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

INITIAL BRIEF
OF THE RETAIL ENERGY SUPPLY ASSOCIATION

May 20, 2013

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I. Introduction

The Retail Energy Supply Association ("RESA")[1] is a broad and diverse group of 20 retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented, outcome than a regulated utility structure. Several RESA members are certificated as competitive retail electric service providers, and are active in Ohio's retail electric and natural gas markets, providing service to residential, commercial, industrial, and governmental customers. In addition, some of RESA's members currently provide competitive retail electric service ("CRES") to retail customers in The Dayton Power and Light Company ("DP&L") service territory.

The Public Utilities Commission of Ohio ("Commission") recently emphasized the importance of electric service competition in Ohio, stating:

> We believe it is important to ensure healthy retail electric service competition exists in Ohio, and recognize the importance of protecting retail electric sales consumers right to choose their service providers without any market barriers, consistent with state policy provisions in Sections 4928.02(H) and (I), Revised Code.[2]

There is little question that development of a robust retail electric service market in DP&L's territory is incomplete. In November 2011, the Commission acknowledged that there are barriers for the CRES suppliers in DP&L's service territory, and commented that its approval

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[1]RESA's membership recently changed. Its members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions, LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd.; and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization, but may not represent the views of any particular member of RESA.

[2]*In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, et al., Entry on Rehearing at 43 (January 30, 2013). Collectively, Columbus Southern Power Company and Ohio Power Company are referred herein to as "AEP-Ohio".

of several stipulations will provide for a reduction in those barriers.[3] The levels of shopping approximately seven months later amply demonstrate that additional changes are warranted to further develop the competitive market in DP&L's service territory. As of August 30, 2012, customer shopping levels were as follows:

Residential Sales	24.7%
Non-Residential Sales	84%
Total System Sales	61.7%

(DP&L Ex. 2 at 6) Moreover, the level of CRES provider participation is another indication of the need to make additional changes. As of March 2013, 29 CRES suppliers were registered in DP&L's territory. (Staff Ex. 7 at 7) While the number of registered CRES providers is sizeable and, at first blush, appears to demonstrate that DP&L's competitive market is robust, the reality is significantly different. Far fewer than the registered 29 CRES suppliers are active. A review of the Commission's Apples-to-Apples chart on its website shows that, as of May 3, 2013, only 11 CRES suppliers are actively offering services.[4]

The decision of the Commission in these matters will affect the viability of the CRES market in DP&L's service territory in the future. RESA recommends that the Commission likewise take a competition-enabling approach in these matters and do so in three general areas. First, the Commission must determine whether DP&L's ESP complies with the statutory requirements in Section 4928.143, Ohio Revised Code. Second, the Commission should spur the development of DP&L's retail electric market by enhancing the manner in which DP&L works with CRES suppliers, particularly with respect to data and billing enhancements. Third, the

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[3] *In the Matter of the Application of The AES Corporation, Dolphin Sub Inc., DPL Inc. and The Dayton Power and Light Company for Consent and Approval for a Change in Control of The Dayton Power and Light Company*, Case No. 11-3002-EL-MER, Finding and Order at 13 (November 22, 2011). That merger closed in November 2011. (Tr. 119)

[4] *See*, http://www.puco.ohio.gov/puco/index.cfm/apples-to-apples/dpl-electric-apples-to-apples-chart/, wherein a count of the active suppliers reflects that only 11 CRES suppliers are actively offering CRES in DP&L's service territory.

Commission should also spur the competitive electric market in DP&L's territory by removing a number of existing anti-competitive tariff provisions.

II. DP&L did not satisfy its burden of proving that the proposed ESP is better than an MRO

Section 4928.143(C), Ohio Revised Code, requires that the Commission find that the electric security plan ("ESP"), 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 a market-rate offer ("MRO") pursuant to Section 4928.142, Ohio Revised Code. The burden of proof lies with the electric distribution company ("EDU"). DP&L presented the testimony of Mr. Malinak to support its burden of proof. However, for the reasons detailed below, the Commission should reject Mr. Malinak's testimony and find that DP&L failed to meet its required burden of proof.

A. Staff's bottom-up quantitative analysis – MRO is superior

The Commission Staff presented convincing evidence of the appropriate methodology to use for comparing an ESP and an MRO ("ESP v. MRO") pursuant to Section 4928.143(C), Ohio Revised Code. (Staff Ex. 8 at 3-7; Staff Ex. 9; Tr. 1777, 1786-1787) Staff Witness Turkenton presented four quantitative scenarios using different assumptions related to the length/time period for both the ESP and MRO, projected market rates, average annual Service Stability Rider ("SSR") revenues of $133 million and $151 million, DP&L's proposed fuel rate, DP&L's proposed SSR rate, different blending rates, and inclusion of the $73 million of Rate Stabilization Charge revenues. The Staff concluded that the ESP is not more favorable quantitatively than the MRO under any of the scenarios. Ms. Turkenton concluded that DP&L's ratepayers will pay more under the ESP versus the MRO option, and the amounts will range from $25.4 million to $628.9 million. (Staff Ex. 8 at 8; Staff Ex. 9 at 1; Tr. 1794)

Ms. Turkenton testified that she followed the approach employed by the Staff in the AEP ESP case.[5] (Tr. at 1792) Ms. Turkenton assumed that the level of shopping customers will remain at the August 2012 level (62%). (Tr. at 1785) She explained that, if switching increases above that assumed level, the MRO looks even more favorable. (*Id.*) She did not agree with several of DP&L's assumptions, rejecting DP&L's use of a 17-month blending period, not including all non-bypassable riders, and ending the analysis after the end of ESP period. (Tr. 1787, 1790-1791).

B. Other quantitative analyses provide additional compelling evidence that DP&L's ESP is not more favorable in the aggregate than an MRO

In addition, the record includes other convincing evidence that DP&L's ESP v. MRO analysis is flawed and its ESP is not more favorable from a quantitative standpoint. OCC, IEU, and FES conducted their own ESP v. MRO analyses, and they too concluded that DP&L's proposed ESP is not more favorable quantitatively than the MRO. They too disagreed with a number of DP&L's assumptions, including its use of a 17-month blending period, its failure to include all non-bypassable riders, its inclusion of the SSR revenues in the MRO, and its termination of the analysis after the end of ESP period. (OCC Ex. 23; IEU Ex. 2 at 3-4, 28-36, KMM-14-KMM-17; FES Ex. 13 at 3-30, RDR-1). RESA finds that the Staff, OCC, and IEU testimony on the ESP v. MRO test was not meaningfully refuted by DP&L's direct or rebuttal witnesses and thus the Commission must find that quantitatively the MRO is better than DP&L's ESP.

[5] *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO et al., Opinion and Order (August 8, 2012) and Entry on Rehearing (January 30, 2013).

C. Substantive advantages of the ESP will not make it more favorable in the aggregate than an MRO

DP&L Witness Malinak stated that, in addition to the quantitative benefits, DP&L's ESP provides several qualitative advantages, namely:

- Improved ability to attract businesses to DP&L's service territory
- Competitive enhancements to provide retail shopping
- Greater regulatory flexibility than would be statutory in place after an MRO

(DP&L Ex. 5 at 3, 13) On rebuttal, Mr. Malinak added that costs of financial distress were not included in any of the other parties' analyses. (DP&L Ex. 14 at 8) He stated that, together, DP&L's quantitative and qualitative benefits demonstrate that DP&L's ESP is more favorable in the aggregate than an MRO. (DP&L Ex. 5 at 15-16). IEU and FES presented contrary evidence that these non-quantifiable benefits of DP&L's ESP do not outweigh the cost of the ESP. (IEU Ex. 2 at 36; FES Ex. 13 at 25-30)

RESA agrees with IEU and FES that the non-quantifiable benefits of DP&L's ESP collectively do not outweigh the significant cost of its ESP. As addressed in greater detail later in this Brief, the proposed competitive enhancements, while being improvements, are a far cry from what is necessary to bring DP&L's systems and processes up to industry standards and to the level for appropriate and fair interactions with CRES providers. Further, the data enhancements can be accomplished under either an MRO or an ESP so the benefits of the DP&L enhancements, which RESA finds insufficient, are not an item that can be exclusively labeled "ESP".

As a result, DP&L's ESP does not satisfy the statutory test contained within Section 4928.143(C), Ohio Revised Code. DP&L's ESP should not be approved. Significant modifications to the ESP are necessary in order for DP&L's proposed ESP to satisfy the statutory requirements.

III. DP&L has failed to include changes that would provide substantive benefits needed for the development of the competitive market

As part of its proposed ESP, DP&L has proposed to implement six "competitive retail enhancements" in an effort to further "promote the policy of the state to encourage competition." DP&L states that the six projects will improve the interaction of CRES providers with DP&L so that, administratively, the customer choice process will be smoother. (DP&L Ex. 9 at 13) Those projects are:

- Eliminate the minimum stay and return to firm provisions in its generation tariffs.
- Implement a web-based portal for CRES providers to obtain DP&L customer information.
- Implement an auto-cancel feature to DP&L's Bill-Ready billing option
- Remove the enrollment verification that requires a CRES provider to have the first four characters of the customer name on the account, as well as the correct account number.
- Support DP&L's response to Historical Interval ("HI") usage data requests via EDI.
- Provide a standardized sync list on a monthly basis.

(DP&L Ex. 9 at 14-15; Tr. 1407-1411)

The six competitive enhancements are items that CRES providers, including members of RESA, have been seeking in DP&L's service territory. (Tr. 1287-1288, 1408-1409, 2308) However, they alone are insufficient to encourage further participation by CRES providers and to impact the level of shopping in DP&L's service territory, particularly for the residential and small commercial customer sectors. Moreover, the cost-recovery for those enhancements remains an open question, which is addressed later in this brief. A variety of important CRES enhancements and modifications are missing from DP&L's ESP proposal and, as a result, it should not be approved without modifying the plan to include them. Two of the important CRES enhancements and modifications are set forth in Section III, and the others are listed in Sections V-VIII of this Brief.

A. DP&L should offer a purchase of receivables program for consolidated bills of residential and small commercial customers

RESA Witness Stephen Bennett testified that there are continuing, ongoing problems with billing for CRES and collecting by the CRES providers. (RESA Ex. 6 at 10) When a shopping customer in DP&L's territory falls behind in paying under a consolidated bill, DP&L allocates the partial payment between itself and the CRES provider.[6]

RESA remains concerned with receiving information as to what takes place with customer partial payments. During the hearing, counsel for DP&L intimated that DP&L provides weekly information to CRES providers regarding payment status and payment arrangements. (Tr. 2472) Counsel's statement is not evidence and should not be relied upon by the Commission.[7] More important, the tariff does not require DP&L to provide timely information to the CRES in an electronic format which shows both what the customer actually paid, and the amount allocated to the CRES. If in fact DP&L is already providing that information, then there should be no objection from DP&L to codifying the service in the tariff. Once in the tariff, the CRES providers can be assured that such information cannot arbitrarily be withdrawn in the future.

While assuring the proper information exchange on partial payment is important, the time has come to implement a better billing option that can *avoid* such billing and collection problems. RESA, as well as Constellation, urge the Commission to implement a non-recourse purchase of receivables ("POR") program that would apply to residential and small commercial

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[6]The allocation process for partial payments is set forth in Rule 4901:1-10-33(H), Ohio Administrative Code. However, in 2004, the Commission granted DP&L a waiver of that rule, and approved a modified partial payment priority process. *In the Matter of the Application of The Dayton Power and Light Company for a Waiver from the Requirements of the Electric Service and Safety Standards, Rule 4901:1-10-133, Ohio Administrative Code*, Case Nos. 03-2324-EL-UNC, Finding and Order (December 1, 2004). Despite this modified partial payment priority process, there are ongoing problems when customers pay only a portion of the consolidated bill.

[7] It is improper to prove an issue of case by insinuation or innuendo, rather than with evidence. In re H.M.S., 2006 Ohio 701; 2006 Ohio App. LEXIS 614 (2006); Ohio Jur. 3d. § 814.

customers. (RESA Ex. 6 at 10-14; Constellation Ex. 1 at 51) As explained by RESA Witness Bennett, a POR program would require DP&L to offer to buy the receivables, along with its provision of consolidated billing; a POR program results in a single customer bill (which is something that customers overwhelmingly prefer) and a single collection entity for the billed amounts (which also is preferred by customers, as well as by the CRES suppliers). A POR program will be a significant means by which to improve the DP&L market and the straightforward remedy to an existing major barrier in the DP&L market. (RESA Ex. 6 at 11)

The Commission Staff takes no position, either for or against, a POR program. (Tr. 1741)

However, based on "conversations," DP&L opines that a POR program is programming intensive and costly (Tr. 1427, 2309) DP&L's Witness Seeger-Lawson did not further explain the basis for those opinions. DP&L also presented no detail or documentation to explain what it considers to be "programming intensive" and "costly." Without substantial supporting evidence, including DP&L's full analysis of such a program, DP&L's empty assertions regarding POR should be ignored.

A POR program provides numerous benefits for all participants and *simplifies* the process of handling payments from a consolidated bill for DP&L, the CRES supplier, and the customer. First, DP&L would no longer have to track and implement payment allocations under the four-point system; rather, DP&L can simply track and collect the arrearages under the same processes that it uses for its own SSO customers who fall into arrears. Second, the CRES supplier would no longer need to try and piece together when and how a customer is making payments or addressing the arrearages, or whether customer payments are being allocated correctly. Third,

the customer has the continued benefit under a POR program of having one, single point of contact for its billing and its collections, which DP&L's customers have historically experienced.

POR programs have successfully been implemented in various territories in Ohio and have successfully aided in the growth of those markets. Specifically, the major gas utilities in Ohio have implemented POR programs and Duke Energy Ohio has implemented a POR program for both its natural gas and electricity markets. Customers in those areas have become accustomed to having that single point of contact for billing and collection. It is entirely reasonable to implement a similar program in DP&L's territory for the electric customers.

Moreover, Constellation Witness Fein explained that a properly constructed POR program is *the key* to a successful retail market for residential and small commercial customers, which is the segment of the CRES market in DP&L's territory that is not robust. (Constellation Ex. 1 at 51) There is significant room for further development of the competitive marketplace for residential customers in DP&L's territory, and a POR program will play a significant role in jumpstarting further development of that segment of the market.

Although a POR program has been raised in other pending proceedings on a more generic basis,[8] this proceeding is an appropriate, direct opportunity for implementation of a POR program in DP&L's territory. In fact, POR programs have been established in company-specific proceedings in the past in Ohio.[9]

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[8]For example, Direct Energy Services LLC and Direct Energy Business LLC, collectively "Direct Energy," (in their joint Initial Comments at 3), Duke Energy Retail Sales (in its Initial Comments at 4-5), and RESA and Interstate Gas Supply Inc. (in their joint Reply Comments at 15-16) all recommended a POR program in *In the Matter of the Commission's Review of its Rules for Competitive Retail Electric Service Contained in Chapters 4901:1-21 and 4901:1-24 of the Ohio Administrative Code*, Case No. 12-1924-EL-ORD. Also, the same entities recommended a POR program in their Initial Comments in *In the Matter of the Commission's Review of Chapter 4901:1-10, Ohio Administrative Code, regarding Electric Companies*, Case No. 12-2050-EL-ORD. *See*, Direct Energy Initial Comments at 2,7; Duke Energy Retail Sales Initial Comments at 4-5; RESA Initial Comments at 6-9; and Interstate Gas Supply Inc. Initial Comments at 1-3.

[9]*See*, E.g., *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer pursuant to Section 4928.143, Revised Code, in the form of an Electric Security Plan, Accounting*

In addition, RESA proposes an alternative for the Commission's consideration. The alternative is not preferred and admittedly is a less appropriate resolution to the billing issues than a POR program. However, RESA also believes that the status quo should not remain in place. Therefore, for additional consideration, RESA suggests, in the alternative, that DP&L should provide, via an automatic electronic process, significantly more information to the CRES providers and more transparency on the partial payment process used today. This proposed process should not require each CRES provider to ask to receive partial payment information. To effectuate this option, the Commission could direct DP&L to implement an additional EDI transaction that would allow CRES providers to reconcile data related to partial payment issues. In addition to the existing EDI transaction that shows the customer payment attributable to CRES charges, the new EDI transaction must include a field that shows (a) the total customer invoice, including DP&L charges, (b) the total amount of the customer payment applied to that invoice total, and (c) a breakdown of how CRES provider charges are included in any payment plan or negotiated payments related to bills which include CRES charges. This alternative option can not only provide a CRES provider with the data necessary to ensure the utility is appropriately applying payments, but also can provide a CRES provider with information necessary when a customer disputes an amount owed. (RESA Ex. 6 at 13-14)

Modifications, and Tariffs for Generation Service, Case No. 11-3549-EL-SSO, Opinion and Order at 33 (November 22, 2011); *In the Matter of the Application of The Cincinnati Gas & Electric Company for Approval of Its Revisions to Rate FRAS Gas Tariff Schedule in Response to H.B. 9*, Case No. 02-2895-GA-ATA, Entry at 12, 14 (April 27, 2005); *In the Matter of the Application of The East Ohio Gas Company dba Dominion East Ohio for Approval of a Plan to Restructure Its Commodity Service Function*, Case No. 05-474-GA-ATA, Opinion and Order at 6, 27 (May 26, 2006); and *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 07-1285-GA-EXM, Finding and Order (November 4, 2008).

B. Elimination of an existing tariff barrier to shopping -- Interval Meter Policy

For many years, DP&L has required a customer who is shopping with a CRES provider to install an interval meter[10] when the customer's demand is greater than 100 kW.[11] (Tr. 1337-1338, 2262, 2263) Such a customer is responsible for the cost of installing the interval meter, which is several hundred dollars, and is required to have a dedicated telephone line or internet connection so that the interval data can be transferred to DP&L. A customer with a demand level of 100 kW or greater who is on DP&L's standard service, however, does not have to install an interval meter. (Tr. 2265) On its face, DP&L's interval meter policy causes shopping customers, and only shopping customers, to incur costs, which is discriminatory. (RESA Ex. 6 at 3)

DP&L attempted to explain its rationale for the interval meter policy on the ground that DP&L "needs to know," on an hourly basis, the shopping customer's usage because of DP&L's obligation to serve. However, DP&L also admitted that it did not "need to know" the hourly usage of that same customer before it was shopping. (Tr. 2262, 2264-2265)

In addition, under DP&L's interval meter policy, neither a CRES provider nor the customer has access to the real-time, interval data. If a CRES provider requests the interval data with the customer's authorization, DP&L charges the CRES provider for that data.[12] Again, this interval meter policy results in additional discriminatory costs. The net effect of these additional meter-related costs that apply only to CRES customers 100+ kW is to make CRES service

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[10]DP&L's tariff defines an interval meter as "an electricity meter which records an End-use Customer's electric usage for defined intervals (e.g., fifteen (15) minutes, half-hour, hour, etc.), allowing the possibility for consumption during different time periods to be billed at different rates and providing a means for an End-use Customer's load pattern to be analyzed." DP&L PUCO No. 17, Eighth Revised Sheet No. G8, page 4 of 30.

[11]A customer with a demand of 100 kW is typically a small- to medium-sized commercial or industrial customer. (Tr. 2256)

[12]*See*, DP&L PUCO No. 17, Eighth Revised Sheet No. G8, page 30 of 30, wherein a manual interval meter read costs $65 per meter read, and electronic interval meter data costs range between $25 per account per request and $150 per account per request.

appear to be more costly than the comparable DP&L standard offer service. This is both unduly discriminatory and results in customers making uneconomic service selection decisions. Thus, continuation of the interval meter provision, as is, works against a competitive market and the promotion of customer choice.

Section 4905.35(A), Ohio Revised Code, prohibits an EDU from making or giving any undue or unreasonable preference or advantage. The Ohio Supreme Court has stated that a "reasonable differential or inequity of rates may occur where such differential is based upon some actual or measurable differences in the furnishing of services to the consumer. *AK Steel Corp. v. Pub. Util. Comm.* (2002), 95 Ohio St.3d 81, 87, citing *Mahoning Cty. Townships v. Pub. Util. Comm.* (1979), 58 Ohio St.2d 40, 43-44, 12 O.O.3d 45, 47, 388 N.E.2d 739, 742. *See, also, Weiss v. Pub. Util. Comm.* (2000), 90 Ohio St.3d 15.

In this instance, it was unreasonable for DP&L to classify 100+ kW shopping customers as the customers who must obtain an interval meter. There is no distinction between DP&L's 100+ kW customers who shop and those 100+ kW customers who do not shop. Yet, under DP&L's policy not all customers are subject equally to the same requirement – only those who are shopping must incur the interval meter expenses. Interval meters are not necessary for shopping and are not necessary equipment for 100+ kW customers. (DP&L does not require interval meters for its non-shopping 100+ kW customers.) Yet, DP&L's policy forces shopping customers with 100+ kW of demand to spend hundreds of dollars on a meter and a telephone line or internet connection, in order to shop. DP&L's policy makes clear that, if the 100+ kW customer does not install the interval meter, the customer may be returned to DP&L's SSO "at the Company's discretion." DP&L's interval meter policy discriminates unduly and unreasonably against shopping customers.

Likewise, DP&L's interval meter policy unduly and unreasonably discriminates in second manner. DP&L does not provide free access to the usage data by either the interval meter customer or, with the customer's permission, by the customer's CRES provider. Rather, DP&L requires specific requests for which it separately charges the CRES provider unique fees for learning its own customer's usage. There is no justification for requiring specific requests for the usage data and for separate charges for providing that data to the customer's authorized CRES provider. This is particularly egregious because DP&L unreasonably requires that the interval meter be installed and then DP&L also denies ready access to the very data collected by the interval meter. The customer not only *owns* its data, but has *bought and paid for* the data by installing the required meter. Yet, DP&L denies the customer access and only allows the customer's CRES provider to have access to the data after paying an additional fee. For this additional reason, DP&L's interval meter policy discriminates unduly and unreasonably.

RESA recommends that the Commission raise the threshold for requiring installation of interval meters from 100 kW to 200 kW for *all* of the DP&L customers. As RESA witness Bennett noted, this change would follow the current policies that have been put into place in the FirstEnergy, AEP, and Duke territories. (RESA Ex. 6 at 3-4) Furthermore, the Commission should require that customers under the 200 kW threshold have the option to install interval meters at their own expense, if they choose. Finally, if the customer installs the interval meter and pays for the telemetry, then the customer should receive the data free of charge. Likewise, with the customer's authorization, its CRES provider should receive the interval meter data free of charge. (RESA Ex. 6 at 3-4)

IV. DP&L proposes new barriers to shopping and excessive retail customer costs

DP&L argues that its proposed ESP will advance many of Ohio's state policies as contained in Section 4928.02, Ohio Revised Code, including subsection H. (DP&L Ex. 8 at 4-7) Section 4928.02(H), Ohio Revised Code, states that one of Ohio's state policy is to:

> 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.

DP&L is incorrect. Its proposed ESP introduces new barriers to shopping, that also will result in excessive retail customer costs – namely, the Switching Tracker and Reconciliation Rider.

A. Switching Tracker

The first new barrier is DP&L's proposed Switching Tracker ("Rider ST"), which would defer for later recovery from all customers the difference between the level of switching as of the initial ESP filing date (62% of retail load) and the actual level of switching. (DP&L Ex. 9 at 16) Rider ST would be a non-bypassable fee that is calculated as follows:

- Each month after August 30, 2012, the percentage of additional switching that occurs will be multiplied by distribution load to determine the quantity of additional switched load in megawatt-hours.
- The difference between the blended standard service offer ("SSO") rate and the competitive bid rate will be multiplied by the quantity of additional switched load.
- That amount will be included in the Switching Tracker account and deferred such that amounts in one year would be deferred for one year and then begin to be collected the following year.
- Beginning January 1, 2014, DP&L will begin to recover the deferred balance, plus carrying costs, until completed.

(DP&L Ex. 1 at 11-13 and CLJ-5; DP&L Ex. 9 at 17; Tr. 203, 211) DP&L also presented estimates of the Switching Tracker amounts, reflecting that, in 2013, $32.8 million would be deferred and that, in 2014, $23.3 million would be deferred. (DP&L Ex. 1 at CLJ-5 and CLJ-6)

DP&L Witness Jackson testified that DP&L has proposed the Switching Tracker "to alleviate some of the pressure related to incremental switching" because losses due to customer switching are expected to create a significant strain on the company's financial integrity. (DP&L Ex. 1 at 12; Tr. at 114, 203, 251) Mr. Jackson further testified that the rider may not recover all losses caused by customer switching because DP&L may procure power at costs below the competitive bid rate and it is does not *guarantee* DP&L a reasonable return on equity. (DP&L Ex. 1 at 12-13)

In reality, proposed Rider ST is a "contingent generation fee" that guarantees revenue recovery of most of DP&L's cost of energy for the period of 2012-2016. Other parties – IEU, OCC, OEG, Kroger, and Staff – agree and presented compelling testimony on this point. (IEU Ex. 3 at 5, 15, 26; OCC Ex. 28 at 22-28; OEG Ex. 1 at 11-12; Kroger Ex. 1 at 5, 14-15; Staff Ex. 10 at 7-10) Moreover, Rider ST is duplicative of DP&L's proposed rate stabilization fee.[13] Rider ST would amount to *a second* subsidy for DP&L for its financial integrity. Further, DP&L is unaware of any other EDU with a switching tracker like that proposed by DP&L. (Tr. 252) There is no statutory or regulatory justification for doubly guaranteeing revenues for DP&L's financial health.

RESA is most concerned about the inequity of Rider ST as it discriminates against shopping customers. As shopping customer Kroger's witness pointed out, as a practical matter, the proposed Rider ST will apply to all distribution customers, including customers who shopped prior to the start date of the proposed ESP. As a result, those shopping customers would be charged for lost revenues from customers who switch to CRES suppliers in the future. (Kroger Ex. 1 at 15).

[13]DP&L proposes the SSR at a levelized rate of $137.5 million each year of the ESP plan to "maintain its financial integrity and to have the opportunity to earn a reasonable rate of return." (DP&L Ex. 1 at 5; Tr. 139)

Additionally, DP&L's proposed Rider ST circumscribes one of the most basic tenants of rate-making: that rates should be set at a level that allows the company a *reasonable opportunity* to earn its authorized rate of return, not set at a level that *guarantees* it. The difference between these two concepts is that a guarantee removes from the utility the incentive to keep costs as low as possible and to perform in a more efficient manner. DP&L's proposed Rider ST would amount to a revenue guarantee that inadvisably removes the incentive from DP&L to operate in a more efficient and least-cost manner.

For all of these reasons, it is unlawful and unreasonable to impose Rider ST as DP&L proposed.

B. Reconciliation Rider

DP&L's second new barrier is its proposed Reconciliation Rider ("Rider RR"), which is a rider to recover an assortment of costs:

- Competitive Bid Expenses – the costs associated with administering and implementing the competitive bid process.
- Deferred amounts in the in excess of 10 percent of the base recovery rate in the following riders: Fuel Rider, Alternative Energy Rider, Transmission Costs Recovery Rider-Bypassable, RPM Rider, and CBT Rider. Also, any remaining deferral amount as of June 1, 2016, of the Fuel Rider, RPM Rider, and TCRR-B will be included.
- Competitive enhancement costs associated with the six enhancements proposed by DP&L (and described earlier).

(DP&L Ex. 10 at 8-13; DP&L Ex. 9 at 14; Tr. 1333)

Rider RR as proposed is a non-bypassable fee that would apply to all distribution customers. As structured by DP&L, Rider RR improperly would recover, in part, for associated and secondary generation expenses. Moreover, it would recover money from shopping customers who did not cause the cost. Multiple parties agree -- FES, Kroger, Federal Agencies,

and Staff. (FES Ex. 14 at 57-63; Kroger Ex. 1 at 15-16; FEA Ex. 2 at 4-8; Staff Ex. 7 at 5, 9) RESA will address each of the components in turn.

First, regarding the Competitive Bid Expenses, RESA agrees that they are legitimate expenses that should be recovered by DP&L. However, they should be collected through a bypassable rider because the auction expenses are generation costs that must be collected from non-shopping customers because they are the customers that require DP&L to incur Competitive Bid Expenses. To include them in Rider RR as proposed would cause shopping customers to pay for costs to which they gain no benefit.

Second, the Fuel Rider strictly recovers a generation expense, and those expenses should be borne by generation customers. For that reason alone, it is improper to include deferred amounts associated with the Fuel Rider in a non-bypassable rider applicable to shopping and non-shopping customers. Additionally, DP&L has not shown in these proceedings an extraordinary circumstance or extraordinary basis for placing costs on customers for a product customers never received. DP&L can apply for financial relief *if* it becomes necessary at some point. However, now is not the time to establish such in Rider RR. DP&L's concerns for its financial integrity, based on projections that may not be realized, do not warrant imposition of additional expenses on customers. Similarly, the same argument applies to the Alternative Energy Rider and Transmission Cost Recovery Rider-Bypassable because they also recover expenses that are not distribution expenses. In addition, it is incorrect to include any portion of the Transmission Cost Recovery Rider-Bypassable in Rider RR because that would recover amounts from all distribution customers for a rider that is only applicable to non-shopping customers. Customers taking service from a CRES provider are already paying for these items in

their CRES rates; they should not be punished for their choice by also paying for the costs of a DP&L product that they chose not to take.

As for the deferred amounts under RPM Rider and CBT Rider, DP&L has not justified a need to include them in Rider RR, or to recover amounts from all distribution customers when shopping customers may not have caused those costs at all.

Third, RESA would not object to competitive enhancement costs being non-bypassable (and that position is addressed in greater detail in Section VIII of this Brief). However, these enhancements costs should be recovered through their own separate riders and removed from Rider RR altogether.

In light of the foregoing, the Commission should reject DP&L's proposed Rider RR. Bypassable charges should not be collected through non-bypassable riders. The competitive bid expenses should be recovered through a bypassable rider, which could be designated Rider RR-B, and the competitive enhancements should be recovered through their own separate, individual riders. Given that no other *legitimate* expenses remain to be collected through Rider RR, the rider should be rejected.

V. Data and billing enhancements are fundamentally necessary

Information-sharing between the EDU and CRES providers is fundamental for the CRES providers to contract with customers, render invoices, and provide other services. The Commission is well aware that appropriate information-sharing between the EDUs and CRES suppliers is *critical*. In fact, once access for retail customers to purchase power on the open market was declared by the Ohio General Assembly, the Commission created and refined certain administrative rules to ensure that EDU-CRES supplier information-sharing takes place in a cooperative fashion during such activities as pre-enrollment, CRES registration, customer

enrollment, and customer billing. *See, e.g.*, Rule 4901:1-10-29 (Coordination with Competitive Retail Electric Service Providers), Rule 4901:1-10-33 (Consolidated Billing Requirements), Rule 4901:1-21-06 (Customer Enrollment), and Rule 4901:1-21-18 (Consolidated Billing Requirements), Ohio Administrative Code.

Based on the collective experience of the twenty RESA members, RESA believes DP&L must be required to take new and more significant steps for information-sharing than it proposes. In reviewing this ESP, the Commission should build on its record of improving Ohio's market by ordering DP&L to update its EDI, information exchange and billing systems. These efforts will help foster a more competitive and innovative marketplace. Like the other Ohio EDUs have done already, DP&L must modify its systems, tariffs, and business practices so that appropriate and modern information-sharing can take place. The record reflects that DP&L implemented a new billing system in 1995, and made specific upgrades thereafter in 2001 and 2005 for customer choice.[14] (Tr. 1374, 1377, 1392, 1394).

Despite the new billing system and upgrades, for numerous years, DP&L has avoided implementation of many of the systems and practices that are and have been standard in the industry. As a result, the means of interaction between DP&L and the CRES providers are needlessly antiquated, laborious, and substandard. CRES providers should be encouraged to enter the market and participate at *all* customer levels in DP&L's service territory, which has not happened during the past 14 years. RESA recommends a variety of changes for DP&L, but those changes are not unique. Rather, RESA is recommending upgrades that are in wide practice which enhance the competitive market in fundamental and critical ways. (Tr. 2467) As RESA Witness Bennett stated, the more standardization there is across the industry, "the more

[14]Other Ohio EDUs have more modern and more appropriate information-sharing systems and processes in place. *See*, e.g., Sections V.C., V.D. of this Brief.

efficiency there is, that means efficiency in the CRES provider systems that means efficiency in the utility's interaction with the CRES providers, and efficiency in the customers receiving pricing and timely enrollments." (Tr. at 2462)

The time has come for DP&L to upgrade its processes and systems by: (1) implementing a web-based system as further detailed by RESA, (2) using a standard format for customer lists, (3) adding standard Electronic Data Interchange ("EDI") interfaces using the most recent standards available, (4) making customer-specific information readily available to CRES providers through EDI and a web-based system, (5) altering certain EDI processes, (6) adding new EDI "876 HU" standards, and (7) adding other detailed enhancements. Each is further explained below.

A. Web-based, electronic system

DP&L has agreed, if its other requested costs are granted, to implement "a web-based portal such that CRES providers can obtain DP&L customer information in [a] more usable and manageable fashion." (DP&L Ex. 9 at 13). No further details about that portal were presented by DP&L. RESA agrees with implementation of a web-based portal, but RESA believes that more specific direction should be provided by the Commission so that an *appropriate* system is ordered and actually implemented in an appropriate timeframe.

The proposed web-based portal should provide electronic access to key customer usage and account data without the risk of a bottleneck that occurs with manual processes. As RESA Witness Bennett explained, web provision of data exists in other competitive markets in the country, and CRES providers have successfully interfaced with those internet-based systems. (RESA Ex. 6 at 4-5)

The Commission has expressly recognized the need to access customer data and the

significant role that a web-based, electronic system plays in the further development of competitive markets. In fact, last year, the Commission ordered AEP-Ohio to develop an electronic system.[15]

DP&L should implement a secure, web-based system for CRES providers with appropriate customer authorization, providing electronic access to key customer usage and account data that can be accessed and downloaded or copied by an authorized CRES provider no later than six months after the Commission's order in this case. (RESA Ex. 6 at 5) The Commission should also order that the web-based system include a minimum set of up-to-date data. RESA recommends that the minimum dataset include those items set forth in Sections V.B – V. G of this Brief.

B. Choice-eligible customer lists

DP&L currently provides lists of choice-eligible customers to CRES providers and updates thereto.[16] The lists are provided electronically on DP&L's internet site. RESA seeks to have DP&L's lists of choice-eligible customers and updates provided in the *standard* format (not DP&L's current format) and have DP&L provide the updates at least quarterly. RESA also requests that these lists be provided via the proposed web-based system, which is not DP&L's internet site. (RESA Ex. 6 at 5)

C. Standard EDI interfaces

Standard EDI interfaces are used in the competitive markets throughout the country, including Ohio. DP&L should be using all the standard EDI interfaces as well, but it is not.

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[15] *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, et al., Opinion and Order at 41 (August 8, 2012). The Commission did not delineate all categories of data that must be accessible in the system, but it did require access to (a) peak load contribution ("PLC") values, (b) NSPL values, (c) historical usage data, and (d) interval data. *Id.*

[16] *See*, DP&L Tariff PUCO No. 17, Eighth Revised Sheet No. G8, pages 10-11 of 30.

(RESA Ex. 6 at 5-6; Tr. 2466) The Commission should require DP&L to add the following standard EDI interfaces, and include them in its web-based system:

(a) Validation, Error Detection, and Editing ("VEE") data posted via EDI
(b) EDI 867 Historical Usage ("HU") and Historical Interval Usage ("HIU") data
(c) EDI 867 Monthly Usage ("MU") and Interval Usage ("IU") data
(d) Transmission and capacity PLCs in EDI 867s
(e) Meter read cycle information

(RESA Ex. 6 at 5-6) These five EDI interfaces have been implemented in other competitive electric markets in Ohio – all except VEE are provided to CRES providers in FirstEnergy's territory and all five are being provided to CRES providers in Duke Energy Ohio's territory.[17] The Commission should likewise determine that these EDI interfaces are standard and should be added in DP&L's territory too, as well as in its proposed web-based system.

D. Customer-specific information

DP&L currently provides customer-specific information to CRES providers via the lists of choice-eligible customers and updates thereto.[18] That customer-specific information is not comprehensive or sufficient, however. RESA Witness Bennett testified that the customer-specific information is fundamental and critical for a competitive marketplace. (Tr. 2467) In addition, he explained that unnecessary delays in the provision of this data "can have an effect on CRES providers' ability to contract with customers, render invoices, and provide other services to customers." (RESA Ex. 6 at 7)

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[17]The Commission accepted those additional EDI interfaces as reasonable in 2010 and 2011, respectively, in *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Opinion and Order at 36 (August 25, 2010), [Collectively, the companies will be referred to as "FirstEnergy."]; and *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO, Opinion and Order at 37, 48 (November 22, 2011).

[18]*See*, DP&L Tariff PUCO No. 17, Eighth Revised Sheet No. G8, pages 10-11 of 30.

At a minimum, DP&L should mirror the customer-specific information that collectively FirstEnergy and Duke provide to CRES providers in their territories. Also, DP&L should be required to provide that customer-specific information via the proposed web-based system, as both FirstEnergy and Duke do. (RESA Ex. 6 at 6, 8) Plus, RESA requests five additional pieces of customer-specific information that, subsequently, have become equally important. The comprehensive list is as follows (the five additional item are specifically identified with asterisks):

(a) Account Numbers
(b) Meter Numbers
(c) Names
(d) Service Addresses, including Zip codes
(e) Billing Addresses, including Zip codes
(f) Email addresses
(g) Meter Read Cycle Dates
(h) Meter Types
(i) Interval Meter Flags
(j) Rate Code Indicators
(k) Load Profile Group Indicators
(l) PLC values
(m) NSPL values
(n) *Effective dates for both PLC and NSPL
(o) 24 months of consumption data (in kWh) by billing period, including On-Peak data; and Off-Peak data
(p) 24 months of demand data (in kW) by billing period[19]
(q) 24 months of interval data
(r) *Daily Zonal Scaling Factor ("DZSF")
(s) *Effective dates for current and pending rate class and/or procurement class
(t) Default Service indicators (if on Default Service)
(u) Minimum stay dates (if applicable)
(v) *Identifiers of whether customers are participating in rate mitigation/deferral plans
(w) *Identifiers of whether customers are participating in pre-payment plans and/or PIPP programs

(RESA Ex. 6 at 6, 8)

[19]Duke provides this data, but the initiating language does not specifically require that it be provided by billing period. *See, In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO, Stipulation at 34.

E. Alter certain EDI processes

DP&L should also be required to change certain of its EDI processes so that it is following industry-wide best practices. (RESA Ex. 6 at 7) RESA's proposed modifications are as follows:

1. Accounts requested together should come back together, unless there would be an unnecessary delay for a particular subset of accounts.
2. The monthly sync-list that is proposed to be provided to CRES Providers should be done on a confidential basis and contain information such as service start date, bill method, and PLC values.
3. Modify the cancel/re-bill process so that the total usage of a customer across all service points is cancelled and re-billed, rather than doing so only for individual service points.
4. Accept supplier-initiated drops if received during the customer's 7-day enrollment rescission period.
5. Effectuate a supplier-initiated drop for the current meter read cycle if the drop is received after the enrollment rescission period but prior to the start of the 12-day switching window.
6. Apply a usage percentage adjustment for customers with Primary, Secondary, or High Voltage rates in order to obtain the correct 'billed' consumption data.

(RESA Ex. 6 at 7)

RESA Witness Bennett explained that these six process changes are intended to eliminate unnecessary delays that "have an effect on CRES providers' ability to contract with customers, render invoices, and provide other services to customers." (RESA Ex. 6 at 7) Eliminating delays in each of these contexts is desirable and understandable for the DP&L retail market. Moreover, this is the opportune time to implement these process changes, particularly since DP&L itself is proposing part of the second process change listed above. Mr. Bennett also noted that some of these practices have been implemented by other Ohio utilities and have resulted in accurate information-sharing. (RESA Ex. 6 at 7)

F. Add other EDI "876 HU" standards

The Commission should require DP&L to also include three EDI standards specific to

876 HU: (a) Special Meter Configuration (REFKY), (b) Loss factor (REFLF), and (c) Service Voltage (REFSV). RESA Witness Bennett explained that these three EDI standards are in practice in Pennsylvania, and that the latter two are also in practice in New Jersey, Delaware and Maryland. (RESA Ex. 6 at 8; Tr. 2467) Likewise, Constellation Witness Fein confirmed that these three 876 HU standards have been adopted by the Pennsylvania Electronic Data Exchange Working Group (EDEWG) in its EDI Change Control 103. (Constellation Ex. 1 at 49)

More importantly, however, is the purpose of these three additional 876 HU standards. These other 876 HU standards will allow CRES providers to have additional data for the development of products that best address customer needs. For example, the REFKY data will identify a special meter configuration or attribute. (RESA Ex. 6 at 8) The Commission should strive to bring DP&L's retail market up to industry standards and thereby adopt these three 876 HU standards in addition to the other EDI standards referenced earlier.

G. Other enhancements

Constellation Witness Fein recommended several other enhancements which RESA supports. They are:

- DP&L should allow suppliers to enroll individual meters.
- DP&L should provide 500 billing codes that mirror DP&L's rate structures without charge to the CRES provider. Changing a variable code should not count as a new code.
- DP&L should bill the switching fee directly to CRES providers.
- Accounts that have not switched and have both a residential and commercial meter should be separated into two accounts to enable individual services to be enrolled.
- DP&L should eliminate the 90- or 60-day notice period for large and industrial customers returning to standard service, and with it, also eliminate the $10/kW penalty for not complying with notification periods.
- DP&L should eliminate the following CRES service charges that are not charged in other jurisdictions: (i) Supplier Registration Fee and (ii) Sync List Charge.

(Constellation Ex. 1 at 49-50) RESA also agrees with Constellation's suggestion that DP&L

commit to providing these six items by June 1, 2014.

VI. Billing options/charges should be changed

A. Rate-ready and bill-ready billing charge (consolidated bill charge)

DP&L provides rate-ready billing for CRES providers. DP&L added bill-ready billing in early 2012.[20] Both billing options are consolidated billings, namely, they include both EDU and CRES provider charges. (Tr. at 1383) DP&L charges CRES providers 20¢ for every consolidated bill it prepares.[21] RESA Witness Bennett testified that no other Ohio EDU has a consolidated bill charge.[22] (RESA Ex. 6 at 14)

DP&L Witness Seger-Lawson explained that its cost of billing "was built into DP&L's last distribution rate case," but actual costs have changed since that time (1991). (Tr. at 1370, 2231-2233) Moreover, she stated that it is not known whether DP&L's billing costs are being recovered through the distribution rates. (Tr. at 2235) DP&L acknowledged that the shopping customers are paying for billing as part of the distribution rates and that CRES suppliers are also paying for billing (via the 20¢ per bill charge), which DP&L believes is passed on then to the shopping customers. (Tr. 2234, 2235) As a result, shopping customers are paying an additional amount for billing.

DP&L does not know its current billing costs and does not know if its billing costs are

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[20]When DP&L's parent company and The AES Corporation ("AES") agreed to merge and they filed for Commission approval of that transaction, DP&L entered into several stipulations with interested parties. Among the stipulations was DP&L's agreement to add utility-consolidated, bill-ready billing to its existing billing system. *In the Matter of the Application of The AES Corporation, Dolphin Sub, Inc., DPL Inc. and The Dayton Power and Light Company for Consent and Approval for a Change in Control of The Dayton Power and Light Company*, Case No. 11-3002-EL-MER, Finding and Order (November 22, 2011). *See, also*, DP&L Tariff PUCO No. 17, Eighth Revised Sheet No. G8, pages 20 of 30; DP&L Ex. 12 at 15; Tr. 1404-1405, 1412.

[21]The 20¢ per bill charge was the result of a settlement approved by the Commission in *Dominion Retail Inc. v. The Dayton Power and Light Company*, Case No. 03-2405-EL-CSS, Opinion and Order (February 2, 2005). When first implemented and paid by CRES providers, DP&L was required to apply the moneys to recover the costs associated with certain billing systems upgrades. Since then, those billing system upgrades have been fully recovered and DP&L now recovers the 20¢ per bill unrestricted. (Tr. 1379-1380, 1384-138, 1394-1397; RESA Ex. 2)

[22]DP&L Witness Seger-Lawson testified that Duke Energy Ohio has a billing charge, but was not sure if it was for consolidated billing. (Tr. 1335)

being recovered through distribution rates. (Tr. 2235-2236) Moreover, DP&L acknowledges that its costs of billing have changed since they were included in distribution rates 22 years ago. (Tr. 1385-1386) Even so, shopping customers are subjected to an additional charge for billing, which may very well cause them to pay twice for billing costs. In fact, DP&L Witness Seger-Lawson stated that the 20¢ per bill charge to CRES providers includes the costs of postage, bill printing, and bill administration, and stated that, through distribution rates, the customer is paying for postage, bill printing, and bill administration. (Tr. 1385) It is extremely telling that no other EDU in Ohio has a consolidated billing charge (RESA Ex. 6 at 14) and that DP&L has not argued that the 20¢ per bill charge is a proper charge.

DP&L's 20¢ per bill charge to CRES providers is not lawful or reasonable. The effect of the charge is unduly and unreasonably discriminatory because shopping customers pay twice for billing, while non-shopping customers do not. Therefore, the Commission should eliminate this charge. If the Commission disagrees with RESA's position regarding the consolidated billing charge and does not eliminate it, the Commission should order that the money DP&L receives from that charge be applied directly to reduce the costs of the competitive enhancements ordered by the Commission in these proceedings.

B. Rate-ready billing code modification

DP&L charges $1,000 each time a CRES provider seeks to change a rate set-up under rate-ready billing. DP&L is the only Ohio EDU to have this charge and, as RESA Witness Bennett explained, it is exorbitant. (RESA Ex. 6 at 14) He pointed out that this fee is a "disincentive to retail product and service innovation." (*Id.*) After all, any CRES provider offering individualized products that satisfy a customer's needs will incur this fee. Given this stifling effect and the fact that DP&L is the only EDU imposing this charge, the Commission

should seriously consider its unreasonable impact on the retail market and eliminate it. If the Commission disagrees with RESA's position regarding the rate-ready billing code modification charge and does not eliminate it, the Commission should order that the money DP&L receives from that charge be applied directly to reduce the costs of the competitive enhancements ordered by the Commission in these proceedings.

C. Dual billing charge

DP&L charges CRES providers 12¢ per bill for those shopping customers who elect to receive dual bills, instead of a consolidated bill.[23] No other EDU in Ohio assesses this billing charge on shopping customers. (RESA Ex. 6 at 14) RESA contends that it is not only discriminatory, but unduly and unreasonably discriminatory. The Commission should eliminate this charge. If the Commission disagrees with RESA's position regarding the dual billing charge and does not eliminate it, the Commission should order that the money DP&L receives from that charge be applied directly to reduce the costs of the competitive enhancements ordered by the Commission in these proceedings.

VII. New business practices should be required

A. Stakeholder meetings for supplier-consolidated billing

DP&L should be required to institute a stakeholder process so that interested CRES providers can discuss supplier-consolidated billing, the process by which the *CRES provider* issues a consolidated bill that includes both EDU and CRES provider charges for electric service. This billing option has existed only in theory in Ohio, although multiple CRES providers would like the opportunity. Despite the fact there is a provision for supplier-consolidated billing the DP&L tariff, DP&L does not in fact allow supplier-consolidated billing. (Tr. 2231) As RESA

[23]The 12¢ per bill charge was the result of a settlement approved by the Commission in *Dominion Retail Inc. v. The Dayton Power and Light Company*, Case No. 03-2405-EL-CSS, Opinion and Order (February 2, 2005). (Tr. 1388; RESA Ex. 2)

Witness Bennett stated, supplier-consolidated billing would cause "a jump" in product innovation because CRES providers would not be constrained by the EDU billing systems. (RESA Ex. 6 at 9) To encourage such innovations and allow stakeholders to explore such a transition, the Commission should require periodic meetings or conference calls between DP&L and registered CRES providers intended to design a process to allow for supplier-consolidated billing.

Although DP&L states that it is not willing to agree to such stakeholder meetings without decisions on a host of issues in advance (DP&L Ex. 12 at 15; Tr. 2268), the Commission does not have to first reach a series of decisions and establish rules on "all of the issues" related to supplier-consolidated billing. Likewise, discussions do not need to be "statewide," with interested stakeholders from all areas in Ohio, as DP&L has suggested in response to this request. (Tr. 2268) In fact, Duke holds stakeholder meetings in which supplier-consolidated billing is discussed. *In re: Duke, supra*, Case No. 11-3549-EL-SSO et al., Opinion and Order at 39. The Commission can require that similar discussions take place for the DP&L service territory.

B. Other new business practices

Constellation recommended additional new business practices. They are:

1. Notification to CRES provider of record before a drop occurs, providing the CRES providers the ability to cure the situation.
2. Provision of legacy customer numbers. If there are any plans to change the customer account numbers or meter numbers due to systems changes or upgrades, the old account/meter numbers should be maintained and provided in the customer lists and on EDI data transactions. This allows the old numbers to be cross referenced with the new numbers so that CRES providers can synchronize their systems/databases.
3. Regular electronic mail notifications of tariff supplements, modifications, or changes when filed with the Commission.
4. Semi-annual or quarterly meetings or conference calls with CRES providers to discuss proposed tariff changes, business practices, or other information.

(DP&L currently conducts an annual CRES provider meeting but with all of the changes being proposed, more frequent meetings, emails, or other forms of communication are warranted.)

(Constellation Ex. 1 at 51-52)

RESA supports these additional business practice changes. They are consistent with the Commission's existing goals and concepts of coordination and nondiscriminatory access to electric services, as contained within the Commission's Rule 4901:1-10-29, Ohio Administrative Code. Moreover, RESA notes that its earlier recommendation for discussions of supplier-consolidated billing dovetails perfectly into Constellation's recommendation for more frequent meetings with CRES providers about tariff changes and business practices.

VIII. Payment for data and billing enhancements

A. Staff and OCC cost-recovery approaches are unworkable

With regard to which of the proposed competitive enhancements to implement, Staff takes no position.[24] (Staff Ex. 7 at 5; Tr. 1741) However, Staff witness Donlon has recommended that the costs of the approved competitive enhancements be recovered as follows:

- 60% of the total costs be charged to CRES providers registered in DP&L's service territory, charged in equal shares once the enhancement is used and useful (the "go live date")
- 15% of the total costs be charged directly to DP&L
- 25% of the total costs be charged to DP&L's customers through Rider RR-N, once the enhancement is used and useful.

(Staff Ex. 7 at 6; Tr. 1728, 1732-1733, 1765) Staff recommends that, once an enhancement is "live," any maintenance costs will not be part of Rider RR-N. (Staff Ex. at 7)

Staff explained that DP&L should pay 15% of the total costs because (a) it will receive a tax benefit from depreciation of the enhancements, (b) it will help keep the approved projects on

[24]Staff has suggested that the Commission evaluate each proposed competitive enhancement; DP&L provide further information, via an RFP process or use internal cost estimates; and the Commission review the costs for prudency in an open docket, in which interested parties can participate. (Staff Ex. 7 at 6; Tr. 1727, 1743, 1745)

schedule, and (c) it will encourage DP&L to complete the approved projects in an economic fashion. (Staff Ex. 7 at 8; Tr. 1765-1766, 1768) Staff Witness Donlon, however, admitted that the EDU does not pay for portions of distribution assets, i.e., new distribution lines, even though he recommended that the EDU pay for part of the competitive enhancements. (Tr. at 1769) He also admitted that, under this cost-sharing proposal, EDUs would not rationally propose competitive enhancements from which they would not benefit because they would have to share in the cost. (Tr. at 1769-1770)

Staff Witness Donlon stated that CRES providers will gain the most from the competitive enhancements, yet he also admitted that the competitive enhancements will improve competitive shopping for customers. (Tr. at 1764) More important, Witness Donlon acknowledged that, under its proposal, a CRES provider could wait until after the enhancement costs are fully recovered before entering DP&L's territory. Clearly, the cost-recovery proposal would create a disincentive for new suppliers towards entering the DP&L service market until the upgrades are both made and paid for. This is especially true since no other EDU in Ohio has such a charge. Moreover, under the Staff's cost-recovery proposal, the suppliers who are in DP&L service territory now and are in essence being asked to pay for the majority of the upgrades would not be reimbursed by the new entrants when the new entrants arrive. (Tr. at 1733). Thus, in addition to being inequitable, the Staff proposal sets up a "free rider" problem as all customers and subsequent suppliers benefit from the improvements, but only the existing suppliers are taxed.

Finally, the Staff proposal does not include a credit for shopping customers who pay for enhancements via their higher CRES bills, yet those shopping customers will be made to pay "the customer portion" of the enhancements under the Staff proposal via Rider RR-N. (Tr. at 1729).

Bottom line, the Staff proposal does not achieve any discernible goal under Section 4928.02, Revised Code. As a practical matter, if the savings between standard service offer and market prices are large as they are today, then the CRES providers will merely pass the cost of the enhancements they are charged through to the shopping customers. Just like power or administrative costs, utility charges to CRES providers for operating in its system are a cost of doing business, and all business costs must be collected as part of the sale price of the product. Thus, while Staff's proposal will not result in CRES paying the enhancement if there are margins between the standard service price and the market price, it will be paid by the customer. The pernicious part of Staff's proposal is that it ends up discriminating against shopping customers. Shopping customers will pay the 60% of the DP&L system enhancement via their CRES charges and then be taxed again for the customer 25% via Rider RR-N. Under the DP&L and RESA proposals, however, all customers pay the same fee for the DP&L system upgrades. Further, unlike the plan of charging all retail customers over several years so future customers also pay for what will be long-term upgrades, which the Commission did for the first set of DP&L upgrade in 2005,[25] Staff's proposal does not have a provision for assessing the fees over time.

The outcome for retail customers under the Staff's proposal is even worse if the CRES providers cannot pass off the enhancement costs in their product price. In that case, when CRES providers cannot offer a value proposition to customers, they will simply not come to the DP&L service area until the enhancements are paid off. Further, the Staff's proposal in those market conditions creates a disincentive for existing CRES providers to expand their operations or product offerings.

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[25] *Dominion Retail Inc. v. The Dayton Power and Light Company*, Case No. 03-2405-EL-CSS, Opinion and Order (February 2, 2005) and Entry on Rehearing (March 23, 2005).

In sum, the Commission should not adopt a cost-recovery proposal for the competitive enhancements that pushes CRES providers from the very market that it is trying to foster and grow, and discourages participation until the enhancements are paid for by the few customers and CRES providers willing to be first in line. Staff acknowledged that the Commission is encouraging an open competitive market and encouraging customers to have a choice of suppliers. (Tr. at 1749, 1761-1762) Nevertheless, Staff's proposal conflicts with these Commission policies and should be rejected.

OCC's cost-recovery proposal is likewise flawed. OCC proposes that DP&L's six proposed competitive enhancements be recovered from only CRES providers because the enhancements benefit the CRES providers directly.[26] (OCC Ex. 18 at 2, 6) However, OCC Witness Hagans admitted that customers, both shopping and non-shopping customers, benefit directly from many of DP&L's proposed competitive enhancements:

- Elimination of the minimum stay is a benefit to the non-shopping customer. (Tr. 2185-2186)
- Implementation of the web-based portal is probably a benefit to customers for use in a customer conservation plans. (Tr. 2186-2187)
- Implementation of the auto-cancel feature in bill-ready billing will make the customer bill more accurate, which is beneficial to the customer. (Tr. 2187-2188)
- Provision of sync lists on a monthly basis will ensure that billing is accurate, which is beneficial to the customer. (Tr. at 2188-2189)

OCC Witness Hagans was not familiar enough with historical interval usage data to opine whether that proposed competitive enhancement would be beneficial to residential customers (Tr. at 2189). The fact that customers will benefit from the competitive enhancements was substantiated by DP&L Witness Seger-Lawson as well. (Tr. 1288, 1289)

[26]OCC does not opine whether that cost recovery should be accomplished via a tariff charge or an assessment on current CRES providers. (Tr. at 2181)

OCC recognizes that the costs of the enhancements, if assessed directly to the CRES providers, could be passed onto the CRES providers' customers, in which case the customers would in fact pay for them despite the fact that OCC is arguing that the customers should not pay for them through DP&L's proposed Rider RR-N. (Tr. 2182-2184) Once again, all that is accomplished by this suggestion is the loss of transparency. The record clearly reflects that customers will benefit from the enhancements and therefore, OCC's *sole* rationale to recover the costs by charging only CRES providers is not logical, especially as discussed above as a business expense because the enhancements are going to be part of the sale price of power.

B. Past Commission decisions appropriately decided cost-recovery of competitive enhancements

The Hearing Examiner asked RESA Witness Bennett, OCC Witness Hagans, and DP&L Witness Seger-Lawson the direct question who should pay for the competitive enhancements. (Tr. 2190-2191, 2310-2311, 2445-2447) In response to the Hearing Examiner, RESA Witness Bennett testified that RESA's preferred position is that all customers pay for the competitive enhancements. (Tr. at 2446). DP&L likewise made the same proposal. (DP&L Ex. 9 at 14). As discussed above the OCC Witness Hagans took a different position.

The Commission has faced the question of cost-recovery related to competitive enhancements in the past, and grappled with the issues of fairness and the benefits of such enhancements. DP&L upgraded its computer and billing systems in the past and all customers were charged for the cost of that upgrade via a rider. (Tr. at 1727-1728) Further, the system upgrades for the competitive markets in the FirstEnergy, Duke and AEP Ohio territories were not directly charged to CRES providers.[27] (Tr. 1731) As a result, the Commission should reach the

[27] In AEP-Ohio's territory, enhancements were ordered by the Commission without a corresponding cost-recovery term. *AEP-Ohio, supra*, Case Nos. 11-346-EL-SSO et al., Opinion and Order at 40-41. In the case of Duke, costs of a web-system were recovered on a non-bypassable basis. *Duke, supra,* Case No. 11-3549-EL-SSO, Stipulation at

same overarching conclusion in these matters. Additionally, the Commission should follow the same general course that it took during DP&L's last upgrade, which is set forth below:

- The Commission should sets dollar limits for the recoverable amount of each of the competitive enhancements it approves.
- The Commission should use the same rate design for recovery of those costs – (a) a per-kWh basis for residential customers and (b) a demand and kWh basis for commercial and industrial customers.
- The Commission should require DP&L to file the project information, and the Commission should review it for prudency, after allowing interested parties an opportunity to participate.

The Commission should continue that same approach here, since it was fair, appropriate, and effective before.

C. Option for a POR program

While Mr. Bennett explained that, for the basic upgrades to DP&L's data systems, the cost should be directly and transparently assessed to all retail customers, he also acknowledged that, RESA has found under certain situations and circumstances that it was appropriate that certain enhancements can be paid by suppliers. (Tr. at 2464-2465) Of the list of enhancements which RESA has proposed in this proceeding, POR, is arguably not strictly a data-system upgrade. Thus, it is appropriate for CRES providers who wish to make use of POR to pay for the upgrade. This can be accomplished without the free rider problem by simply charging a discreet fee to pay for the POR system changes over time, or by increasing the discount by which DP&L purchases the receivables.[28] The impact on the shopping customers ought to be minimal as the extra cost of the POR charge will be offset by the efficiency of processing the billing. The design of the POR charge, if authorized, should just be for as long as necessary to pay for the DP&L expenses of implementing POR.

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35. In FirstEnergy's territory, enhancements were agreed upon without a corresponding cost-recovery term. *FirstEnergy, supra,* Case No. 10-388-EL-SSO, Opinion and Order (March 23, 2010), Stipulation at 30.

[28] Duke Energy Ohio is the only electric distribution company that has an operating POR program at this time. Duke collects all bad debt – from standard service customers.

D. Process for Implementing Enhancements

In sum, RESA believes that the data enhancements on its list represent industry best practice and should be implemented. This includes the six items which have been proposed by DP&L for which DP&L has provided cost estimates, as well as the RESA items detailed in Sections V - VIII which have not been priced out by DP&L. Since improvements, such as the web-based system on DP&L's list, may accommodate the added information requested by RESA with little modification and since DP&L outsources its EDI[29] and the third-party provider may already have the capacity to provide the added EDI services, a new set of estimates are required to accurately assess the cost to bring DP&L up to the best practice level. RESA suggests that the Commission accomplish the upgrade in the same fashion it did for the 2005 upgrade[30] of the DP&L billing system: (1) require DP&L to prepare and file estimates for all the items on the RESA list (which includes the six proposed by DP&L); (2) allow for a public proceeding for supplier and customer input; and (3) then, the Commission should authorize the upgrades at cost and provide for amortization of the cost, since these are long-term improvements.

In the modern world, regular upgrading of computer systems is the norm. In 2005, the Commission authorized a $17 million dollar budget for upgrades.[31] The six items that DP&L has suggested in these pending proceedings are budgeted for only $2.5 million dollars, and the added cost for RESA's suggestions may not add much to that estimate. As for POR, should the Commission authorize POR for DP&L as requested by RESA examination of the DP&L cost estimate and design of the rate can be addressed in the same proceeding.

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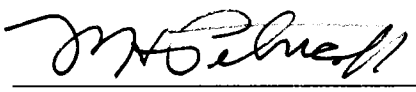
[29] Tr. 1386.
[30] *Dominion Retail Inc. v. The Dayton Power and Light Company*, Case No. 03-2405-EL-CSS, Opinion and Order (February 2, 2005).
[31] *Id.* at Utilipoint Audit Report at Exhibit 3.

IX. Conclusion

For the foregoing reasons, the Commission must reject or modify DP&L's proposed ESP. It does not satisfy statutory requirements. If modifications are made, the Commission should:

- Implement a POR program in DP&L's service territory for residential and small commercial customers.
- Change the threshold for requiring the installation of interval meters to 200 kW, as has been put into place in other EDU tariffs.
- Reject the proposed Switching Tracker.
- Reject the proposed Reconciliation Rider, but allow for recovery of (a) competitive bid expenses on a bypassable basis, (b) a POR program via charges to the registered CRES providers as set forth in Section VIII.B, and (c) the other competitive enhancements via separate non-bypassable riders, as set forth in Sections IV.B and VIII.B.
- Approve DP&L's proposed competitive enhancements.
- Require implementation of a web-based system with detailed information-sharing capabilities as outlined in Section V.
- Require customer lists to be in a standard format and updates to be provide at least quarterly.
- Add EDI interfaces.
- Make certain customer-specific information readily available.
- Change certain EDI processes.
- Adopt a number of enhancements proposed by Constellation as set forth in Section V.G.
- Eliminate discriminatory charges for consolidated bills, bill-ready billing code modifications, and dual bills.
- Require meetings to discuss supplier-consolidated billing and the other new business practices proposed by Constellation and set forth in Section VII.B.

Respectfully submitted,



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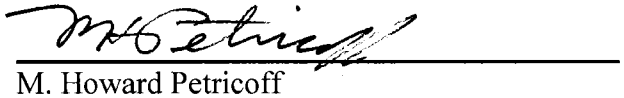
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 20th day of May, 2013 by electronic mail upon the persons listed below.



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