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 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

SECOND APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT OF INDUSTRIAL ENERGY USERS-OHIO

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SECOND APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT OF INDUSTRIAL ENERGY USERS-OHIO

On September 4, 2013, the Public Utilities Commission of Ohio ("Commission") issued an Opinion and Order ("ESP II Order") modifying and approving the Amended Application to Establish an Electric Security Plan ("ESP") of the Dayton Power and Light Company ("DP&L").[1] On September 6, 2013, the Commission issued an Entry Nunc Pro Tunc ("September 6th Entry") (the ESP II Order and September 6th Entry are collectively referred to as the "ESP II Orders") altering the duration of the Modified ESP

[1] The ESP approved by the Commission is hereinafter referred to as the "Modified ESP."

as well as the duration in which the Commission authorized DP&L to collect the nonbypassable Service Stability Rider ("SSR"). On March 19, 2014, the Commission issued a Second Entry on Rehearing, granting in part and denying in part, applications for rehearing. Pursuant to R.C. 4903.10 and Rule 4901-1-35, Ohio Administrative Code ("OAC"), Industrial Energy Users-Ohio ("IEU-Ohio") respectfully submits this Second Application for Rehearing. Without waiving any claims previously raised in its Application for Rehearing of the ESP II Orders, IEU-Ohio alleges that the Second Entry on Rehearing is unlawful and unreasonable in the following respects:

A. The Second Entry on Rehearing is unlawful and unreasonable because it, in violation of R.C. 4903.09, fails to identify the findings of fact and the reasons prompting the decision that there are additional nonquantifiable benefits of the Modified ESP that make it more favorable in the aggregate as compared to the expected results that would otherwise apply under R.C. 4928.142 ("ESP versus MRO test").

B. The Second Entry on Rehearing is unlawful and unreasonable because the Service Stability Rider and Service Stability Rider-Extension provide DP&L with transition revenue or its equivalent in violation of R.C. 4928.38 and the prior Commission-approved agreement of DP&L to terminate the recovery of transition charges.

C. The Second Entry on Rehearing is unreasonable because it fails to terminate the authorization of the Service Stability Rider no later than January 1, 2016, the date by which DP&L's generation assets must be transferred.

D. The Second Entry on Rehearing is unreasonable because it fails to terminate authorization for the Service Stability Rider-Extension due to the Commission's order that DP&L transfer generation assets by January 1, 2016.

E. The Second Entry on Rehearing is unreasonable because it fails to reduce the amount of the total revenue that DP&L may seek to recover under the Service Stability Rider-Extension even though the term of the rider has been reduced by thirty-one days.

As discussed in the Memorandum in Support attached hereto, IEU-Ohio respectfully requests that the Commission grant this Second Application for Rehearing and correct the errors identified herein.

Respectfully submitted,

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BEFORE
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MEMORANDUM IN SUPPORT

I. SUMMARY OF ARGUMENT

Any party to a proceeding may seek rehearing of an order of the Commission on the ground that the Commission's order is unreasonable or unlawful.[2] If the Commission determines that the original order or a part of it is unreasonable or unlawful, it may terminate or modify the order.[3] Because the Second Entry on Rehearing is unlawful and unreasonable in several respects, the Commission should

[2] R.C. 4903.10(B).

[3] *Id*.

grant rehearing. On rehearing, the Commission should either reject the Modified ESP or substantially modify it because the Modified ESP as approved in the Commission's orders does not pass the ESP versus MRO test. Additionally, the Commission should terminate authorization of the SSR and Service Stability Rider-Extension ("SSR-E") because they presently permit or may permit DP&L to bill and collect transition revenue or its equivalent. If the Commission does not terminate the authorizations of the SSR and SSR-E, it should modify the terms of the authorizations to limit the duration of the SSR and the ceiling amount of the SSR-E.

In its Application for Rehearing, IEU-Ohio demonstrated that the Commission erred when it relied upon alleged nonquantifiable benefits to conclude that nonquantifiable benefits outweigh the $313.8 million by which an MRO is more favorable than the Modified ESP. The Commission's assignment of subjective value to alleged nonquantifiable benefits of the Modified ESP violated R.C. 4903.09 and 4928.143(C)(1).[4]

The Commission denied IEU-Ohio's assignments of error addressing the ESP versus MRO test in the Second Entry on Rehearing, but in doing so, the Commission again violated R.C. 4903.09. That section requires the Commission to state findings of fact and the reasons prompting the decision based upon those findings of fact. In the Second Entry on Rehearing, the Commission states that there are other nonquantifiable benefits beyond those identified in its ESP II Order on which it relied. The Commission, however, does not identify what those nonquantifiable benefits are.[5] Because the

[4] Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio at 9-24 (Oct. 4, 2013).

[5] Second Entry on Rehearing at 28.

Commission is basing its decision on unidentified "benefits" and still has not explained how it concluded that the identified and unidentified nonquantifiable benefits "outweigh" the $313.8 million benefit an MRO would provide customers, the Commission again has failed to comply with the requirements of R.C. 4903.09.

On an objective basis, the Modified ESP fails the ESP versus MRO test. Accordingly, the Commission should grant rehearing and find that the Modified ESP is not more favorable in the aggregate and reject the Modified ESP or substantially modify it to meet the requirements of R.C. 4928.143(C).

In the ESP II Orders, the Commission authorized DP&L to bill and collect $110 million annually through nonbypassable charges that assure that customers will not realize all the benefits afforded by the lower wholesale energy and capacity prices available in the current market.[6] As IEU-Ohio previously showed, DP&L's demand for a cash injection is premised on its generation ownership. Distribution and transmission segment revenues are adequate; it is the generation segment that allegedly is causing DP&L's financial problems or will.[7] Although DP&L had the option of divesting the generation assets, it vigorously claimed it should not transfer ownership of them until it could refinance the Electric Distribution Utility's ("EDU") debt and the refinancing could not occur until late 2016.[8]

DP&L also has recently stated that the low value of the generation assets relative to DP&L's debt load is driving its financial problem that the SSR is designed to "fix."[9]

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[6] ESP II Order at 21; September 6 Entry at 2.

[7] See discussion below.

[8] ESP II Order at 27-28, citing DP&L Ex. 16 at 2-4.

[9] *In the Matter of the Application of The Dayton Power and Light Company for Authority to Transfer or Sell its Generation Assets,* Case No. 13-2420-EL-UNC, Supplemental Application of the Dayton Power and

Based on DP&L's representations, the value of the generation assets, measured by either what DP&L can collect in the wholesale and retail generation markets or through the sale of the assets themselves, is insufficient to meet the "financial integrity" target that DP&L has set and the Commission has accepted when it authorized the SSR.

As the Commission noted in the Second Entry on Rehearing, DP&L recently indicated that it could transfer the assets sooner than 2016, possibly as early as 2014.[10] Because DP&L has changed its story about its ability to transfer the generation assets, the Commission has begun to recognize how DP&L's questionable claims affect the terms of the ESP II Orders. In the Second Entry on Rehearing, the Commission correctly noted that the ability to divest the generation assets sooner should be reflected in a requirement for an earlier transfer of the assets and is a consideration if DP&L seeks to increase the SSR-E.[11] Based on DP&L's recent disclosures, however, the Commission should grant rehearing and order the termination of the SSR either immediately because it is an unlawful transition revenue charge or no later than when the generation assets are transferred.

The Commission also should grant rehearing to address its failure to terminate authorization of the SSR-E. Like the SSR, the SSR-E would permit DP&L to bill and collect illegal generation-related transition revenue or its equivalent. Additionally, because the generation assets must be divested by January 1, 2016, there is no justification (lawful or otherwise) for the SSR-E which the Commission has ordered

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Light Company to Transfer or Sell its Generation Assets at 2 (Feb. 25, 2014) ("DP&L Transfer Case"); *id*., Supplemental Reply Comments of The Dayton Power and Light Company at 5 (Apr. 7, 2014).

[10] Second Entry on Rehearing at 17.

[11] *Id*. at 17-18.

cannot increase above 0 until January 1, 2017. Therefore, the Commission should reverse its order authorizing the SSR-E.

If the Commission does not reverse its authorization of the SSR-E, it should grant rehearing and adjust the amount that DP&L may seek to recover because the Commission shortened the term of the rider. In the Second Entry on Rehearing, the Commission ordered that the SSR-E terminate no later than April 30, 2017,[12] but it did not reduce the total revenue that DP&L may ask to bill and collect. Based on the methodology the Commission has previously used to set the ceiling amount DP&L may seek in an application to increase the SSR-E, in a manner consistent with prior orders and the reduced duration of the rider. Accordingly, the Commission should reduce the ceiling amount by $9.167 million.

II. ARGUMENT

A. The Second Entry on Rehearing is unlawful and unreasonable because it, in violation of R.C. 4903.09, fails to identify the findings of fact and the reasons prompting the decision that there are additional nonquantifiable benefits of the Modified ESP that make it more favorable in the aggregate as compared to the expected results that would otherwise apply under R.C. 4928.142 ("ESP versus MRO test").

In its Application for Rehearing, IEU-Ohio sought rehearing of the Commission's unlawful and unreasonable decision to rely on five nonquantifiable "benefits" to support its finding that the Modified ESP passed the ESP versus MRO test.[13] In the Second Entry on Rehearing, the Commission takes exception to IEU-Ohio's statement that the Commission relied on five nonquantifiable benefits to find that the quantitative benefits of an MRO were outweighed by the nonquantitative benefits of the Modified ESP,

[12] *Id*. at 16.

[13] Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio at 15-24 (Oct. 4, 2013) (noting the factors listed in the ESP II Order at 50-52).

stating, "there are more qualitative benefits to the authorized ESP."[14] It then identifies the same five benefits it listed in the ESP II Order: advancement of state policies, more rapid implementation of market rates, preservation of reliable and safe service, competitive retail enhancements, and support of economic development.[15] Apart from offering a few additional details about the competitive retail enhancements it had already noted as a nonquantifiable benefit in the ESP II Order, the Commission does not identify the additional nonquantifiable benefits it relies on to support its conclusion that the Modified ESP was more favorable in the aggregate than an MRO.

Because the Commission has not identified the additional nonquantifiable benefits that support its decision, the Commission has violated R.C. 4903.09. In a contested case, R.C. 4903.09 requires the Commission to issue "findings of fact and [a] written opinion[] setting forth the reasons prompting the decision[] arrived at, based upon said findings of fact." Under this section, the Commission must explain its rationale, respond to contrary positions, and support its decision with appropriate evidence.[16] "The commission cannot decide cases on subjective belief, wishful thinking, or folk wisdom."[17] The Commission's explicit reliance on unstated nonquantifiable benefits is a patent violation of the requirement of R.C. 4903.09 that the Commission set forth its findings of fact and the reasons for its decision based on those findings of fact.

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[14] Second Entry on Rehearing at 28.

[15] *Id*.

[16] *In re Application of Columbus Southern Power Co.,* 128 Ohio St.3d 512, 519 (2011) ("*Remand Decision*").

[17] *Consumers' Counsel v. Pub. Util. Comm'n of Ohio*, 61 Ohio St.3d 396, 406 (1991) (*quoting Columbus v. Pub. Util. Comm'n of Ohio*, 58 Ohio St.2d 103, 104 (1979) (Brown, J., dissenting)).

In addition to introducing unidentified nonquantifiable benefits to support its conclusion, the Commission has not offered any reasoned basis for its determination that the Modified ESP is more favorable in the aggregate than an MRO because of the identified and unidentified nonquantifiable benefits. The Commission's Second Entry on Rehearing only states that the "dollar amounts cannot be calculated because the qualitative benefits are non-quantifiable,"[18] and never explains the method or metric it is using to determine that five (and some undisclosed additional) nonquantifiable benefits outweigh $313.8 million in benefits an MRO would provide customers relative to the Modified ESP.

R.C. 4903.09 requires more than the "trust me" reasoning on which the Commission addresses the nonquantifiable benefits of the Modified ESP in the Second Entry on Rehearing.[19] Without an objective and articulated explanation of how each of the so-called "qualitative" benefits was weighed, the Second Entry on Rehearing's subjective test prevents the parties, the Court, and the public from assessing the validity of the Commission's decision. As a result, the conclusion that the Modified ESP is more favorable in the aggregate than an MRO based on subjective and unexplained belief violates the requirements of R.C. 4903.09 that the Commission make findings of fact, base its decisions on those findings, explain its rationale, respond to contrary positions, and support its decision with appropriate evidence.

As previously demonstrated in IEU-Ohio's Application for Rehearing, the Modified ESP is $313.8 million less favorable in the aggregate than an MRO. The Second Entry on Rehearing does not provide a basis for the Commission to find

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[18] Second Entry on Rehearing at 27.

[19] *Remand Decision,* 128 Ohio St.3d at 519.

otherwise. Accordingly, the Commission should grant rehearing and find that the Modified ESP is not more favorable in the aggregate and reject the Modified ESP or substantially modify it to meet the requirements of R.C. 4928.143(C).

B. The Second Entry on Rehearing is unlawful and unreasonable because the Service Stability Rider and Service Stability Rider-Extension provide DP&L with transition revenue or its equivalent in violation of R.C. 4928.38 and the prior Commission-approved agreement of DP&L to terminate the recovery of transition charges.

C. The Second Entry on Rehearing is unreasonable because it fails to terminate the authorization of the Service Stability Rider no later than January 1, 2016, the date by which DP&L's generation assets must be transferred.

D. The Second Entry on Rehearing is unreasonable because it fails to terminate authorization for the Service Stability Rider-Extension due to the Commission's order that DP&L transfer generation assets by January 1, 2016.

Throughout the hearings on the Modified ESP, DP&L alleged that it needed the SSR to assure its "financial integrity" and that the revenue and earnings erosion it faced were a result of customer migration and low wholesale energy and capacity prices. When parties suggested the obvious solution was to divest generation assets, DP&L responded it should not do so before late 2016 due to the risk of refunding the debt earlier.[20] The Commission accepted DP&L's claim and did not require DP&L to divest generation assets before December 31, 2016. The Commission subsequently extended the date to divest and the combined duration of the SSR and SSR-E to May 31, 2017 in the September 6th Entry.[21]

[20] ESP II Order at 15.

[21] September 6th Entry at 2.

Contrary to its prior representations, DP&L recently stated that it may be able to transfer the generation assets as early as 2014.[22] In the Second Entry on Rehearing, the Commission noted the "new information" provided by DP&L was different than what it had relied upon in the ESP II Orders.[23] As a result of DP&L's disclosure, the Commission granted rehearing and advanced the date by which DP&L must divest its generation assets to January 1, 2016.[24] It further noted "that any approval of an amount for recovery through the SSR-E will take into consideration the timing and disposition of DP&L's generation assets."[25] The Commission, however, should have terminated the authorization of the SSR and SSR-E based on DP&L's recent disclosures or significantly modified its prior authorizations.

DP&L sought to justify the SSR because it needed additional revenue to produce a total company return on equity to assure its "financial integrity."[26] According to DP&L, its financial integrity was "at risk" solely because of its generation business segment. As the chief financial officer of DP&L stated, distribution and transmission revenues were adequate and would remain so.[27] The alleged threat to the financial integrity of DP&L arose from the reduced revenue DP&L was realizing from its competitive generation resources due to customer migration to competitive retail electric service ("CRES") providers and reduced prices for capacity and energy in the wholesale market

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[22] *In the Matter of the Application of The Dayton Power and Light Company for Authority to Transfer or Sell its Generation Assets,* Case No. 13-2420-EL-UNC, Supplemental Application of the Dayton Power and Light Company to Transfer or Sell its Generation Assets at 2 (Feb. 25, 2014).

[23] Second Entry on Rehearing at 17.

[24] *Id*. at 16.

[25] *Id*. at 18.

[26] DP&L Ex. 1 at 5; DP&L Ex. 4 at 3-4.

[27] Tr. Vol. XII at 2914; Tr. Vol. I at 118; Tr. Vol. 1 at 150.

supervised by PJM Interconnection LLC ("PJM") under federally approved tariffs.[28] DP&L similarly argued that the proposed switching tracker ("ST") was necessary to make up for lost revenue associated with customer migration.[29]

The Commission correctly denied authorization of the ST on the grounds that it violated the policies of the State, was anticompetitive, and would discourage the further development of the retail electric services market.[30] Although the Commission recognized that a nonbypassable retail electric generation rider violated State policy and was anticompetitive, the Commission authorized DP&L to bill and collect an additional $110 million annually through the SSR, a generation-related nonbypassable rider. The Commission also left open the door for additional charges through the SSR-E if certain conditions are satisfied and DP&L requires additional "financial stability."[31]

As IEU-Ohio demonstrated in its post-hearing briefs and first Application for Rehearing, the SSR and SSR-E will permit DP&L to bill and collect transition revenue or its equivalent in violation of R.C. 4928.38 and DP&L's settlement of its Electric Transition Plan ("ETP").[32] The arguments in those pleadings are incorporated by reference.

Since the Commission issued its Second on Entry on Rehearing, DP&L has again confirmed that the SSR and SSR-E are mechanisms that will provide DP&L transition revenue or its equivalent. In its Supplemental Application to transfer its

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[28] *Id*., DP&L Ex. 1 at Second Revised Exhibit CLJ-1.

[29] DP&L Ex. 1 at 11-12; DP&L Ex. 4 at 3 n.2.

[30] ESP II Order at 30.

[31] *Id.* at 28.

[32] Initial Brief of Industrial Energy Users-Ohio at 11-22 (May 20, 2013); Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio at 30-35 (Oct. 4, 2013).

generation assets, it requested authority to continue to collect the SSR after it transfers the generation assets. As DP&L explains in Reply Comments filed on April 7, 2014, the proceeds of the sale of the assets will not permit DP&L to reduce its corporate debt sufficiently. According to DP&L, "[g]iven the current market conditions, a third party is unlikely to be willing to buy those assets at a price that will allow DP&L to pay off a significant portion of those debts. If the assets are to be sold to a third party, then DP&L (as a transmission and distribution utility) will need the SSR to assist it to pay the remaining debt. Based on current market conditions and expectations, the only way that DP&L may be able to sell its generation assets to a third party before the Commission-imposed deadline is to continue the SSR until it is scheduled to end."[33] Thus, DP&L has confirmed that its need for the SSR is based on its belief that the amount it will realize through the sale of the generation assets is insufficient to extinguish the EDU's debt load sufficiently to prevent a harm to its "financial integrity."

The recent comments by DP&L confirm that the SSR and SSR-E will permit DP&L to bill and collect a transition revenue charge. According to DP&L's own witness, William Chambers, the purpose of a transition charge is to compensate a utility when its assets would not be competitive when subjected to market prices.[34] Based on DP&L's own assertions that the assets may not provide a return in the market to retire sufficient debt to avoid financial problems, DP&L again has demonstrated that the SSR is nothing more than a charge to collect transition revenue or its equivalent.

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[33] *DP&L Transfer Case*, Supplemental Reply Comments of The Dayton Power and Light Company at 5-6 (Apr. 7, 2014). The Commission has taken administrative notice of the application and supplemental application in Case No. 13-2420-EL-UNC. Second Entry on Rehearing at 17 n.1.

[34] Tr. Vol. II at 536-37.

Because the SSR and SSR-E authorize DP&L to collect transition revenue or its equivalent, the Commission's orders are illegal. Under R.C. 4928.38, DP&L's generation-related business must "be fully on its own in the competitive market," and the Commission "shall not authorize the receipt of transition revenues or any equivalent revenues by an electric utility." Thus, based on DP&L's confirmation that the SSR is needed because the generation assets are not competitive in the market, the Commission should grant rehearing and terminate its authorization of the SSR. The SSR-E should be terminated for the same reason, as it is a continuation of authorization of additional transition revenue in violation of R.C. 4928.38.

Additionally, the authorization of the riders violates DP&L's commitments in the Stipulation and Recommendation resolving its ETP application. As part of the Stipulation and Recommendation that was approved by the Commission, DP&L agreed that transition charges would end on December 31, 2003.[35] DP&L also agreed that its Market Development Period ("MDP") would end on December 31, 2003 based upon its agreement to forgo the recovery of transition costs beyond that date.[36] As DP&L's recent filings further demonstrate, DP&L will violate the terms of the Stipulation and Recommendation by billing and collecting additional transition revenue through the SSR and SSR-E. Accordingly, the Commission should grant rehearing and terminate authorization of the riders.

If the Commission, nonetheless, refuses to grant rehearing and terminate its authorization of the SSR and SSR-E based on DP&L's recent disclosure, it should

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[35] IEU-Ohio Ex. 3 at 23-24.

[36] The MDP was extended until December 31, 2005 through a subsequent stipulation. *In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for the Dayton Power and Light Company*, Case Nos. 02-2779-EL-ATA, *et al.*, Opinion and Order at 13 (Sep. 2, 2003).

adjust the term of the SSR. The justification for the SSR is based on the risk to the financial integrity posed by the generation assets. (The Commission made that connection even clearer in the Second Entry on Rehearing when it indicated that the timing and disposition of the generation assets would be a factor the Commission would consider when it assessed a request to increase the SSR-E.[37]) Based on the new information provided by DP&L that it can transfer those assets much sooner than it previously claimed, there is no justification for the SSR for a period any longer than it takes to transfer the generation assets. Accordingly, the Commission should grant rehearing and reduce the term of the SSR to a period no longer than the reasonable amount of time DP&L should have to divest the generation assets. At the latest, the SSR should be terminated by January 1, 2016, the date on which the Commission has ordered that the transfer of the generation assets must be completed.

Additionally, the Commission should grant rehearing and terminate the authorization of the SSR-E. As a result of the Second Entry on Rehearing, DP&L must transfer the generation assets long before the Commission would have authorized the increase in the SSR-E under the ESP II Orders. As a result, there is no reasonable basis for the Commission to continue the authorization of the SSR-E.

E. The Second Entry on Rehearing is unreasonable because it fails to reduce the amount of the total revenue that DP&L may seek to recover under the Service Stability Rider-Extension even though the term of the rider has been reduced by thirty-one days.

In the ESP II Order, the Commission authorized an SSR-E that would terminate on October 31, 2016, set the rider to 0, and stated that DP&L may seek approval of an increase in the SSR-E in a ceiling amount not to exceed $92 million for 2016 if it filed a

[37] Second Entry on Rehearing at 18.

request to increase the SSR-E at least 275 days prior to December 31, 2015, the date the SSR terminated.[38] In its September 6th Entry, the Commission reset the terms of the SSR and SSR-E. The former was to remain in effect until December 31, 2016; the latter was to be authorized for a five-month period from January 1, 2017 to May 31, 2017 if DP&L met various conditions.[39] Further, the Commission reduced the ceiling amount of the SSR-E that DP&L could request to no more than $45.8 million.[40] In the Second Entry on Rehearing, the Commission further reduced the term of the SSR-E by thirty-one days.[41] The Commission, however, did not reduce the ceiling amount. Based on the method that the Commission previously used to set the total revenue DP&L may seek to bill and collect through the SSR-E, the currently authorized ceiling amount is too high.

When the Commission established a ceiling amount that DP&L may seek in an application to increase the rider, it did not explain its math, but the ceiling amount appears to be tied to the Commission's finding that the SSR annual revenue amount should be $110 million or $9.167 million a month ($110 million/12 months=$9.167/month). Apparently applying this approach, the Commission stated that DP&L could seek $92 million over ten months ($9.167 million multiplied by ten months) in the ESP II Order.[42] When the Commission revised the Modified ESP in its September 6th Entry, the Commission reduced the ceiling amount of the SSR-E to

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[38] ESP II Order at 26-28.

[39] September 6th Entry at 2.

[40] *Id*.

[41] Second Entry on Rehearing at 16.

[42] ESP II Order at 27.

$45.8 million, again apparently basing its calculation on a monthly revenue amount of $9.167 million ($9.167 million multiplied by five months).[43]

Although the Commission reduced the term of the SSR-E by a month in the Second Entry on Rehearing, it did not adjust the ceiling amount that DP&L may seek to recover in an application to increase the rider. If the Commission had applied the same logic it used to adjust the SSR-E in its September 6th Entry to the changes it ordered in the Second Entry on Rehearing, the Commission should have reduced the ceiling amount by $9.167 million. Unless the Commission grants rehearing, the amount that DP&L may seek to recover will be even more unreasonable than it already is. Therefore, the Commission should grant rehearing and reduce the amount that DP&L may seek in an application to increase the SSR-E by $9.167 million.

III. CONCLUSION

For the reasons stated above, the Commission should grant rehearing and find that the Modified ESP should be rejected or substantially modified so that it passes the ESP versus MRO test. Based on the new information provided by DP&L that demonstrates again that the SSR and SSR-E authorize transition revenue or its equivalent, the Commission should grant rehearing and terminate its authorization of the unlawful and unreasonable nonbypassable riders. If the Commission does not terminate authorization of the riders, the Commission should restate the term of the SSR and ceiling amount of the SSR-E, as discussed above.

Respectfully submitted,

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[43] September 6th Entry at 2.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Second Application for Rehearing and Memorandum In Support of Industrial Energy Users-Ohio* was served upon the following parties of record this 17th day of April 2014, *via* electronic transmission..

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Case No(s). 12-0426-EL-SSO, 12-0427-EL-ATA, 12-0428-EL-AAM, 12-0429-EL-WVR, 12-0672-EL-RDR

Summary: App for Rehearing Second Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio electronically filed by Mr. Frank P Darr on behalf of Industrial Energy Users-Ohio