FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Market Rate Offer	:	Case No. 12-426-EL-SSO
In the Matter of the Application of 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

THE KROGER CO.'S APPLICATION FOR REHEARING

Pursuant to Ohio Revised Code ("O.R.C.") Section 4903.10 and Oho Administrative Code ("O.A.C.") Rule 4901-1-35, The Kroger Co. "(Kroger") submits this Application for Rehearing of the September 4, 2013 Opinion and Order ("Order") issued by the Public Utilities Commission of Ohio ("Commission") in DP&L's Application for Authority to Establish a Standard Service Offer in the form of an Electric Security Plan and the September 6, 2013 Nunc Pro Tunc entry modifying that Order. Specifically, the Commission's Order is unreasonable because it failed to adequately address several issues that significantly impact Kroger and similarly situated customers in the DP&L service territory.

First, with respect to the Service Stability Rider ("SSR"), the Commission failed to properly weigh the substantial quantitative SSR financial cost of the SSR against theoretical and speculative qualitative benefits of the ESP as modified. Second, the Commission failed to properly design the recovery mechanism for SSR so that demand related costs are recovered through a demand charge. Third, the Commission did not address Kroger's recommendation for a firm sunset provision for the recovery of generation related charges from long term shopping customers. Finally, the Commission's Order unreasonably authorizes a non-bypassable Reconciliation Rider from shopping customers for generation related costs.

Accordingly, Kroger respectfully requests that the Commission grants this Application for Rehearing and reverse its September 4, 2013 Opinion and Order as modified by the September 6, 2013 Nunc Pro Tunc entry.

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MEMORANDUM IN SUPPORT

I. INTRODUCTION.

Pursuant to Section 4928.141 of the Ohio Revised Code, Electric Distribution Utilities ("EDU") are required to provide consumers with "a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service." RC 4928.141(A). EDUs may provide the offer through either a "market rate offer" ("MRO"), R.C. 4928.142, or through an "electric security plan" ("ESP"), R.C. 4928.143. The standard service offer ("SSO") serves as the electric utility's default generation price for consumers who do not shop for competitive generation.

The ESP approved by the Public Utilities Commission of Ohio ("PUCO" or "Commission") fails to satisfy the legal standard set forth in RC 4928.143 for several important reasons. First, the ESP shifts significant measurable and quantitative financial costs of maintaining DP&L's overall financial position to shopping customers in return for purely theoretical, immeasurable and speculative "qualitative" benefits. For example, the Commission found that $110 million per year for the first three years in SSR charges were justified because SSR relates to default service and by-passability, and also has the effect of stabilizing and providing certainty regarding retail electric service. However, no party, *including DP&L*, contended that DP&L would not be able to provide an SSO without the SSR.

Further, as noted in Kroger's initial brief, the major cause of the costs to be recovered through the SSR - identified by DP&L as costs related to an anticipated increase in customer shopping - is DP&L's historical aggressive pricing of its energy, which makes shopping for generation increasingly attractive. These pricing decisions have allowed DP&L to recover generous returns on equity in the short-term, but may have negative long-term effects on the Company's financial health. It is not fair or reasonable to expect shopping customers, particularly long term shopping customers, to "bail-out" DP&L from the consequences of the Company's aggressive short-term pricing strategies. [1]

Additionally, the Commission's approved and modified ESP fails to provide a reasonable and coherent rate treatment for all customers, but especially for customers that have been shopping for several years. In effect, the ESP underwrites the

[1] Transcript of Proceedings, Volume VII filed herein on April 9, 2013 at page 1682, lines 4-15.

anticipated reduction in its SSO rates, and an anticipated increase in customer switching, by increasing the non-bypassable generation subsidy SSR. This proposition is fundamentally unreasonable, especially as it relates to customers who shop, and have shopped for generation service for an extended period.[2] Since SSO is non-bypassable, those customers who take SSO service are subsidized by shoppers, particularly long term shoppers; yet long term shoppers are expected to pay an equal share of SSR with those who take generation service under a default rate. For these reasons and the reasons that follow, The Kroger Co. ("Kroger") respectfully submits its Application for Rehearing. Failure to address any issue presented by the Commission's Order and Entry does not indicate a waiver or consent on the part of Kroger.

II. BACKGROUND.

A. Dayton Power & Light Company's Revised Application for an Electric Security Plan.

On March 20, 2012, the Dayton Power and Light Company ("DP&L" or "the Company") filed an application to establish a Standard Service Offer ("SSO") based upon a Market Rate Offer ("MRO") pursuant to Ohio Revised Code ("RC") section 4928.142.[3] On September 7, 2012, DP&L notified the Public Utilities Commission of Ohio ("PUCO or the "Commission") that the MRO Application would be withdrawn and re-filed.[4] On October 5, 2012 DP&L filed a new application in the same PUCO docket for an SSO in the form of an Electric Security Plan ("ESP") pursuant to RC 4928.143

[2] Id.

[3] *See* In the Matter of the Application of the Dayton Power & Light Company for Authority to Establish a Standard Service Offer in the Form of a Market Rate Offer, Case No. 12-426-EL-SSO, Application for Approval of MRO (March 30, 2012)..

[4] *Id.* Notice of Withdrawal (Sept. 7, 2012). .

(the "ESP Application").[5] On December 12, 2013, DP&L filed a revised application for approval of an ESP ("Revised ESP Application"), correcting various errors in the ESP Application.[6]

The Revised ESP Application requested a term running from January 1, 2013 through December 31, 2017.[7] The Revised ESP Application requested authority to provide SSO rates that will eventually be based solely on DP&L's power purchases in a competitive bidding process. The schedule set forth in the Revised ESP Application provided for SSO rates to be initially based upon a blended rate, with a mixture of competitively bid generation and DP&L owned generation.[8] The transition to pure competitively bid based SSO rates was accelerated when compared to the MRO Application[9] In return for this faster transition to pure market rates based on a competitive bidding process, DP&L requested approval of a non-bypassable Service Stability Rider ("SSR") that, according to DP&L, "will allow DP&L an opportunity to earn a reasonable return on equity."[10] Stated more plainly, DP&L sought authority to collect $137.5 million annually through the ESP term to ensure stability as it transitions to 100% competitively bid generation. DP&L claimed that the Company's "financial integrity will be threatened without such a charge."[11]

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[5] *Id.* Application for Approval of ESP (Oct. 5, 2012)..
[6], *Id.* Revised ESP Application at 2-6.
[7] *Id.* at 2.
[8] *Id* at 7.
[9] *Compare* MRO Application at 2 *with* Revised ESP Application at 7.
[10] *Id.* at 2.
[11] Id., at 8.

The Revised ESP Application also requested authority for a "switching tracker" deferring the value of any customer shopping that exceeds 62% as a regulatory asset.[12] This regulatory asset would accumulate interest at a rate commensurate with DPL's cost of debt.[13] Finally, DP&L's second revised application sought permission to collect a Reconciliation Rider ("RR") to compensate DP&L for costs incurred in administering and implementing the competitive bidding process ("CBP"), as well as for various "competitive retail enhancements" from all customers on a non-bypassable basis.[14]

An evidentiary hearing was held beginning March 18, 2013. At the hearing, DP&L, the Staff of the Commission and various interveners presented testimony. The evidentiary hearing concluded on April 3, 2013 and post-hearing briefs and reply briefs were filed by the parties on May 20, 2013 and June 5, 2013, respectively.

B. The Commission's September 4, 2013 Order.

On September 4, 2013, the Commission issued an Opinion and Order that granted, in part, and denied, in part, the various requests made by DP&L in its Revised ESP Application (the "Order")[15]. The Commission found that the five (5) year term proposed by DPL was too long, and instead, modified the term of the ESP to begin January 1, 2014, and terminate May 31, 2017. (Order at 15; Entry Nunc Pro Tunc at 2). The Commission further found that competitively bid prices ("CBP") should be implemented during the ESP term. (*Id.*) The blending percentages of the CBP auction for the SSO offering will be 10 percent CBP from January 1, 2014 to December 31,

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[12] Id.
[13] Id., at 16.
[14] Revised ESP Application at 13.
[15] *Id.* Opinion and Order (Sept. 4, 2013). The Order was modified on September 6, 2013 by a *Nunc Pro Tunc* Entry to correct several administrative errors. The corrected dates are supplied herein without further explanation for purposes of brevity and to avoid unnecessary confusion.

2014; 40 percent for the period January 1, 2015 to December 31, 2015; and 70 percent for the period January 1, 2016 to May 31, 2016. (*Id.*). The Commission found that this schedule would allow DP&L to transition to market based rates while granting DP&L sufficient time to refinance long term debt to facilitate divestment of the Company's generation assets. (*Id.*) DP&L is required to divest all generation assets prior to May 31, 2017. (Entry Nunc Pro Tunc at 2). The date by which DP&L shall file its next SSO is August 1, 2016, and in the event such SSO is not authorized by April 1, 2017, DP&L will begin procuring generation deliverable on June 1, 2017. (*Id.*).

i. <u>The Service Stability Rider.</u>

The Commission granted DPL's request for a service stability rider ("SSR"), finding that the SSR meets the criteria of RC 4928.143(B)(2)(d) because it is "related to default service and bypassability that has the effect of stabilizing and providing certainty regarding retail electric service." (*Id.* at 21). The Commission found that the SSR should be non-bypassable because the continued maintenance of DP&L's generation assets and the ability to provide certainty regarding retail electric service benefits both shopping and non-shopping customers. (*Id.* at 21). . The Commission also found that the SSR is needed to provide stability and certainty regarding electric service, since financial losses in generation operations constitute financial losses for the entire Company. (Order at 21-22). The Commission further held that the SSR is not a transition charge and stated that the Commission's authorization of the SSR is not the equivalent of authorizing transition revenue. (*Id.* at 22).

With regard to the amount of the SSR charge, as noted above, DP&L requested $137.5 million per year for five (5) years. The Commission reduced the amount to $110 million per year for three years: 2014, 2015 and 2016. (Order at 25; Entry Nunc Pro

Tunc at 2). The Commission noted that with potential O&M savings for years 2014 through 2016, $110 million per year is adequate to ensure the financial integrity of the company. (Order at 25). The Commission set January 1, 2014 as the start date for collecting the SSR, and until that time DP&L is permitted to continue to collect a prorated monthly RSC charge from customers. (Order at 25).

The Commission further held that the significantly excessive earnings test ("SEET") threshold for the company should be set at a 12 percent return on equity during the years 2014, 2015 and 2016[16]. (Order at 26). The Commission required that SSR revenues shall remain with DP&L and not be transferred to any DP&L current or future affiliates. (*Id.*).

The Commission held that it was not convinced that the SSR should be collected through a flat customer charge. (Order at 26). Rather, the Commission required that the costs recovered through the SSR should be allocated to customer classes using a 1CP demand allocation method.[17] (*Id.* at 26). The Commission's adoption of OEG's cost-allocation method reflects the fact that the costs recovered through the SSR are demand related in their essential character. However, the Commission adopted the rate design for recovery of the SSR proposed by the Staff, which is an energy charge, in order to "minimize rate impacts upon customers." (Order at 26). The Commission failed to explain the incongruity of collecting a demand cost through an energy charge

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[16] The original Order set the SEET for 2014 and 2015 only, but since the SSR was extended for an additional year by the Nunc Pro Tunc Entry, it follows that the SEET should also be set at 12 percent for the year 2016. The Nunc Pro Tunc Entry is silent on the matter, however.

[17] The commission states as follows: "We agree with OEG that the SSR revenues should be allocated using a 1CP demand allocation method that reflects the underlying nature of the SSR charges."

other than the unsupported and incorrect assertion that this rate design will "minimize rate impacts upon customers."

After January 1, 2017, DP&L may request an extension of the SSR through rider SSR-E, for a period of 5 months ending on May 31, 2017. (Order at 26; Entry Nunc Pro Tunc at 2). The SSR-E is capped at no more than $45.8 million. (Entry Nunc Pro Tunc at 2). As a condition of implementing SSR-E, DP&L must file a distribution rate case no later than July 14, 2014. (Order at 27). The Commission will consider the impact of the distribution rate case in in determining the amount of the SSR-E. Moreover, DP&L must also file an application to divest its generation assets by December 13, 2013. (*Id.* at 27). DPL must also file a smart grid and advanced metering infrastructure application by July 1, 2014 and an application to modernize its billing system by December 31, 2014. (*Id.* at 27-28).

ii. <u>The Commission's Approval of the ESP.</u>

The Commission determined that the ESP, as modified, was more favorable in the aggregate than a market rate offer under RC 4928.142. In making this determination, the Commission first considered the modifications made by the Commission to DP&L's proposal. Particularly, the Commission noted that it had denied the Switching Tracker (ST), adjusted the term of the ESP to 41 months, adjusted the proposed blending percentages, adjusted the SSR down to $110 million per year and denied the Alternative Energy Rider – Nonbypassable ("AER-N"). (*Id.* at 48-49). Secondly, the Commission stated that it should compare the results of this ESP to the expected results of an MRO beginning January 1, 2014. Third, the Commission compared the ESP to the expected MRO to determine the quantifiable benefit or cost of the ESP. The Commission concluded that the expected results of an MRO would be more favorable than the proposed ESP by approximately $250 million dollars over the ESP term[18].

However, the Commission stated that its analysis under RC 4928.143(C)(1) did not end with the quantitative analysis finding that an MRO would save customers $250 million over the life of the ESP. Rather, the Commission determined that certain "qualitative" aspects of the ESP as amended require the conclusion that the ESP is more favorable in the aggregate than the expected results of an MRO. The Commission concluded that the modified ESP advanced the stated policies of the state of Ohio and moved ESP pricing to market more quickly than an expected MRO. Additionally, the SSR allows DPL to provide adequate reliable and safe service to its customers prior to DPL divesting itself of its generation assets. The Commission also stated that the competitive retail enhancements provided further qualitative benefits to customers of DPL. The Commission also found that the competitive retail enhancements, the billing system modernization, and the economic development provisions encourage economic development and improve Ohio's competitiveness in the global marketplace. The ESP was also held to provide DPL with an incentive to modernize its distribution infrastructure.

In summary, the Commission found that the "qualitative" benefits of the ESP as modified by the Commission significantly outweighed the fact that the cost to customers over the 41 month term of the ESP was at least $250 million dollars. Therefore, the Commission determined that the ESP as modified is more favorable in the aggregate than the expected results of an MRO, so the modified ESP should be approved.

[18] Though the extension of SSR for an additional year could push that number as high as $360 million.

III. LAW AND ARGUMENT.

A. The Order is Unlawful and Unreasonable Because it Authorizes Transition Cost Recovery Through the SSR.

The Commission approved the SSR as a non-bypassable rider, designed to collect $110 million annually for the first three years of the ESP. The Commission found that the SSR is intended to provide the Company an opportunity to earn a reasonable return on equity, which has declined due to increased customer shopping and decreasing capacity and wholesale power prices.[19] The SSR is a de facto extension and expansion of the RSC, which is comprised exclusively of generation costs designed to collect approximately $73 million per year.[20]

SSR requires shopping customers to pay a form of transition cost recovery, i.e. an attempt to recover generation costs that are "stranded" due to shopping.[21] Transition cost recovery for DP&L was fully resolved and completed several years ago as a result of a Stipulation approved by the Commission in Case No. 99-16879-EL-ETP. The Commission's approval of the Stipulation in that docket approved the collection of substantial transition costs, but also provided that recovery of transition costs was to be completed by the end of 2003. In Section VII of that Stipulation, DP&L specifically agreed not to attempt to recover any transition costs beyond that date. Allowing the SSR to be collected from shopping customers on a non-bypassable basis would

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[19] Second Revised Testimony of Craig L. Jackson, filed herein on December 2012, at page 13 at lines 6-9; also, Transcript of Proceedings, Volume I, filed herein on April 1, 2013, at page 248, lines 7-20, (cross examination of Craig L. Jackson.)

[20] *In the Matter of the Application of The Dayton Power & Light Company for Relocation of the Rate Stabilization Surcharge,* PUCO Case No. 07-1252-EL-ATA, Finding and Order (April 30, 2008).

[21] Id., at 5-6.

improperly extend the recovery of transition costs beyond that terminal date, agreed upon by the Company.[22]

In light of the absence of express statutory support for continued transition related charges, and taking into consideration the previous disposition of DP&L's transition cost recovery by the Commission and the stated policy of the State to encourage competition, the Commission should reject DP&L's proposal to make the SSR non-bypassable since the continuation and increase of those charges constitutes unreasonable and redundant transition cost recovery. Although the Commission finds that SSR is not a transition charge,[23] the reasoning stated by the Commission suggests otherwise. The Commission stated: "we note that DP&L continues to be responsible for offering SSO service to its customers and has demonstrated that the SSR is the minimum amount necessary to maintain its financial integrity to provide such service." Id. DP&L was required by the ETP cases to prepare to serve customers on a market basis. ETP charges were collected by DP&L to assist it in making this transition to market. As the Commission notes, "DP&L does not claim its ETP failed to provide sufficient revenues." Kroger agrees, ETP provided more than adequate revenue for DP&L to transition to market based rates. DP&L does not claim otherwise. Therefore, further transition charges, in the form of SSR or otherwise, are unreasonable and unlawful.

It may be correct that shopping customers benefit from the existence of SSO offerings, as the SSO is available as a default rate when and if market conditions become unfavorable. However, the existence of an SSO is not dependent upon DP&L's

[22] Id.at 6.
[23] Order at page 22.

continued ownership and operation of its generation assets. The SSO offering can and will exist after DP&L has divested itself of generation assets, so there is no rationale for subsidizing the continued operation of those assets in addition to funds already invested through ETP charges. DP&L should already be in a position to transition to market based rates, including SSO rates.

In approving AEP-Ohio's RSR, the Commission determined that AEP-Ohio's RSR "provides certainty for retail electric service, as is consistent with Section 4928.143(B)(2)(d), Revised Code."[24] The cited section of the Revised Code states that an ESP may provide for or include, without limitation:

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

The Commission should have balanced several factors in considering the request for recovery of the SSR charge. On the one hand, the Commission found that DP&L's proposed SSR stabilizes or provides certainty regarding retail electric service Id. at 22. But such a finding should be balanced against the requirement in Ohio Revised Code § 4928.40 that transition charges end no later than December 31, 2010. The Commission should consider the substantial advance notice that DP&L was given by the statute that DP&L should prepare to provide service at market rates, transition charges would cease and shopping customers would not have an obligation to underwrite utility generation costs indefinitely. The Commission should also give

[24] Id., at 7-8, and citing Opinion and Order at 32.

substantial weight to the Stipulation in Case No. 99-16879-EL-ETP which provided that recovery of transition costs was to be completed by the end of 2003.[25]

The Commission should also strongly consider that the SSO rates from which shopping customers have been fleeing were fully and fairly negotiated by DP&L in a stipulation that exempted DP&L from the Significantly Excessive Earnings Test ("SEET") for three years (2009-2011).[26] It is well understood that SSO rates are not based on cost-of-service. In negotiating the current SSO rates, DP&L gained the freedom and ability to earn rates of return beyond SEET levels for three years, but also assumed the risk that setting SSO rates too high might result in a loss of sales to CRES in the market.[27] Had market prices increased, DP&L would have profited handsomely from this arrangement. But capacity and wholesale power pricing in the market have been declining.[28] Consequently, DP&L's SSO pricing has become increasingly unattractive for customers, and as a result, shopping penetration levels have increased sharply. By allowing DP&L to insulate itself from the consequences of its prior aggressive pricing decisions, and recover the costs of these strategies by converting its RSC into the SSR and increasing the level of these charges, the Commission is requiring shopping customers to bear the cost of DP&L's risky and imprudent pricing decisions. The majority of the shopping load has gone to DP&L's affiliate, DPL Energy Resources ("DPLER"), and thus, this load has remained within DP&L's corporate

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[25] Id., at 8.

[26] Case No. 08-1094-EL-SSO. *Entry 171,117C pro tune* dated May 13, 2010.

[27] Id., at 9.

[28] See for example, Second Revised Testimony of Craig L. Jackson, p. 13, and Second Revised testimony of Aldyn W. Hoekstra, p. 7.

family.[29] Taking into account all of these factors, the Commission should have limited SSR to be no greater than the current RSC, particularly for long-term shopping customers, as there is no evidence that these customers are imposing any greater costs on DP&L today than when the RSC was adopted.[30]

B. The Commission Failed to Address Kroger's Proposal for a Shopping Customer "Sunset Date" for the SSR.

The Commission did not specifically make a finding on Kroger's suggestion for a sunset provision. The Commission should establish a final sunset date after which individual shopping customers are no longer subject to the SSR. There should be a firm date beyond which those customers who purchase generation from a CRES supplier should no longer be forced to subsidize the generation related costs of DP&L. For this purpose, a reasonable sunset date of five years measured from the date of the individual customer's initiation of Competitive Retail Electric Service should be established as a firm cut-off date, after which no shopping customer should be required to pay any generation related "stability" charge.

Further, the Commission should also take into consideration the past and current non-bypassable RSC, and the impact of those charges on long-term shopping customers (i.e., customers who have been shopping continuously for at least three

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[29] DP&L's Response to ESP RFA 1-10 confirms that during 2011, DPLER accounted for approximately 5,731 million kWh of the total 6,593 million kWh supplied by CRES providers within DP&L's service territory. In 2012, according to AES Corporation's 10-K Filing (2-27-13), DPLER accounted for approximately 6,201 million kWh of the total 8,212 million kWh supplied by CRES providers within DP&L's service territory.

[30] Id., at 10.

years).[31] Through the RSC, shopping customers have contributed to DP&L's generation costs while purchasing their full generation requirements from a CRES provider. The proposed SSR would increase what is essentially this same charge by increasing the revenue recovery from approximately $73 million per year under the current RSC to $110 million under the SSR as modified. Yet in continuing to purchase power from CRES providers, long-term shopping customers should not reasonably incur any greater unit cost responsibility for DP&L's legacy costs. Other than the right to return to currently unattractive SSO rates, long-term shoppers receive no tangible benefit from DP&L in exchange for the substantial RSC they are currently responsible to pay. Increasing these charges is unfair and unreasonable particularly to long-term shopping customers.

Sunset dates that are applied at the individual customer level are inherently reasonable. One of the difficulties with the current universal charge approach is that the "stabilization" charge is the same for both long-term shoppers (e.g., customers shopping continuously for at least three years) and more recent shoppers, even though the rationale for assessing a charge for legacy costs diminishes the longer a customer has purchased generation from a CRES. Under the individual sunset approach, although shopping customers would be subject to five (5) years of charges for legacy generation costs, an established cut-off date would at least provide a bridge to a time when the individual shopping customer would no longer be subject to this effective double charge for generation service. The establishment of such a date certain for

[31] Id., at 8. (Customers who have been shopping for at least three years would have initiated service with a CRES provider within the first year of the Commission's approval of DP&L's previous ESP in June 2009.)

shopping customers is also a form of "rate certainty" and "rate stability" and is strongly preferable to the open-ended obligation on shoppers to subsidize generation costs.

C. The Commission's Order Unreasonably Requires Customers to Pay for the SSR Costs Through an Energy Charge When the Costs are Allocated on the Basis of Demand.

The rate design proposed for the SSR violates basic rate making principles and should be modified by the Commission to a straight demand charge. The Opinion and Order correctly notes that the "underlying character" of SSR charges are demand based. The Commission states "[w]e agree with OEG that the SSR revenues should be allocated using a 1 CP demand allocation method that reflects the underlying character of the SSR charges." (Order at 26). While DP&L's request for a flat customer charge may not have been ideal, particularly as applied to demand metered customers, it was not necessarily fundamentally inconsistent with the nature of the costs to be collected, which are demand-related costs. For reasons not explained, the Commission adopted the Staff's proposed rate design, which is an energy charge, instead of adopting OEG's recommendation that SSR be recovered through a demand charge for demand metered customers.

It is patently true, as OEG notes in its Post Hearing Brief: "For demand metered rate classes, such as GS Secondary, Primary, Primary Substation and High Voltage classes, it is appropriate to recover 100% of the allocated SSR costs through the kW demand charge. There is no reasonable basis to recover the SSR through a combination of the customer, demand and energy charges of these rates as proposed by DP&L. These SSR costs, if approved by the Commission, are 100% demand related and it is not reasonable to recover these costs through a customer charge or an energy charge as proposed by DP&L." OEG Merit Brief at 13-14.

Staff's proposed rate design will do nothing to minimize rate impacts on customers. In fact, customers with high load factors will be unfairly and profoundly impacted by a rate design that allocates demand costs to customer classes on the basis of a 1CP demands allocation methodology, and then recovers those demand allocated costs through an energy charge. For example, since Kroger is in a commercial rate class, which rate class typically contributes significantly to peak demand, Kroger's rate class will be allocated a relatively substantial contribution to peak demand. However, many of the customers in the commercial class do not have high load factors, meaning that although these customers contribute significantly to peak demand, these same customers do not consume comparatively large amounts of energy on average. Since Kroger and similarly situated customers use larger amounts of energy on average than most members of its rate class, Kroger and similarly situated high load factor customers will pay a disproportionately high amount of demand related charges if those costs are recovered through an energy rider. Customers who contribute equally to peak demand costs, but who use less energy on average, will therefore be the beneficiaries of an intra-class subsidy, to be paid by Kroger and other high load factor customers under this rate design. It is axiomatic in rate design that intra-class subsidies should be avoided.

The use of an energy charge to recover demand related costs is plainly discriminatory to high load factor customers, and should be rejected by the Commission on rehearing. Such a rate design does not minimize rate impacts on customers. Rather, such rate design improperly shifts costs that should fairly be paid through a demand charge for all demand metered customers disproportionately onto high load factor customers in the form of an energy charge. It is true that this rate design provides a subsidy for low load factor customers who contribute to peak demand but consume less energy on average than high load factor customers, and therefore the impact of those charges is unfairly "minimized." The burden on high load factor customers, however, will be unfairly "maximized." Providing an intra-class rate subsidy is not a legitimate goal to be pursued by the Commission.

Instead of adopting only OEG's allocation methodology, the Commission should have adopted both OEG's allocation method and rate design. This approach would fairly align recovery method with cost. OEG urged the Commission to recover demand allocated costs through a demand charge. This rate design is fundamentally fair and sound, and recovers costs properly from the cost causer. It should be obvious that customers that contribute to peak demand equally should pay the same demand charge. There is no recognized rational or logical reason to prefer a rate design that discriminates against high load factor customers and provides low load factor customers an intra-class subsidy at the expense of consumers with a higher load factor.

D. The Commission's Order Unreasonably Authorized a Non-Bypassable Reconciliation Rider.

The Commission determined that the Reconciliation Rider ("RR") should be divided into both a by-passable and a non-bypassable charge. The non-bypassable charge would include any deferred balance that exceeds 10% of the base recovery rate associated with the FUEL Rider, the RPM Rider, AER, and the proposed Competitive Bid True-up (CBT) Rider. The by-passable charge would include generally the costs of administering the Competitive Bidding Process, and the carrying costs associated therewith. (Order at 35).

While the Commission is correct in rejecting DP&L's proposal to make the recovery all of these costs non-bypassable, the Commission erred in creating a non-bypassable component of RR, because each of the existing riders that compose the non-bypassable component of the RR is, properly, by-passable today. Shopping customers do not cause the costs recovered by this rider to be incurred and, appropriately, should not obligated to pay for them. DP&L has attempted to confound this issue by arguing that if the balance of these riders becomes "excessive," it would further improve the economics of shopping, resulting in additional switching.

The Commission's adoption of DP&L's position as to the non-bypassable component of RR appears to accept the Company's claim that to prevent this occurrence, shopping customers should be assigned cost responsibility for these currently by-passable riders if the deferral balance exceeds 10%. This is, of course, merely another incarnation of the improper and unreasonable transition cost claim discussed earlier herein.

The Commission noted that shoppers benefit in qualitative ways by the existence of a SSO offering. Based on this benefit to shoppers, an argument may be made that some costs incurred in developing a SSO offering are incurred on shoppers' behalf. However, it is unreasonable to assume that shoppers, particularly long term shoppers benefit to the same degree as SSO customers, either in qualitative or quantitative terms. Long term shopping customers such as Kroger, who have been shopping for years, are saddled with the reconciliation of otherwise by-passable costs that indeed were absolutely <u>not</u> incurred on those customers' behalf. The Commission has erred in assigning equal cost responsibility to long term shopping customers and SSO customers. Given the fact that long term shoppers will likely be required to pay some level of stability charge to defray the cost of operating DP&L's generation assets, additional charges based on currently bypassable charges associated with an SSO offering are unwarranted for shopping customers. The Commission's current approach results in a completely unreasonable and baseless assignment of cost responsibility particularly upon long term shopping customers. In short, the non-bypassable portion of RR is not warranted or proper as that Rider relates to long term shopping customers and should have been rejected by the Commission.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Reply Brief of The Kroger Co.* was served this 4th day of October, 2013, via electronic mail upon the following:

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