unbundled.[6] When market prices were higher, DP&L's Standard Service Offer ("SSO") revenues exceeded its costs to serve the SSO load and switching rates were lower. As a result, the Company's earned returns were nearly *double* the average of the returns authorized by regulators for all electric utilities during those years, as shown in the following graph.[7]

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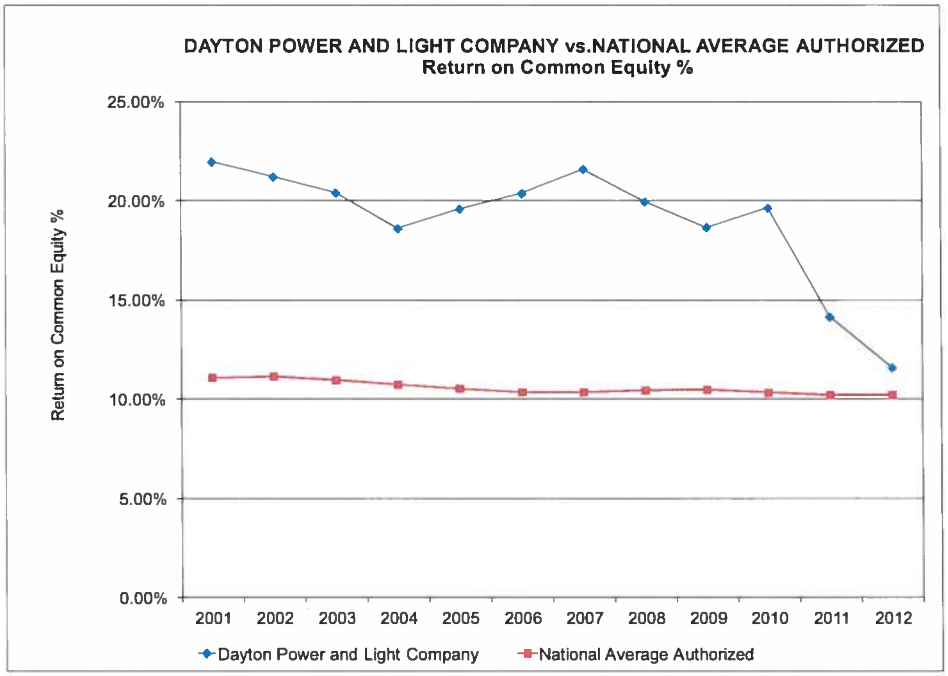
[3] Id. at 8.

[4] OEG Ex. 1 (Reformatted Direct Testimony of Lane Kollen (March 15, 2013)) at 6:17-19.

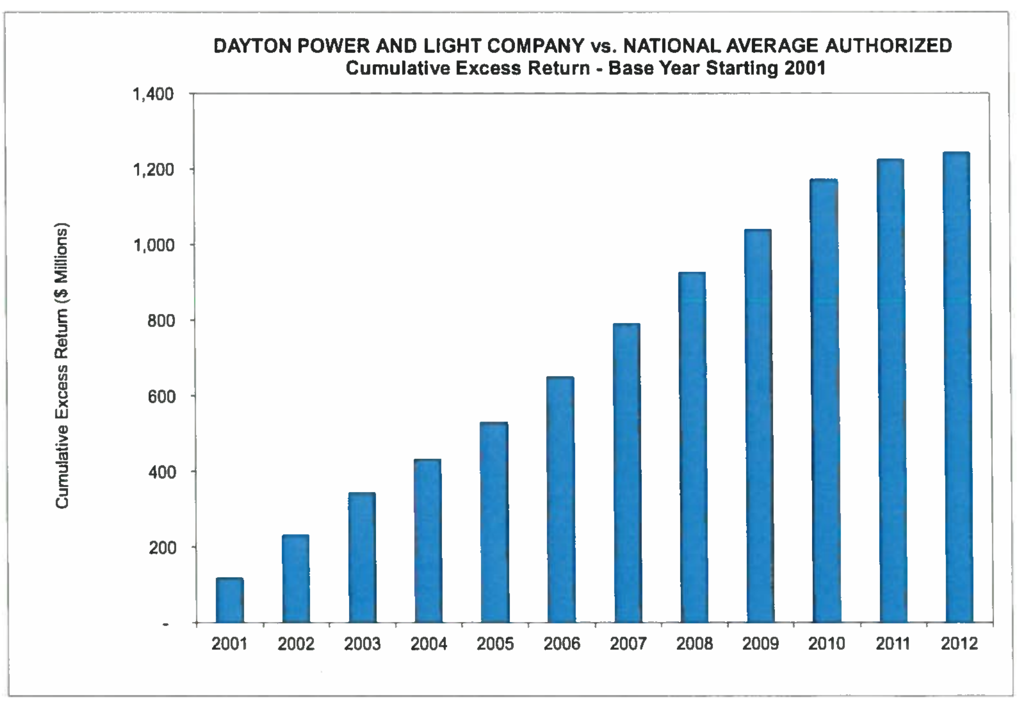
[5] Tr. Vol. III at 709:12-15 ("*Q. Would you agree that the generation business within DP&L is not regulated by the Public Utilities Commission of Ohio*? [Company witness Rice] *Yes, I would*."); OEG Ex. 1 at 3:20-22; In addition, the Company no longer uses regulatory accounting for its *generating assets. Tr. Vol. I at 123:9-11 ("Q. And DP&L no longer uses regulatory accounting for its generation assets, correct? [Company witness Jackson]. That's correct.").*

[6] OEG Ex. 1 at 5:5-12.

[7] OEG Ex. 1 at 14:7-15:1. *See also* Tr. Vol I at 113:17-20. ("*Q. Was the return on equity for DP&L during the 2000s consistently in the range of 18 to 20 percent per year?* [Company witness Jackson]. *I believe that it was in that range.").*



In fact, over the 2001-2012 time period, DP&L recovered $1.244 billion more from its customers than if it had earned the average return on equity authorized for all electric utilities, as illustrated below.[8]



[8] OEG Ex. 1 at 15:2-16:1.

DP&L retained those *supra*-normal earnings and did not return them to its customers, ostensibly because they were earned on unregulated generation assets.[9]

Now, however, the Company seeks to reverse course and return to a pre-2001 *de facto* regulated ratemaking paradigm so that it can earn a "reasonable" regulated return on its deregulated generation assets. But that regulated generation ratemaking paradigm has not existed since 2000 and the Commission cannot and should not attempt to reestablish it, even on an alleged temporary basis.[10]

As an initial matter, DP&L's request raises issues of ratemaking equity. DP&L was allowed to retain its excessive earnings over the last twelve years. It benefitted by $1.244 billion. It should not now be allowed to recover its projections of inadequate earnings over the next five years. DP&L's position is clearly asymmetrical and amounts to the "best of all worlds" for the Company and the "worst of all worlds" for its customers.

If adopted, the Company's proposal allows it to retain *supra*-normal earnings from past years while also conveniently dodging pending losses associated with its unregulated generation by forcing customers to make-up its projected earnings shortfall. This would result in the Company retaining over-recoveries of more than $1.2 billion from 2001 through 2017, all else equal. But even if OEG's position is adopted, DP&L still gets to retain over-recoveries of $0.5 billion from 2001 through 2017, all else equal.[11] Hence, there is no compelling reason for the Commission to choose this time to effectively "reregulate" DP&L's generation by establishing the proposed SSR and Switching Tracker.

In addition, the proximate cause of DP&L's alleged "need" for the proposed SSR and Switching Tracker is the Company's own choice to retain the unregulated generation assets in the utility. The Company's

[9] OEG Ex. 1 at 15:5-7.
[10] OEG Ex. 1. at 5:12-16.
[11] OEG Ex. 1 at 16:4-17:2.

transmission and distribution businesses are not the cause of its "financial integrity" concerns.[12] The utility's projected financial health could be transformed and improved instantaneously simply by transferring its generation assets to an affiliate or selling them to a third party.[13] It is therefore unreasonable for the Commission to reward DP&L's choice to retain its unregulated generation assets in the regulated distribution utility by establishing the proposed SSR and Switching Tracker.

From a customer and ratemaking perspective, there no valid reason why DP&L's unregulated generation assets should be retained in the utility rather than transferred to an affiliate or sold to a third party. The Company sells all of its generation to PJM and buys it back on an hourly basis.[14] And DP&L provides all of the supply for its retail marketing affiliate, DPL Energy Resources, LLC at market rates.[15] In this manner, the Company presently purchases the capacity and energy necessary to meet its SSO obligation at market and sells all of its capacity and energy at market. In other words, its generation assets are not required or even used to meet its SSO load obligations.[16]

DP&L or its parent may find value in retaining its unregulated generation assets in the utility now that market prices are lower and customer switching has increased. Specifically, the Company has can use those

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[12] Tr. Vol. I at 150:9-151:9 ("*Q. My question is a little different. I guess in the event that DP&L were to transfer its generating assets to an unregulated affiliate, would you agree that the remaining transmission and distribution utility would not have a financial integrity concern?* [Company witness Jackson]. *I guess as I look at this, this is a filing for DP&L and that filing includes transmission, distribution, and generation, and we had discussed the rationale for the decreases in ROE over that period of time which was tied to market pricing, customer switching, and capacity pricing, obviously, which, yes, are tied on the generation side. Q. So the answer is that the remaining distribution and transmission utility would not have a financial integrity concern?...*[Company witness Jackson] *I believe that the T and D business has sufficient revenue included in it so I do not believe it would have a financial integrity issue for the T and D business.*"); Tr. Vol. I at 720:1-19 ("*Examiner Price: I just have a couple. Do you believe that Dayton Power & Light is getting a reasonable rate of return on its distribution business at this time?* [Company witness Jackson] *We have not looked at the ROE per se on the T and D business - Examiner Price: I'm just asking distribution right now.* [Company witness Jackson] *Yes, or distribution. You know, that said, as I indicated before, I do think we are getting adequate revenues on our -- over the forecasted period. So that would, I guess that would imply that, yes, I believe we are getting an adequate return. Examiner Price: Okay. How about on the transmission side, do you believe you're getting a reasonable rate of return on your transmission business at this time?* [Company witness Jackson] *I do believe so.").*

[13] OEG Ex. 1 at 11:6-11.

[14] Tr. Vol I. at 172: 15-21 ("*Mr. Jackson, earlier did you testify that DP&L is selling all of its generation into PJM and then buying it back on an hourly basis?* [Company witness Jackson]. *Our generation assets clear in PJM, they're paid, so yes, we are offering our generation assets in. Likewise, we are -- we have a load expense that's attributable to our load obligation.").*

[15] Company Exs. 1 and 1A (Prefiled Redacted and Confidential Testimony of Craig L. Jackson) at 10; Tr. Vol I. at 174:12-15 ([Company witness Jackson]. "*It's my understanding that if there is a sale between DP&L -- I'm just going to use DP&L and DPLER in this instance -- it has to be at a market rate to -- which we are doing.*").

[16] OEG Ex. 1 at 13:3-6.

assets to argue that the Commission should force all customers, both shopping and non-shopping, to pay the Company additional revenues under the guise of preserving the regulated utility's "financial integrity," as it has done here.[17] This opportunity would not be available if the unregulated generation assets were in an unregulated affiliate, as is the case with the FirstEnergy companies. But the Commission should not endorse the use of those unregulated generation assets in this manner by establishing either the proposed SSR or the Switching Tracker in this proceeding.

B. DP&L failed to provide any evidence that the Service Stability Rider or Switching Tracker will actually result in or improve retail rate "stability" or "certainty" in accordance with R.C. Code §4928.143(B)(2)(d). Additionally, DP&L's base case financial statements suffer from major flaws that render them unreliable for purposes of establishing those rate mechanisms.

The Commission should reject the Company's superficial claim that the SSR and/or the Switching Tracker would result in or improve retail rate "stability" or "certainty" in accordance with R.C. Code §4928.143(B)(2)(d). DP&L failed to provide evidence demonstrating that such a result would occur. To the contrary, the evidence demonstrates that both proposed mechanisms will simply increase rates: the SSR by a fixed amount ($137.5 million annually) and the Switching Tracker by unknown amounts that will vary from year to year based upon shopping rates. Hence, the only "certainty" that adoption of these mechanisms would achieve is that the rates for all customers, both shopping and non-shopping, will be greater than if these mechanisms are rejected.[18]

The Commission should also reject DP&L's claim that the SSR and Switching Tracker will allow the Company to maintain its "financial integrity" and earn a "reasonable return" over the next five years. As a fundamental matter, DP&L does not have a statutory entitlement to an "opportunity" to earn a regulated return on unregulated generation assets. This basis alone supports rejection of the Company's requests.

[17] OEG Ex. 1 at 13:14-19.

[18] OEG Ex. 1 at 4:6-14.

Further, the evidence that DP&L relies upon to support its claim is demonstrably and fundamentally flawed. DP&L's "financial integrity" claim relies on projected financial statements for the years 2013 through 2017.[19] These projected financial statements are based on a modeling construct developed specifically for purposes of this proceeding, rather than one used within the normal course of DP&L's business.[20] And those projected financial statements rely on assumptions, rather than the actual data reflected in historic financial statements.[21] The modeling construct, assumptions, and data used by the Company significantly impact the projected financial statements, the earned return on equity results, and the requested rate increase. Yet Company witness Jackson did not provide all of the assumptions or data used within his testimony and was unable to answer numerous questions regarding the assumptions and data used in response to deposition questions.[22]

Company witness Chambers used the base case projected financial statements developed by Mr. Jackson and made certain modifications to assess the financial impact of the Company's SSR and Switching Tracker proposals as the basis for arguing that these mechanisms are necessary for the Company's "financial integrity."[23] The various scenarios presented presuppose the veracity of the base case projected financial statements.[24] But DP&L's projected financial statements suffer from numerous major flaws that vitiate any probative value that the statements may have in assessing the "financial integrity" of the Company.

One fundamental flaw is that DP&L's projected financial statements include the unregulated generation assets and related revenues and costs.[25] DP&L's choice to include these assets in its projected financial statements improperly assumes that all of DP&L's customers are obligated to fund the Company's unregulated

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[19] Company witness Jackson developed the "base case" projected financial statements and summarized the results on his Exhibits CLJ-2, CLJ-3, and CLJ-4.
[20] OEG Ex. 1 at 7:6-11 (citing deposition testimony provided by Company witness Jackson on February 15, 2013 in this proceeding).
[21] OEG Ex. 1 at 7:6-8.
[22] OEG Ex. 1 at 7:11-18.
[23] *See* Company Exs. 4 and 4A (Prefiled Testimony of William C. Chambers (Dec. 12, 2012)).
[24] OEG Ex. 1 at 7:19-8:2.
[25] Company Exs. 1 and 1A, Jackson Testimony at 10.

generation activities. But these unregulated generating activities should have no bearing on the "financial integrity" of the distribution utility.[26]

The inclusion of these unregulated generation assets is the primary reason for the projected deterioration in the Company's financial metrics, including the earned rate of return.[27] There would be no effect on the projected financial statements from its unregulated generation activities, however, if DP&L had divested its generation assets to an affiliate or sold the assets to a third party in the same manner that the FirstEnergy companies have. Rather, the effects of these unregulated activities would be reflected on the financial statements of the unregulated generation affiliates.

The Company's decision to maintain these unregulated generation assets within the utility was irrelevant to customer rates when it earned *supra*-normal returns on equity in years prior to 2013. There were no customer rate reductions to reduce the excessive earned returns in those years. Accordingly, there is no reason why the unregulated generation assets should suddenly become relevant starting in 2013 now that the Company projects sub-normal returns on equity. Customers should not be required to reward the Company for its failure to divest its generation assets.[28]

Another major flaw is that DP&L's projected financial statements assume that there will be no distribution rate increases during the ESP period, even though distribution costs are projected to increase.[29] Company witness Jackson intentionally excluded any retail rate increases except for those rate increases that are the result of recovery mechanisms, such as the fuel adjustment clause.[30] Yet the Company is entitled to, and likely will ask for, rate increases to recover the costs of its prudently incurred distribution costs over the next five

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[26] OEG Ex. 1 at 8:9-13.
[27] OEG Ex. 1 at 8:9-13.
[28] OEG Ex. 1 at 8:13-9:3.
[29] Tr. Vol. I at 118:3-5 ("[Company witness Jackson*]. I think, yeah, just as I had mentioned, we had not included any impact of a distribution rate case in my projections.*").
[30] In his description of these financial statement projections, he states: *"(4) Retail and Wholesale Revenue Estimates - Retail revenue estimates for customers under DP&L's SSO rates are developed by customer class. The retail revenues reflected in the Company's pro forma financial include existing tariff rates, adjustments to retail riders that are cost trackers (such as the fuel adjustment clause), the effects of the ESP (including the impact that the Competitive Bid Process has on retail rates), and the distribution baseline sales volumes and SSO baseline sales volumes described earlier."* Company Exs. 1 and 1A, Jackson Testimony at 8.

years. If those rate increases were included in the projected financial statements, it would reduce DP&L's requested SSR increase, all else equal. Alternatively, if the Commission grants DP&L's proposed SSR increase of $137.5 million annually and the Company subsequently seeks and obtains distribution rate increases over the next five years, then DP&L's returns on equity will be greater than reflected in the projected financial statements and the Company will retain the enhanced returns, all else equal.[31]

Moreover, DP&L's projected financial statements assume that all growth in unregulated generation plant investment as well as in regulated transmission and distribution plant investment over the five-year period (2013-2017) will be financed through common equity rather than debt. The amount of debt capitalization is essentially held constant over the five-year period, which results in excessive common equity and an excessive common equity ratio of nearly 66% in 2017 based on the capitalization amounts shown on Second Revised Exhibit CLJ-3.[32] The excessive common equity assumption alone drags down the earned return compared to using the 50% debt and 50% common equity ratio considered by Company witness Chambers to be more reasonable, and causes an increase in the requested SSR of approximately $20 million, all else equal.[33]

In addition, DP&L failed to reflect any effects of significant cost reduction initiatives that were and/or are under consideration in the projected financial statements. If the Company implemented cost reductions, there would be a direct offset to the SSR rate increase the Company claims that it requires to achieve a "reasonable" return on equity over the next five years. For example, if the Company implemented $20 million in operation and maintenance expense reductions (a 5% reduction to the $398 million projection for 2013), then its SSR rate increase would be $20 million less, all else equal. Consequently, if the Company implements its planned cost reduction initiatives and achieves those cost reductions, then Company's returns on equity will be greater than reflected in the projected financial statements, all else equal.[34]

Finally, the Company intentionally used the "low" estimate of RPM to project the capacity revenues used in the projected financial statements rather than the average of the estimates that it obtained from its consultants

[31] OEG Ex. 1 at 12:3-11.
[32] OEG Ex. 1 at 9:19-26. $1,825 million common equity divided by $2,751 million total capitalization.
[33] Company Exs. 4 and 4A, Chambers Testimony at 31; OEG Ex. 1 at 10:3-4.
[34] OEG Ex. 1 at 10:5-13.

for this purpose. If the Company had simply used the average of the estimates, there would have been a direct offset to the SSR rate increase the Company claims based on those projected financial statements. For example, if the Company had used an average estimate of RPM to project the capacity revenues and this increased the capacity revenues by $20 million on average over the five-year period, then its SSR rate increase would be $20 million less, all else equal.[35]

Given the major flaws within DP&L's projected financial statements, the Commission's establishment of the proposed rate mechanisms would introduce significant risks of over-recoveries by the Company. This is contrary to the Commission's directive under R.C. 4928.02(A) to ensure the availability to customers of reasonably priced retail electric service. Therefore, since the Company failed to provide a valid basis, legal or otherwise, upon which the Commission could establish the SSR or Switching Tracker in this proceeding, the Commission should reject DP&L's requests.

II. If a Service Stability Rider is Established in this Proceeding, Its Revenue Requirement Should be Limited to No More than the Present $73 Million Rate Stabilization Charge. The SSR Should be Allocated to Rate Classes Using a 1 CP Production Demand Allocator and, for Demand-Metered Rate Classes, SSR Costs Should be Recovered Through the kW Demand Charge.

As discussed above, the defects in the Company's projected financial statements significantly overstate the need for DP&L's proposed SSR and Switching Tracker and introduce a risk of over-recovery resulting from distribution rate increases, cost reductions, and RPM values that exceed the "low" estimates used by the Company in its projected financial statements. In light of these major flaws, if the Commission agrees to provide *de facto* "re-regulation" of the Company's generation assets and establish the SSR, at the very least, the Commission should reduce the SSR to no more than the $73 million annually that is presently recovered through the Rate Stabilization Charge ("RSC").[36] This will help reduce the risk that the Company will over-recover costs from customers through the SSR in violation of R.C. 4928.02(A).

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[35] OEG Ex. 1 at 10:14-11:2.
[36] OEG Ex. 1 at 11:17-12:2.

The Commission should also modify the Company's proposed SSR cost allocation and rate design methodology, which are unreasonable given the nature of the SSR charges.[37] DP&L did not conduct a cost-of-service study in designing the proposed SSR.[38] Rather, the Company developed the SSR by using the present RSC for each rate schedule, adding an SSR customer charge component, and then adjusting the resulting charges to produce the desired SSR revenues for the total Company.[39] Its objective was to maintain the "*historical demand and energy rate design of nonbypassable charges*."[40]

It is unreasonable to use the present RSC rate design, and implicit cost allocation, to assign the SSR revenue requirement to rate classes. This is because nature of the RSC charges is markedly different than the nature of the proposed SSR charges. To understand this distinction, it is helpful to examine the history of the RSC. The RSC initially was established in conjunction with a Stipulation and Recommendation approved on September 3, 2003, addressing the extension of a market development period as well as the beginning of a three-year rate stabilization plan.[41] Pursuant to that Stipulation, a Retail Stabilization Surcharge ("RSS") was established to allow DP&L to recover:

> *"1) production costs per kWh directly related to the generation of electricity from plants owned by DP&L and its affiliates resulting from **fuel price increases,** or actions taken in **compliance with environmental and tax laws,** regulations or court or administrative orders; and*
>
> *2) costs per kWh directly related to **physical security and cyber-security costs** associated with the generation of electricity from plants owned by DP&L and its affiliates imposed by final rule, regulation or administrative or court order...."*[42] (emphasis added).

In that case, the Commission stated that it did not find "*that the costs specified in the stipulation as the basis for the RSS are* [Provider of Last Resort ("POLR")] *costs....*,"[43] but that "*...the existence of POLR costs makes it*

[37] OEG Ex. 1 at 17:6-7.
[38] Tr. Vol. III at 821:1-5 ("*Q. Okay. Did you conduct a class cost-of-service study in this case?* [Company witness Parke]. *I did not in this case because the rates that I was designing in this case did not -- I didn't find the need for one to be performed.*").
[39] Company Ex. 7 (Second Revised Direct Testimony of Nathan Parke).
[40] Company Ex. 7, Parke Testimony at 7:13.
[41] *In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for The Dayton Power and Light Company*, PUCO Case No. 02-2779-EL-ATA, Stipulation and Recommendation (May 28, 2003).
[42] Id., Provision IX(E) of the Stipulation and Recommendation.
[43] *In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for The Dayton Power and Light Company*, PUCO Case No. 02-2779-EL-ATA, Opinion & Order (September 3, 2003)("2003 Order") at 28.

reasonable to apply the RSS to all customers.'[44] Hence, the RSS was intended to allow DP&L to recover a variety of costs, including POLR costs, but was not specifically aimed at giving DP&L an "*opportunity to earn a reasonable return on equity*" in the midst of projected revenue shortfalls.[45]

On March 1, 2005, DP&L filed an application to establish the RSS Rider in Case No. 05-276-EL-AIR. A partial Stipulation was filed in that case and approved by the Commission on December 28, 2005. In its Order approving the Stipulation, the Commission set the level of the RSS Rider at 11% of DP&L's January 1, 2004 generation rates.[46] The RSS Rider reflected a rate increase in the then-existing generation rate "*to recover costs associated with fuel price increases or actions taken in compliance with environmental and tax laws, regulations or court or administrative orders, and costs associated with physical security and cyber security relating to the generation of electricity from plants owned by DP&L and its affiliates, which costs are imposed by final rule, regulation or administrative or court order.*"[47]

Later, in DP&L's first ESP case,[48] the Commission approved a Stipulation which provided for the continuation of the RSS through 2012, though the name of the rider appears was changed from the "Retail Stabilization Surcharge" to the "Retail Stabilization Charge," as the rider presently is known.[49] Again, the RSC charges approved in that case were based on 11% of the January 2004 DP&L generation rates and not any specific costs or revenue shortfalls that DP&L was expected to experience in 2010.

Accordingly, in light of the origin and intended purpose of the RSC, it is not reasonable to use the RSC rates (11% of the January 2004 DP&L generation rates) as the basis for allocating the SSR revenue requirement to rate classes. The SSR is separate and distinct from the RSC. Unlike the RSC, which may be characterized as a

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[44] Id. at 28.
[45] DP&L Second Revised Application (Dec. 12, 2012), Book I at 8.
[46] *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, Opinion & Order, (December 28, 2005)("2005 Order") at 11.
[47] 2005 Order at 2 (emphasis added).
[48] *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 08-1094-EL-SSO.
[49] *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 08-1094-EL-SSO, Opinion and Order (June 24, 2009) ("2009 ESP Order") at fn 2 ("*Although the Stipulation characterizes this charge as the 'RSS' charge, the Signatory Parties clearly intended to mean the existing 'RSC' charge approved by the Commission in Dayton Power & Light Co., Case No. 05-276-EL-AIR.*").

POLR charge and/or a fuel adjustment charge,[50] the proposed SSR represents an enhancement to the rate of return on equity that would be earned by DP&L on its fixed and unregulated generation assets. Thus, the purpose of the SSR is totally unrelated to the purpose of the RSC and there is no reasonable basis to perpetuate the allocation of the present RSC charges for each rate class as proposed by DP&L in this case. Instead, the Commission should establish an independent cost allocation and rate design methodology that properly reflects the nature of the proposed SSR costs.

Given that the SSR revenues represent recovery of 100% demand-related production costs aimed at enhancing the return on equity the Company would earn on its fixed and unregulated generation assets, the approved level of the SSR revenue requirement (if any) should be allocated using a 1 CP demand allocation method that reflects the underlying character of the SSR charges. A 1 CP allocation method would be a reasonable proxy for the underlying 5 CP cost responsibility used to assign demand-related costs in PJM. While OEG recommends the use of a 1 CP allocation method in this case, if the Company is able to develop a 5 CP rate class allocation factor, such a 5 CP methodology also would be appropriate and consistent with a cost-based allocation method for the SSR revenue requirement.[51]

Additionally, among rate classes, the SSR revenue requirement should be allocated as follows. For the residential rate class and other non-demand metered rate classes, OEG does not object to the Company's proposed customer/energy charge recovery. However, for demand-metered rate classes, such as the GS Secondary, Primary, Primary Substation and High Voltage classes, it is appropriate to recover 100% of the allocated SSR costs through the kW demand charge. There is no reasonable basis to recover the SSR through a combination of the customer, demand and energy charges of these rates as proposed by DP&L. These SSR costs, if approved by

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[50] At the hearing, Company witness Parke stated that he understands the RSC to be a POLR charge. Tr. Vol. III at 823:24-824:1 ("*Q. What is that general understanding?* [Company witness Parke]. *That the rate stabilization charge was a POLR charge.").* *The first ESP Stipulation provided that customers of government aggregations who elected not to pay the RSC in 2011 and 2012 would return to electric utility service at market-based rates, which suggests that the existing RSC is a POLR charge*." 2009 ESP Order at 5. In addition, in Case No. 05-276-EL-AIR, *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*, the Commission permitted recovery of additional revenues associated with fuel price increases.

[51] OEG Ex. 1 at 20:17-21:5.

the Commission, are 100% demand-related and it is not reasonable to recover such costs through either a customer charge or an energy charge as proposed by DP&L.[52]

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the Commission should flatly reject DP&L's proposal to effectively "reregulate" its generation by establishing an SSR and Switching Tracker. Alternatively, if the Commission establishes an SSR at some level, the Commission should limit that level to no more than the present $73 million Rate Stabilization Charge. In addition, the SSR revenue requirement (if any) should be allocated using a 1 CP demand allocation method and, for demand-metered rate classes, the entirety of the allocated SSR costs should be recovered through the kW demand charge. These modifications properly reflect the nature of the costs being recovered through the proposed SSR and are necessary to ensure that customers are provided reasonably priced retail electric service in accordance with R.C. 4928.02(A).

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May 20, 2013

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[52] OEG Ex. 1 at 21:6-17.

CERTIFICATE OF SERVICE

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