

**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
)	

REPLY BRIEF OF SOLARVISION, LLC

SolarVision, LLC is an Ohio-based solar company that, along with its subsidiaries, is a solar developer/operator, provider of solar renewable energy credits (SRECs), and an active participant in the Ohio SREC competitive market. SolarVision sought and was granted intervention in the above-captioned matters, participated in the hearing on The Dayton Power and Light Company's (DP&L or the Company) Amended Electric Security Plan Application (Amended ESP Application), and submitted an Initial Post-Hearing Brief on the matter on May 20, 2013. As noted in SolarVision's Initial Brief, of specific interest to SolarVision in these proceedings are two important issues: the establishment and calculation of a three percent cost cap threshold in Rider AER, and the establishment of a non-bypassable charge, Rider AER-N,

for recovery of the costs associated with the construction of the solar generation facility known as Yankee 1 (and future solar facilities). SolarVision respectfully requests that the Public Utilities Commission of Ohio (Commission) reject DP&L's proposal to establish a fixed three percent cost cap threshold under Rider AER, as well as the Company's proposed establishment of the non-bypassable Rider AER-N and the recovery of costs associated with Yankee 1.

I. The Commission should reject DP&L's proposal to establish a fixed three percent cost cap threshold under Rider AER.

In its Initial Brief, DP&L briefly explains its proposal to establish a fixed three percent cost cap threshold under Rider AER based upon the expected auction results.¹ DP&L's proposal simply takes an estimated price of electricity established by estimated future auction results and then calculates three percent of that estimated number to arrive at a fixed cost cap threshold. However, the Company's vague summary explanation of its calculation of the proposed three percent AER threshold fails to acknowledge or address the fact that the renewable portfolio standards (RPS) mandate under Section 4928.64, Revised Code, increases annually.² DP&L also fails to recognize that the RPS mandate is based upon a three year average of total kilowatt hours of electricity sold.³ Furthermore, as Staff notes, it may be unreasonable and inconsistent to exclusively rely on auction results in which the Company's load is not 100 percent competitively bid.⁴

Accordingly, in proposing to establish the fixed three percent AER threshold, DP&L seeks to impose a finite cost cap today on a mandate determined by ever-evolving requirements. As noted in SolarVision's Initial Brief, the three percent ceiling established by Section 4928.64,

¹ DP&L Initial Brief at 61-62 (May 20, 2013).

² Section 4928.64(B)(2), Revised Code.

³ Section 4928.64(B), Revised Code.

⁴ Staff Initial Brief at 31 (May 20, 2013).

Revised Code, was intended to be variable and fluctuate from year to year.⁵ The Company's proposal of a static figure for compliance with the RPS mandates during the entire proposed ESP period frustrates the purpose of the statute and should be rejected by the Commission.

DP&L also fails to address in its Initial Brief Staff's lack of support for the establishment of a fixed three percent cost threshold in this proceeding. Staff Witness Stuart Siegfried stated in his March 12, 2013 testimony, and again at hearing on March 25, 2013, that it is not appropriate or necessary to establish a fixed three percent cost threshold in these matters.⁶ The Company has failed to explain why its approach is appropriate and reasonable under its ESP. Its proposal to establish a fixed three percent cost cap threshold under Rider AER should, therefore, be denied.

II. The Commission should reject DP&L's proposed establishment of non-bypassable Rider AER-N and the ultimate recovery of costs associated with the Company's Yankee 1 facility.

Although DP&L briefly addresses the establishment of the non-bypassable Rider AER-N in its Initial Brief,⁷ it glosses over the argument that, as proposed, Rider AER-N is inconsistent with the law, in direct contradiction to Section 4928.64(E), Revised Code, and Section 4928.143(B)(2)(c), Revised Code. DP&L has also failed to meet its burden to demonstrate that it has satisfied the statutory requirements to obtain recovery for costs associated with the construction of a solar facility.

Section 4928.64(E), Revised Code, provides, in pertinent part, "[a]ll costs incurred by an electric distribution utility in complying with the requirements of this section shall be bypassable by any consumer that has exercised choice of supplier under section 4928.03 of the Revised

⁵ SolarVision Initial Brief at 5 (May 20, 2013).

⁶ Testimony of Stuart M. Siegfried at 4, In 13-16 (March 12, 2013); Tr. Vol. VI at 1549, In 2-18 (Stuart Siegfried); see also, Staff Initial Brief at 30-31.

⁷ DP&L Initial Brief at 54-55.

Code.”⁸ Section 4928.143(B), Revised Code, specifically requires any ESP provision sought under (B) to comply with Section 4928.64(E), Revised Code. Thus, an ESP that seeks recovery of a non-bypassable charge pursuant to Section 4928.143(B)(2)(c), Revised Code, must also comply with Section 4928.64(E), Revised Code. Considered together, it is clear that the statute did not intend to allow a non-bypassable charge to be established for costs associated with the construction of solar generating facilities built to satisfy an electric utility distribution company’s RPS compliance requirements. Accordingly, DP&L’s request to establish Rider AER-N should be rejected as Ohio law does not authorize a non-bypassable charge to recover costs associated with RPS compliance.⁹

Section 4928.64(E), Revised Code, is intended to prohibit shopping customers from paying twice for SRECs because CRES providers are also required to meet RPS requirements per Section 4928.64(B), Revised Code. Shopping customers are already paying for the SRECs acquired by their CRES providers. Those customers should not be required to also pay for costs associated with DP&L’s solar facility through its non-bypassable rider. As FES and IEU-Ohio note in their Initial Briefs, shopping customers receive no benefit from the costs that they will be required to incur.¹⁰ In essence, shopping customers will be subsidizing SRECs that will be used by DP&L to meet DP&L’s RPS mandate, while paying their CRES providers for SREC costs associated with meeting the CRES providers’ RPS mandates. The Commission should not allow this anti-competitive charge to be assessed through Rider AER-N.

Moreover, CRES providers and solar developers do not receive recovery for costs associated with the construction of solar facilities from ratepayers. The Commission should

⁸ SolarVision Initial Brief at 7.

⁹ IEU-Ohio also supports this conclusion. See IEU Initial Brief at 46-47 (May 20, 2013).

¹⁰ FES Brief at 69 (May 20, 2013) (quoting an exchange between Attorney Examiner Price and DP&L Witness Seger-Lawson); IEU Brief at 49-50.

similarly not allow DP&L to receive cost recovery from ratepayers. Rather, the Commission should allow market forces to work with regard to the construction of solar generating facilities.¹¹

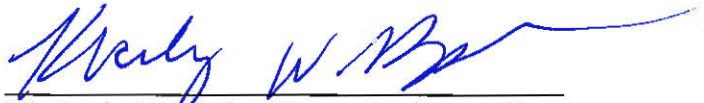
DP&L is using the SRECs generated at the Yankee 1 facility to comply with its solar RPS mandates set forth in Section 4928.64, Revised Code. It logically follows that the costs incurred by DP&L to comply with RPS requirements, including the costs of constructing the facility, must be bypassable for shopping customers. Thus, although the Company has proposed it as such, Rider AER-N cannot lawfully be established as a non-bypassable rider. Accordingly, the request to establish non-bypassable Rider AER-N to recover the costs associated with the construction of DP&L's Yankee 1 facility (and any other solar facilities) is unreasonable and unlawful, and should be rejected.

¹¹ FES supports this conclusion. See FES Brief at 74.

III. Conclusion

DP&L has failed, through testimony introduced at hearing and arguments advanced in its Initial Brief, to prove that either the establishment of a fixed three percent cost cap threshold under Rider AER or the creation of a non-bypassable Rider AER-N are just and reasonable and in compliance with Ohio law. For all of the reasons stated herein, SolarVision strongly urges the Commission to deny DP&L's request for both proposals.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 5th day of June, 2013, via e-mail upon the parties below.


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Summary: Brief Reply Brief of SolarVision, LLC electronically filed by Mrs. Kimberly W. Bojko
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