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

APPLICATION FOR REHEARING
OF THE DAYTON POWER AND LIGHT COMPANY

Pursuant to Ohio Rev. Code § 4903.10 and Ohio Admin. Code § 4901-1-35, The Dayton Power and Light Company ("DP&L") seeks rehearing of the Commission's September 4, 2013 Opinion and Order ("Order") and the Commission's September 6, 2013 Entry Nunc Pro Tunc ("Entry") on the following grounds:

I. The Commission's decision relating to the SSR-E is inconsistent with Ohio Rev. Code § 4928.143(B)(2)(d).

A. Section 4928.143(B)(2)(d) does not authorize the Commission to limit the amount of a stability charge that DP&L would seek in a future proceeding.

B. The five conditions listed in the Commission's Order are not contained in Section 4928.143(B)(2)(d), and imposition of those conditions in effect rewrote that statute.

C. There is no basis in the record for the Commission to condition DP&L's recovery of a stability charge on the implementation of Advanced Metering Infrastructure and Smartgrid.

D. The deadline set by the Commission for DP&L to file a distribution rate case is unreasonable and should be extended.

E. The Commission should clarify its Order relating to rate-ready billing.

II. The Commission should clarify its decision regarding why DP&L's ESP is more favorable in the aggregate than an MRO.

III. The Commission does not have jurisdiction or authority to order DP&L's shareholders to contribute to an Economic Development Fund.

A. Contributions to an Economic Development Fund should be voluntary.

B. The Commission does not have jurisdiction or authority to order DP&L to contribute to an Economic Development Fund using shareholder dollars.

C. The amount of the required contribution to an Economic Development Fund is without support in the record.

IV. The Commission should not order DP&L to implement either changes to its billing system or other competitive enhancements because there is no record support.

V. The Commission should not require DP&L to include in the competitive bidding process its contracts with customers.

VI. The Commission should clarify its decision on SSR rate design.

VII. The Commission should order DP&L to combine the CBT rider and the RR-B rider into a single rider.

VIII. The Commission should clarify that the Significantly Excessive Earnings Test threshold is applicable only during the term of the ESP.

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MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING OF THE DAYTON POWER AND LIGHT COMPANY

Pursuant to Ohio Rev. Code § 4903.10 and Ohio Admin. Code § 4901-1-35, The Dayton Power and Light Company ("DP&L") seeks rehearing of the Commission's September 4, 2013 Opinion and Order ("Order") and the Commission's September 6, 2013 Entry Nunc Pro Tunc ("Entry") on the following grounds.

I. THE COMMISSION'S DECISION RELATING TO THE SSR-E IS INCONSISTENT WITH OHIO REV. CODE § 4928.143(B)(2)(d)

The Commission authorized DP&L to seek an extension of the SSR (an SSR-E) of $45.8 million from January 1, 2017 through May 31, 2017. Entry, p. 2. To receive the SSR-E, DP&L would have to satisfy the following five conditions: (1) DP&L must demonstrate that its financial integrity is threatened (Order, p. 27); (2) DP&L must file a distribution rate case no later than July 1, 2014 (Order, p. 27); (3) DP&L must file by December 31, 2013, an application to separate its generation assets by May 31, 2017 (Order, p. 27; Entry, p. 2); (4) DP&L must file by July 1, 2014 a proposal to implement SmartGrid and Advanced Metering Infrastructure ("AMI") (Order, p. 28); and (5) DP&L must file by December 31, 2014, a plan to modernize its billing system (Order, p. 28). The Commission should grant rehearing as to that Order and Entry for each of the following separate and independent reasons.

A. SECTION 4928.143(B)(2)(d) DOES NOT AUTHORIZE THE COMMISSION TO LIMIT THE AMOUNT OF A STABILITY CHARGE THAT DP&L WOULD SEEK IN A FUTURE PROCEEDING

As the Commission correctly held, Ohio Rev. Code § 4928.143(B)(2)(d) authorizes DP&L to seek a charge that would allow DP&L to provide stable and reliable service. The Commission's Order and its Entry permit DP&L to file a proceeding to seek an SSR-E under

that section for the period January 1, 2017 through May 31, 2017, but limit the amount of the SSR-E to $45.8 million. Order, pp. 27-28; Entry, p. 2.

The Commission's decision to limit the amount of the 2017 SSR-E to $45.8 million is unlawful because there is nothing in Ohio Rev. Code § 4928.143(B)(2)(d) that authorizes the Commission to decide now the level of a stability charge that DP&L would seek in a future (yet-to-be-filed) proceeding. In other words, in 2016, if DP&L can show that in 2017 it needs a stability charge greater than $45.8 million, then the Commission should authorize a higher stability charge. The Commission should not now limit DP&L's ability to seek such a charge. Indeed, as the Commission knows, market conditions can be unpredictable, and DP&L may need a stability charge that is higher than the $45.8 million SSR-E in order to allow the Company to continue to provide stable and reliable service in the future; it is thus unreasonable for the Commission to limit the amount of the SSR-E that DP&L can seek in a future proceeding.

It is well settled that "the commission may not legislate in its own right" and that the Commission does not have "the authority to rewrite the statutes." Office of Consumers' Counsel v. Pub. Utils. Comm'n of Ohio, 67 Ohio St. 2d 153, 166-67, 423 N.E.2d 820 (1981). Accord: Armstrong v. John R. Jurgensen Co., 136 Ohio St. 3d 58, 2013-Ohio-2237, 990 N.E.2d 568, ¶ 13 ("We will not rewrite statutes under the guise of liberal construction."); Columbus S. Power Co. v. Pub. Utils. Comm'n of Ohio, 67 Ohio St. 3d 535, 537, 620 N.E.2d 835 (1993) (per curiam). In light of the fact that § 4928.143(B)(2)(d) does not authorize the Commission to decide now the amount of a stability charge that DP&L could recover in a future proceeding, the Commission should grant rehearing as to the amount of the SSR-E, and should hold that DP&L can seek an SSR-E of sufficient amount to allow DP&L to provide stable and reliable service.

B. THE CONDITIONS LISTED IN THE COMMISSION'S ORDER ARE NOT CONTAINED IN SECTION 4928.143(B)(2)(d)

The conditions that the Commission listed in its Order (pp. 27-28) for DP&L to receive the SSR-E are not authorized by Ohio Rev. Code § 4928.143(B)(2)(d). The conditions to grant a stability charge under that section are that: (1) the stability charge is a charge; (2) the stability charge is related to one of the items listed in the statute; and (3) the stability charge would promote stable and reliable service. There is nothing in § 4928.143(B)(2)(d) that authorizes the Commission to add to the statute, or to impose additional conditions that are not contained in that section.

As "the commission may not legislate in its own right" and that the Commission does not have "the authority to rewrite the statutes," Office of Consumers' Counsel, 67 Ohio St. 2d at 166-67, 423 N.E.2d 820, and as § 4928.143(B)(2)(d) does not contain the five conditions that the Commission imposed for DP&L to seek an SSR-E, the Commission should grant rehearing on this issue. The Commission should hold that DP&L can receive the SSR-E if it satisfies the statutory conditions.

C. THERE IS NO BASIS IN THE RECORD FOR THE COMMISSION TO CONDITION DP&L'S RECOVERY OF A STABILITY CHARGE ON THE IMPLEMENTATION OF ADVANCED METERING INFRASTRUCTURE AND SMARTGRID

Even assuming for the sake of argument that the Commission has jurisdiction to impose additional conditions that are not listed in § 4928.143(B)(2)(d), the Commission should conclude that the condition that DP&L file an application to implement AMI and SmartGrid is both unlawful and unreasonable.

That condition is unlawful because there is no basis in the record for it. It is well settled that the Commission's decisions must have "record support" and that a Commission order is unlawful if "no evidence" supports the decision. In re Application of Columbus S. Power Co., 128 Ohio St. 3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 25, 29. Accord: Elyria Foundry Co. v. Pub. Utils. Comm'n of Ohio, 114 Ohio St. 3d 305, 2007-Ohio-4164, 871 N.E.2d 1176, ¶ 29 (a Commission order is unlawful if there was no "factual basis supporting the commission's finding"); Industrial Energy Users-Ohio v. Pub. Utils. Comm'n of Ohio, 117 Ohio St. 3d 486, 2008-Ohio-990, 885 N.E.2d 195, ¶ 30 ("[I]n order to meet the requirements of R.C. 4903.09, the PUCO's order must show, in sufficient detail, the facts in the record upon which the order is based . . . .") (emphasis added) (internal quotation marks and citation omitted).

Here, there is no record support whatsoever for the Commission to condition DP&L's receipt of the SSR-E upon the filing of an application to implement AMI/SmartGrid. No party asked that DP&L be ordered to implement AMI/SmartGrid. There is no evidence in the record regarding how much AMI/SmartGrid would cost, or the benefits that would result. The Commission's Order does not cite to any evidence supporting the reasonableness of the AMI/SmartGrid condition. The Order is thus unlawful in this respect.

The Order is also unreasonable because it may be impossible or unreasonably expensive for DP&L to implement AMI/SmartGrid. Specifically, as the Commission knows, there was substantial evidence introduced in this case showing that DP&L's financial integrity was in jeopardy. DP&L Ex. 1A, CLJ-1 (Jackson); DP&L Ex. 4A, WJC-1-5 (Chambers); DP&L Ex. 14A, pp. 15-29 (Malinak Rebuttal); DP&L Ex. 16A, p. 4-11 (Jackson Rebuttal). Implementing AMI/SmartGrid would be extraordinarily expensive, and DP&L may not be able

to borrow sufficient funds to implement AMI/SmartGrid; and even if DP&L could borrow sufficient funds, the terms of that borrowing may be unreasonable.

To be clear, DP&L is not necessarily opposed to implementing AMI/SmartGrid. However, DP&L believes that significant analysis regarding the costs and benefits of AMI/SmartGrid should be conducted before AMI/SmartGrid are implemented. There was no such evidence introduced in this case, and the Commission's Order that DP&L file an application to implement AMI/SmartGrid as a condition to receive the SSR-E is thus without evidentiary foundation and is thus unreasonable and unlawful.

The Commission should thus grant rehearing on this issue, and should not condition DP&L's receipt of the SSR-E upon DP&L's filing of an application to implement AMI/SmartGrid.

D. THE DEADLINE SET BY THE COMMISSION FOR DP&L TO FILE A DISTRIBUTION RATE CASE IS UNREASONABLE AND SHOULD BE EXTENDED

Again, assuming that the Commission may lawfully impose conditions on DP&L's receipt of the SSR that are not contained in § 4928.143(B)(2)(d), the Commission should reconsider, and extend, the deadline that it imposed for DP&L to file a distribution rate case. Specifically, one of the conditions that the Commission placed upon DP&L's ability to receive the SSR-E is that DP&L file a distribution rate case no later than July 1, 2014. Order, p. 27. DP&L asks the Commission to extend that deadline until December 13, 2014 for two separate reasons. First, DP&L will need to do an extraordinary amount of work to prepare a distribution rate case for filing, including but not limited to preparing a deprecation study, a loss study, a cost of service study, and extensive testimony, analysis and cost support. That work is

time consuming, and will be nearly impossible for DP&L to complete by the July 1, 2014 deadline set by the Commission. Second, the Commission's Order requires DP&L to do a substantial amount of work on other matters (including filing an application to separate its generation assets), and it will be nearly impossible for DP&L to file a distribution rate case by July 1, 2014 in light of the other work that it needs to perform to comply with the Commission's Order. The Commission should thus extend the deadline for DP&L to file a distribution rate case to December 13, 2014.

E. THE COMMISSION SHOULD CLARIFY ITS ORDER RELATING TO RATE-READY BILLING

Another condition that the Commission imposed for DP&L to receive the SSR-E is that DP&L upgrade its billing system so that it could provide (among other features) rate-ready billing. Order, p. 28. DP&L's billing system already performs that function (Tr. 1384-85; 1404) (Seger-Lawson), and DP&L asks the Commission to clarify that no additional action related to rate-ready billing by DP&L is necessary.

II. THE COMMISSION SHOULD CLARIFY ITS DECISION REGARDING WHY DP&L'S ESP IS MORE FAVORABLE IN THE AGGREGATE THAN AN MRO

The Commission can approve an ESP only if it "is more favorable in the aggregate" than a Market Rate Offer ("MRO"). Ohio Rev. Code § 4928.143(C)(1). In its initial Order, the Commission found that an MRO would be $250 million more favorable on a quantitative basis than DP&L's ESP. Order, p. 50. The principal reason for the Commission's finding that an MRO was more favorable than DP&L's ESP on a quantitative basis is that the Commission concluded that the SSR and SSR-E would be available under an ESP, but not under an MRO. Order, p. 49. The Commission further found that DP&L's ESP was nonetheless "more

favorable in the aggregate" than an MRO because the ESP had qualitative benefits that are not available under an MRO (including a faster transition to 100% competitive bidding). Order, pp. 50-52.

In its Entry (p. 2), the Commission made two rulings that would affect the quantitative aspect of its analysis: (1) the Commission extended the SSR by one year, thus adding a $110 million cost on the ESP side; and (2) the Commission cut the potential SSR-E amount by $46.2 million (from $92 million to $45.8 million), thus subtracting $46.2 million in costs from the ESP side. If DP&L was authorized to receive the SSR-E, then the Commission's Entry thus effectively added $63.8 million in costs ($110 million minus $46.2 million) to the ESP side of the test.

However, in its Entry, the Commission did not explain that its Order added $63.8 million to the MRO side of the test, and did not address whether the qualitative benefits of the ESP still exceeded the quantitative benefits of an MRO if $63.8 million in costs were added to the ESP. Instead, the Commission said only that "the amount that the modified ESP fails the quantitative analysis should be corrected accordingly." Entry, p. 3.

The Supreme Court has repeatedly held that an order by the Commission must "state specific findings of fact, supported by the record" and must "state the reasons upon which the conclusions . . . were based." Tongren v. Pub. Utils. Comm'n of Ohio, 85 Ohio St. 3d 87, 91, 706 N.E.2d 1255 (1999) (internal quotation marks and citation omitted). Accord: Indus. Energy Users-Ohio v. Pub. Utils. Comm'n of Ohio, 117 Ohio St. 3d 486, 2008-Ohio-990, 885 N.E.2d 195, ¶ 30 ("[T]he PUCO's order must show, in sufficient detail, the facts in the record upon

which the order is based, and the reasoning followed by the PUCO in reaching its conclusion.") (internal quotation marks and citation omitted).

The Commission's Entry did not disturb its earlier finding in the Order that the qualitative benefits of the ESP exceeded the quantitative benefits of an MRO; however, the Commission should clarify its Entry by explaining that the Commission added $63.8 million in costs to the ESP side of the test, and that the qualitative benefits of DP&L's ESP (as modified by the Entry) continue to exceed the quantitative benefits of an MRO.

III. THE COMMISSION DOES NOT HAVE JURISDICTION OR AUTHORITY TO ORDER DP&L'S SHAREHOLDERS TO CONTRIBUTE TO AN ECONOMIC DEVELOPMENT FUND

The Commission's Order requires DP&L to contribute $2 million annually to an Economic Development Fund ("EDF"). Order, p. 42. That contribution is "to be funded by shareholders" and "shall not be recoverable from customers." Id. The Commission issued that Order in response to the City of Dayton's claim that "a declining economic climate exists in DP&L's service territory." Id. DP&L seeks rehearing on that Order, for three reasons:

A. CONTRIBUTIONS TO AN ECONOMIC DEVELOPMENT FUND SHOULD BE VOLUNTARY

As the City of Dayton acknowledged, "Dayton Power and Light has been a supporter and partner of [the City of] Dayton's in pursuing economic development opportunities in the past." City of Dayton Ex. 1, p. 8 (Dickstein). DP&L has used shareholder dollars to support many economic and charitable efforts in its community, and if it has the financial resources, DP&L intends to continue to do so. However, as the Commission knows, DP&L

faces significant threats to its financial integrity and to its ability to provide stable service.[1] Further, if there is an adverse change in projected economic conditions (e.g., lower power prices or increased fuel costs), then DP&L may not be able to maintain its financial integrity and provide stable service.

In addition, there are already extensive efforts to improve the economic climate in DP&L's service territory; those efforts are being funded both by taxpayers and through private contributions. While DP&L intends to participate in those efforts, its participation should be voluntary. The Commission should not order DP&L's shareholders to fund those efforts.

B. THE COMMISSION DOES NOT HAVE JURISDICTION OR AUTHORITY TO ORDER DP&L TO CONTRIBUTE TO AN ECONOMIC DEVELOPMENT FUND USING SHAREHOLDER DOLLARS

The Commission cited Ohio Rev. Code § 4928.143(B)(2)(i) as the legal basis for its order that DP&L contribute to an EDF using shareholder dollars. Order, p. 42. However, there is nothing in that subsection that authorizes the Commission to order DP&L to contribute to an EDF using shareholder dollars. To the contrary, Ohio Rev. Code § 4928.143(B)(2)(i) states that the Commission "may allocate program costs across all classes of customers." (Emphasis added.)

As demonstrated above, "the commission may not legislate in its own right" and the Commission does not have "the authority to rewrite the statutes." Office of Consumers' Counsel v. Pub. Utils. Comm'n of Ohio, 67 Ohio St. 2d 153, 166-67, 423 N.E.2d 820 (1981). In light of the fact that there is no statutory basis for the Commission to order DP&L to contribute

[1] DP&L Ex. 1A, CLJ-1 (Jackson); DP&L Ex. 4A, WJC-1-5 (Chambers); DP&L Ex. 14A, pp. 15-29 (Malinak Rebuttal); DP&L Ex. 16A, pp. 4-11 (Jackson Rebuttal).

to an EDF using shareholder dollars, the Commission's Order is unlawful. The Commission should therefore grant rehearing on this issue, and withdraw the portion of its Order that would require expenditure of $2 million annually of shareholder funds.

C. THE AMOUNT OF THE REQUIRED CONTRIBUTION TO AN ECONOMIC DEVELOPMENT FUND IS WITHOUT SUPPORT IN THE RECORD

As shown above, it is well settled that the Commission's decisions must have "record support" and that a Commission order is unlawful if "no evidence" supports the decision. In re Application of Columbus S. Power Co., 128 Ohio St. 3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 25, 29. Accord: Elyria Foundry Co. v. Pub. Utils. Comm'n of Ohio, 114 Ohio St. 3d 305, 2007-Ohio-4164, 871 N.E.2d 1176, ¶ 29; Industrial Energy Users-Ohio v. Pub. Utils. Comm'n of Ohio, 117 Ohio St. 3d 486, 2008-Ohio-990, 885 N.E.2d 195, ¶ 30.

Here, there are no facts in the record to support the Commission's Order that DP&L contribute $2 million annually to an EDF. The testimony from the City of Dayton's witness did not ask that DP&L be ordered to contribute to an EDF; nor did the City of Dayton offer evidence showing that a $2 million annual contribution was reasonable. City of Dayton Ex. 1. There is thus no evidence in the record to support the reasonableness of the Commission's Order that DP&L contribute $2 million annually to an EDF.

The Commission should thus grant rehearing on this issue, and should eliminate the requirement that DP&L contribute to an EDF using shareholder funds.

IV. THE COMMISSION SHOULD NOT ORDER DP&L TO IMPLEMENT EITHER CHANGES TO ITS BILLING SYSTEM OR OTHER COMPETITIVE ENHANCEMENTS BECAUSE THERE IS NO RECORD SUPPORT

The Commission ordered DP&L to implement certain competitive enhancements: "If an EDI process, standard, or interface, as well as any other competitive retail enhancement, has been adopted by every other EDU in Ohio, then DP&L shall also implement that EDI process, standard, interface, or competitive retail enhancement." Order, p. 38. The Commission should grant rehearing to DP&L on that Order because there was no evidence introduced in the hearing that it would be reasonable or prudent to implement such competitive enhancements.

Specifically, although numerous CRES intervenor witnesses asked the Commission to order DP&L to implement a variety of competitive enhancements, none of those witnesses included any analysis of either the benefits or the costs of their proposals. Constellation Ex. 1, pp. 45-53 (Fein); FES Ex. 17A, pp. 19-26 (Noewer); DERS Ex. 1, pp. 3-7 (Walz); IGS Ex. 1, pp. 9-13 (White); RESA Ex. 6, pp. 2-17 (Bennett). Indeed, they repeatedly admitted that they did not conduct any cost/benefit analysis. Tr. 1211-12 (Fein); Tr. 2425 (Noewer); Tr. 2478 (Bennett); Tr. 2569-76 (Walz).

Again, the Commission must "state specific findings of fact, supported by the record" and must "state the reasons upon which the conclusions . . . were based." Tongren v. Pub. Utils. Comm'n of Ohio, 85 Ohio St. 3d 87, 91, 706 N.E.2d 1255 (1999) (internal quotation marks and citation omitted). Accord: Indus. Energy Users-Ohio v. Pub. Utils. Comm'n of Ohio, 117 Ohio St. 3d 486, 2008-Ohio-990, 885 N.E.2d 195, ¶ 30. As there is no evidence in this case as to either the costs or the benefits of the various competitive enhancements, the Commission's Order that DP&L implement enhancements is not supported by the record, and is thus unlawful.

In addition, the intervenor witnesses concede that there is no Commission rule that requires DP&L to implement the various enhancements that they propose. Tr. 1211 (Fein); Tr. 2388-89, 2424-25 (Noewer). Further, the Commission has engaged in a lengthy process to set competitive rules in the State of Ohio, has recently revisited those rules through Case No. 12-3151-EL-COI, and is currently reviewing its electric service and safety standards for utilities in Case No. 12-2050-EL-ORD. The decision of whether (and which) additional competitive enhancements should be required should be made in a rule-making proceeding, so that the decision would have state-wide effect, and the Commission could hear all points of view.

The Commission should thus grant rehearing on this issue, and should not order DP&L to implement those competitive enhancements.

V. THE COMMISSION SHOULD NOT REQUIRE DP&L TO INCLUDE IN THE COMPETITIVE BIDDING PROCESS ITS CONTRACTS WITH CUSTOMERS

DP&L has customer contracts that have been approved by the Commission. The Commission ordered that the load associated with those contracts should be included in the competitive bidding process. Order, p. 16. DP&L will receive lower revenue as a result of the Commission's Order, because the winning bidders in the competitive bidding process will serve 10% of the load under contract in year one, 40% in year two, etc. The Commission should grant rehearing on that decision for the following reasons.

As an initial matter, it is well-settled in Ohio that "[i]t is not the responsibility or function of this court to rewrite the parties' contract in order to provide for a more equitable result." Foster Wheeler Enviresponse, Inc. v. Franklin County Convention Facilities Auth., 78 Ohio St. 3d 353, 362, 678 N.E.2d 519 (1997). Accord: Sunoco, Inc. v. Toledo Edison Co., 129

Ohio St. 3d 397, 2011-Ohio-2720, 953 N.E.2d 285, ¶ 62 ("a contract cannot be given a meaning different from the one reflected by its plain language in order to provide a more equitable result" (citing Aultman Hosp. Ass'n v. Comty. Mut. Ins. Co., 49 Ohio St. 3d 51, 54-55, 544 N.E.2d 920 (1989))). DP&L's contracts with its customers provide that DP&L is to provide full requirements electric service to those customers, including generation service. The Commission's Order, however, would result in the winning bidders at auction supplying a portion of that generation. The Commission's Order is thus inconsistent with those contracts, and is unlawful.

Further, as demonstrated above, an order of the Commission must be based upon the factual record before it. Here, Constellation witness Fein and FES witness Noewer asked that DP&L's contracts with customers be included in the competitive bid. FES Ex. 17A, pp. 13-14 (Noewer); Constellation Ex. 1, p. 13 (Fein). However, neither Mr. Fein nor Ms. Noewer even reviewed the contracts to determine whether they permit the load associated with the contract to be included in the competitive bid. Tr. 1203 (Fein); Tr. 2419 (Noewer). There is thus no basis in the record to support the Commission's Order that the load associated with those contracts be included in a competitive bid.

It is also important to understand that including the DP&L contracts in the competitive bidding process would not result in any cost savings to any customers. Specifically, under the Commission's Order, whether the customer contract is included in the competitive bid or not, that customer will still pay its contract price; the Order thus does not result in cost savings to the contract customer. Further, pursuant to Ohio Rev. Code § 4905.31(E), DP&L recovers from all customers the difference between the contract price and its tariff rates; based upon currently prevailing market prices, DP&L's tariff rates are expected to decrease as a result of

competitive bidding. Those lower rates will reduce the amount that DP&L recovers from all customers under § 4905.31(E); however, that delta recovery would decrease whether the contracts were included in the competitive bid or not, and therefore, including those contracts in the competitive bid does not benefit any customers. Thus, the only effect of the Commission's Order would be to award to winning bidders a portion of the contracts that DP&L signed with customers, to the frustration of the customers, who specifically chose to contract with DP&L.

The Commission should thus grant rehearing on this issue, should continue to permit enforcement of DP&L's contracts with its customers as written, and should not require the load associated with those contracts to be included in the competitive bidding process.

VI. THE COMMISSION SHOULD CLARIFY ITS DECISION ON SSR RATE DESIGN

The Commission should clarify that when it adopted "the rate design recommended by Staff and the class allocation methodology recommended by OEG" (Order, p. 26) it intended for the Company to allocate only the increment of SSR that exceeds the current non-bypassable amount based on the single system peak. Exhibit A attached to this Application for Rehearing shows two alternatives for the SSR rate design. In the second column of Exhibit A, the Company has allocated the full amount of the SSR based on one coincident peak (1 CP) and applied the current rate design methodology. That allocation methodology would result in an SSR rate for Street Lighting and Private Outdoor Lighting tariff classes of zero. However, if the Commission intended that only the amount of the SSR that exceeds the current nonbypassable charge should be allocated based on 1 CP, then the Street Lighting and Private Outdoor Lighting tariff classes would continue to pay the current nonbypassable charge, and would not be assigned any incremental amount for the SSR. This rate design alternative is

shown in the third column of Exhibit A. In its Order, p. 26, the Commission states that its intent is to "minimize rate impacts upon customers." The Commission should therefore order DP&L to implement the rate design depicted in the third column on Exhibit A.

VII. THE COMMISSION SHOULD ORDER DP&L TO COMBINE THE CBT RIDER AND THE RR-B RIDER INTO A SINGLE RIDER

In its Application, DP&L requested that costs associated with administering and implementing the competitive bidding process ("CBP") be recovered through the Company's proposed nonbypassable Reconciliation Rider ("RR"). DP&L Ex. 10, pp. 8-13 (Rabb). These costs included CBP auction costs, CBP consultant fees, PUCO consultant fees, audit costs, supplier default costs, and carrying costs. Id.

In its Order, p. 35, the Commission found that the RR should be divided into an RR Nonbypassable ("RR-N") and RR Bypassable ("RR-B"). The RR-B would recover "the CBP auction costs, CBP consultant fees, Commission consultant fees, audit costs, supplier default costs, and carrying costs." Order, p. 35. The Commission also approved DP&L's request to implement a bypassable Competitive Bid True-Up Rider ("CBT") to reconcile the revenue DP&L collects from customers with the payments DP&L makes to CBP suppliers. DP&L Ex. 7, pp. 5-6 (Parke); Order, p. 53.[2]

DP&L seeks clarification on this issue and requests that the Commission authorize DP&L to include the RR-B as a component of the CBT Rider, instead of creating a new rider to recover only the costs of implement the CBP. Since both the CBT Rider and the RR-B have been ordered by the Commission to be bypassable and have the same true-up

[2] The Commission's Order did not modify DP&L's request for the CBT. The Order, p. 53, thus approved the CBT when it stated "[t]hat DP&L's application for an electric security plan [is] approved, as modified by the Commission."

schedule, recovering the costs associated with the CBT and RR-B through one rider will reduce the costs and administrative burden of managing two separate riders. It is also logical to have all expenses related to the CBP recovered through one rider. This practice is consistent with other Ohio utilities that have implemented a CBP; both Duke Energy Ohio and the First Energy utilities (Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company) have one rider that recovers these cost components. The Commission should authorize DP&L to implement its CBT Rider that will consist of separate components, one for reconciling supply costs with revenue, and another for costs associated with conducting and administering the CBP.

VIII. THE COMMISSION SHOULD CLARIFY THAT THE SIGNIFICANTLY EXCESSIVE EARNINGS TEST THRESHOLD IS APPLICABLE ONLY DURING THE TERM OF THE ESP

The ESP statute includes a significantly excessive earnings test ("SEET") (Ohio Rev. Code § 4928.143(F)), and the Commission's Order established a SEET threshold of 12%. Order, p. 26. Although DP&L believes that the Commission intended that SEET threshold to apply only during DP&L's ESP (i.e., through May 31, 2017), the Order does not expressly limit the 12% SEET threshold to the term of the ESP. DP&L thus asks the Commission to clarify its Order to state that the 12% SEET threshold is applicable only during the term of DP&L's ESP.

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EXHIBIT A

EXHIBIT A

The Dayton Power and Light Company
Case No. 12-426-EL-SSO
SSR - Allocation and Rate Design

Line	Class/Description	2012 CP			
		All 1 CP		**Only increment over current non-bypassable 1 CP**	
		RATE	REVENUE	RATE	REVENUE
(A)	(B)	(C)	(D)	(E)	(F)
1	Total Revenue Requirement		$110,000,000		$110,000,000
2	All kWh		$85,959,503		$83,633,222
3	All kW		$24,040,497		$26,366,778
4					
5	**Total Residential**		**$53,119,974**		**$47,557,646**
6	Residential Non-Heating				
7	0-750 kWh	$0.0115451	$26,874,056	$0.0103362	$24,060,005
8	> 750 kWh	$0.0094145	$10,377,021	$0.0084287	$9,290,416
9	Residential Heating				
10	0-750 kWh	$0.0115451	$9,939,691	$0.0103362	$8,898,880
11	> 750 kWh (S)	$0.0094145	$1,849,467	$0.0084287	$1,655,804
12	> 750 kWh (W)	$0.0056451	$4,079,740	$0.0050540	$3,652,540
13	**Secondary**		**$32,280,190**		**$33,982,830**
14	0-5 kW	$0.0000000		$0.0000000	
15	> 5 kW	$1.1497856	$12,541,993	$1.2104318	$13,203,528
16	0-1,500 kWh	$0.0096376	$4,769,920	$0.0101459	$5,021,513
17	1,501-125,000 kWh	$0.0042315	$11,750,533	$0.0044547	$12,370,323
18	> 125,000 kWh	$0.0035946	$2,318,513	$0.0037842	$2,440,805
19	Max Charge	$0.0224593	$899,231	$0.0236440	$946,662
20	**Primary**		**$15,409,349**		**$18,097,739**
21	All kW	$1.2098089	$7,369,533	$1.4208780	$8,655,257
22	All kWh	$0.0028853	$7,956,648	$0.0033887	$9,344,803
23	Max Charge	$0.0202214	$83,168	$0.0237494	$97,678
24	**Primary Substation**		**$3,134,020**		**$3,639,469**
25	All kW	$1.2996864	$1,412,026	$1.5092978	$1,639,756
26	All kWh	$0.0027971	$1,721,993	$0.0032482	$1,999,714
27	**High Voltage**		**$5,769,880**		**$6,091,170**
28	All kW	$1.4583782	$2,716,946	$1.5395867	$2,868,236
29	All kWh	$0.0031710	$3,052,934	$0.0033476	$3,222,934
30	**School**		**$286,587**		**$399,558**
31	All kWh	$0.0056676	$286,587	$0.0079018	$399,558
32	**Street Lighting**		**$0**		**$147,452**
33	All kWh	$0.0000000	$0	$0.0027000	$147,452
34	**Private Outdoor Lighting (kWh)**	$0.0000000	**$0**	$0.0007649	**$84,137**
35	9500 L High Pressure Sodium	$0.0000000	$0	$0.0028395	$1,255
36	28000 L High Pressure Sodium	$0.0000000	$0	$0.0025717	$1,708
37	7000 L Mercury Vapor	$0.0000000	$0	$0.0028396	$56,133
38	21000 L Mercury Vapor	$0.0000000	$0	$0.0025717	$20,244
39	2500 L Incandescent	$0.0000000	$0	$0.0041097	$16
40	7000 L Fluorescent	$0.0000000	$0	$0.0056170	$55
41	4000 L PT Mercury	$0.0000000	$0	$0.0137642	$4,726

Summary: App for Rehearing of the Dayton Power and Light Company electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company