FILE

(62)

BOEHM, KURTZ & LOWRY
ATTORNEYS AT LAW
36 EAST SEVENTH STREET
SUITE 1510
CINCINNATI, OHIO 45202
TELEPHONE (513) 421-2255

TELECOPIER (513) 421-2764

VIA HAND DELIVERY

February 10, 2017

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 11th Floor
Columbus, Ohio 43215

In re: Ohio Energy Group's Supreme Court Appeal of PUCO Case Nos. 08-1094-EL-SSO, 08-1095-EL-ATA, 08-1096-EL-AAM and 08-1097-EL-UNC

Dear Sir/Madam:

Please find attached an original and two (2) copies of **THE OHIO ENERGY GROUP'S NOTICE OF APPEAL** filed today with the Ohio Supreme Court in the above-referenced matter.

Copies have been served on all parties listed on the Commission's certificate of service. Please place this document of file.

Respectfully yours,

David F. Boehm, Esq.
Michael L. Kurtz, Esq.
Jody Kyler Cohn, Esq.
BOEHM, KURTZ & LOWRY

MLKkew
Encl.
Cc: Certificate of Service

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan	)	Case No. 2017-17-0204
	)	Appeal from the Public Utilities Commission of Ohio
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs	)	Public Utilities Commission of Ohio
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code §4905.13	)	Case Nos. 08-1094-EL-SSO 08-1095-EL-ATA 08-1096-EL-AAM 08-1097-EL-UNC
In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Amended Corporate Separation Plan.	)	

2017 FEB 10 PM 2:13

NOTICE OF APPEAL OF APPELLANT, THE OHIO ENERGY GROUP

Michael L. Kurtz, Esq., Counsel of Record (0033350)
David F. Boehm, Esq. (0021881)
Jody Kyler Cohn, Esq. (0085402)
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Telephone: (513)421-2255
Facsimile: (513)421-2764
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com
jkylercohn@bkllawfirm.com

COUNSEL FOR APPELLANT, THE OHIO ENERGY GROUP

Michael DeWine (0009181)
ATTORNEY GENERAL OF OHIO

William L. Wright (0018010)
Section Chief, Public Utilities Section
Thomas W. McNamee (0017352)\
John H. Jones (0051913)
Assistant Attorney General
30 East Broad Street, 16th Floor
Columbus, Ohio 43215-3414
Telephone: (614)466-4397
Facsimile: (614)466-8764
William.wright@puc.state.oh.us
Thomas.mcnamee@puc.state.oh.us
John.jones@puc.state.oh.us

COUNSEL FOR APPELLEE, THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan	)	Case No. 2017-___
	)	Appeal from the Public Utilities Commission of Ohio
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs	)	Public Utilities Commission of Ohio
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code §4905.13	)	Case Nos. 08-1094-EL-SSO 08-1095-EL-ATA 08-1096-EL-AAM 08-1097-EL-UNC
In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Amended Corporate Separation Plan.	)	

NOTICE OF APPEAL OF APPELLANT, THE OHIO ENERGY GROUP

Appellant, The Ohio Energy Group, a party of record in the above-styled proceedings, hereby gives notice of its appeal, pursuant to R.C. 4903.11 and 4903.13 and S.Ct.Prac.R. 10.02(A), to the Supreme Court of Ohio and Appellee, the Public Utilities Commission of Ohio ("Commission"), from a Finding and Order issued August 26, 2016 (Exhibit A), an Entry on Rehearing issued October 12, 2016 (Exhibit B), and a Third Entry on Rehearing issued December 14, 2016 (Exhibit C) by Appellee in PUCO Case Nos. 08-1094-EL-SSO, 08-1095-EL-ATA, 08-1096-EL-AAM, and 08-1097-EL-UNC (collectively, the "Commission Cases").

Appellant was and is a party of record in the Commission Cases, and timely filed its Application for Rehearing of Appellee's August 26, 2016 Finding and Order in accordance with R.C. 4903.10. Appellant's Application for Rehearing was denied, with respect to the issues on appeal herein, by Appellee's Third Entry on Rehearing issued December 14, 2016.

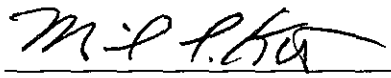
Appellant complains and alleges that Appellee's August 26, 2016 Finding and Order, October 12, 2016 Entry on Rehearing, and December 14, 2016 Third Entry on Rehearing issued in the Commission Cases are unlawful, unjust, and unreasonable in the following respects, as set forth in Appellant's Application for Rehearing.

1. The Commission misapplied R.C. 4928.143(C)(2)(a) and (b), and undermined the statutory appellate process provided for under R.C. 4903.13, by allowing The Dayton Power and Light Company to withdraw the Electric Security Plan approved in PUCO Case No. 12-426-EL-SSO and to selectively reinstate most of the Electric Security Plan approved in PUCO Case No. 08-1094-EL-SSO in its place.

Appellant preserved this issue on pages 3 through 8 of its September 26, 2016 Application for Rehearing (Exhibit D).

WHEREFORE, Appellant respectfully submits that Appellee's August 26, 2016 Finding and Order, October 12, 2016 Entry on Rehearing, and December 14, 2016 Third Entry on Rehearing in the Commission Cases are unlawful, unjust, and unreasonable and should be reversed. This case should be remanded to Appellee with instructions to correct the errors complained of herein.

Respectfully submitted,



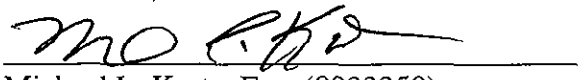
Michael L. Kurtz, Esq., Counsel of Record (0033350)
David F. Boehm, Esq. (0021881)
Jody Kyler Cohn, Esq. (0085402)
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Ph: (513) 421-2255 Fax: (513) 421-2764
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com
jkylercohn@bkllawfirm.com

February 10, 2017

COUNSEL FOR OHIO ENERGY GROUP

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF APPEAL OF THE OHIO ENERGY GROUP was served by **OVERNIGHT MAIL** (unless otherwise noted) this 10th day of February, 2017 to the parties listed below:



Michael L. Kurtz, Esq. (0033350)
David F. Boehm, Esq. (0021881)
Jody Kyler Cohn, Esq. (0085402)

COUNSEL FOR APPELLANT,
THE OHIO ENERGY GROUP

William L. Wright (0018010)
Section Chief, Public Utilities Section
Thomas W. McNamee (0017352)
John H. Jones (0051913)
Assistant Attorney General
30 East Broad Street, 16th Floor
Columbus, Ohio 43215-3414

COUNSEL FOR APPELLEE,
THE PUBLIC UTILITIES COMMISSION OF OHIO

PUCO CHAIRMAN AND COMMISSIONERS
VIA HAND DELIVERY:

Chairman Asim Z. Haque
Commissioner M. Beth Trombold
Commissioner Thomas W. Johnson
Commissioner Lynn Slaby
PUBLIC UTILITIES COMMISSION OF OHIO
180 E. Broad Street, 12th Floor
Columbus, Ohio 43215

COMMISSION REPRESENTATIVES AND PARTIES OF RECORD
VIA ELECTRONIC MAIL:

Jeffrey S. Sharkey
Charles J. Faruki (Counsel of Record)
D. Jeffrey Ireland
Jeffrey S. Sharkey
FARUKI IRELAND & COX P.L.L.
110 North Main Street, Suite 1600
Dayton, OH 45402
Email: cfaruki@ficlaw.com
djireland@ficlaw.com
jsharkey@ficlaw.com

ATTORNEYS FOR THE DAYTON POWER AND LIGHT COMPANY

Thomas McNamee
Natalia Messenger
Public Utilities Commission of Ohio
30 East Broad Street, 16th Floor
Columbus, OH 43215-3793
thomas.mcnamee@ohioattorneygeneral.gov
natalia.messenger@ohioattomeygeneral.gov

ATTORNEYS FOR PUCO STAFF

Kimberly W. Bojko
James D. Perko, Jr.
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, OH 43215
Email: bojko@carpenterlipps.com
perko@carpenterlipps.com

ATTORNEYS FOR THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP

Frank P. Darr (Counsel of Record)
Matthew R. Pritchard
McNees Wallace & Nurick
21 East State Street, 17th Floor
Columbus, OH 43215
Email: Email: fdarr@mwncmh.com
mpritchard@mwncmh.com

ATTORNEYS FOR INDUSTRIAL ENERGY USERS - OHIO

Joseph Oliker (Counsel of Record)
Matthew White
Evan Betterton
IGS Energy
6100 Emerald Parkway
Dublin, OH 43016
Email: joliker@igsenergy.com
mswhite@igsenergy.com
Ebetterton@igsenergy.com

ATTORNEY FOR IGS ENERGY

Joel E. Sechler (Counsel of Record)
Carpenter Lipps & Leland
280 N. High St., Suite 1300
Columbus, OH 43215
Email: sechler@carpenterlipps.com

Gregory J. Poulos
EnerNOC, Inc.
P.O. Box 29492
Columbus, OH 43229
Email: gpoulos@enernoc.com

ATTORNEYS FOR ENERNOC, INC.

Kevin R. Schmidt
88 East Broad Street, Suite 1770
Columbus, OH 43215
Email: schmidt@sppgrp.com

ATTORNEY FOR THE ENERGY PROFESSIONALS OF OHIO

Jeffrey W. Mayes
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Valley Forge Corporate Center
Eagleville, PA 19403
Email: jeffrey.mayes@monitoringanalytics.com

ATTORNEYS FOR MONITORING ANALYTICS, LLC AS THE INDEPENDENT MARKET MONITOR FOR PJM

Trent Dougherty (Counsel of Record)
Ohio Environmental Council
1145 Chesapeake Ave., Suite 1
Columbus, OH 43212-3449
Email: tdougherty@theoec.org

ATTORNEY FOR THE OHIO ENVIRONMENTAL COUNCIL

William J. Michael (Counsel of Record)
Kevin F. Moore
Ajay Kumar
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Email: william.michael@occ.ohio.gov
kevin.moore@occ.ohio.gov
ajay.kumar@occ.ohio.gov

ATTORNEYS FOR THE OHIO CONSUMERS' COUNSEL

Angela Paul Whitfield
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, OH 43215
Email: paul@carpenterlipps.com

ATTORNEY FOR THE KROGER CO.

Colleen Mooney
Ohio Partners for Affordable Energy
231 West Lima Street, P.O. Box 1793
Findlay, OH 45839-1793
Email: cmooney@ohiopartners.org

ATTORNEY FOR OHIO PARTNERS FOR AFFORDABLE ENERGY

Madeline Fleisher
Kristin Field
Environmental Law & Policy Center
21 West Broad Street, Suite 500
Columbus, OH 43215
Email: mfieisher@elpc.org
kfield@elpc.org

ATTORNEYS FOR THE ENVIRONMENTAL LAW & POLICY CENTER

Steven D. Lesser
James F. Lang
N. Trevor Alexander
Mark T. Keaney
Calfee, Halter & Griswold LLP
41 South High Street, 1200 Huntington Center
Columbus, OH 43215
Email: slesser@calfee.com
jlang@calfee.com
talexander@calfee.com
mkeaney@calfee.com

ATTORNEYS FOR THE CITY OF DAYTON AND HONDA OF AMERICA MFG., INC.

Michael D. Dortch
Richard R. Parsons
Kravitz, Brown & Dortch, LLC
65 East State Street, Suite 200
Columbus, OH 43215
Email: mdortch@kravitzllc.com
rparsons@kravitzllc.com

ATTORNEYS FOR NOBLE AMERICAS ENERGY SOLUTIONS LLC

Richard C. Sahli
Richard C. Sahli Law Office, LLC
981 Pinewood Lane
Columbus, OH 43230-3662
Email: rsahli@columbus.rr.com

Christopher M. Bzdok (pro hac vice)
Olson Bzdok & Howard, P.C.
420 East Front Street
Traverse City, MI 49686
chris@envlaw.com

Tony G. Mendoza, Staff Attorney (pro hac vice)
Kristin Henry, Senior Staff Attorney (pro hac vice)
Sierra Club Environmental Law Program
2101 Webster Street, 13th Floor
Oakland, CA 94612
Email: tony.mendoza@sierraclub.org
kristin.henry@sierraclub.org

ATTORNEYS FOR SIERRA CLUB

Lisa M. Hawrot
Spilman Thomas & Battle, PLLC
Century Centre Building
1233 Main Street, Suite 4000
Wheeling, WV 26003
Email: lhawrot@spilmanlaw.com

Derrick Price Williamson
Spilman Thomas & Battle, PLLC
1100 Bent Creek Blvd., Suite 101
Mechanicsburg, PA 17050
Email: dwilliamson@spilmanlaw.com

Carrie M. Harris
Spilman Thomas & Battle, PLLC
310 First Street, Suite 1100, P.O. Box 90
Roanoke, VA 24002-0090
Email: charris@spilmanlaw.com

Steve W. Chriss
Senior Manager, Energy Regulatory Analysis
Greg Tillman
Senior Manager, Energy Regulatory Analysis
Wal-Mart Stores, Inc.
2001 SE 10th Street
Bentonville, AR 72716-0550
Email: Stephen.Chriss@walmart.com
Greg.Tillman@walmart.com

ATTORNEYS FOR WAL-MART STORES EAST, LP AND SAM'S EAST, INC.

Evelyn R. Robinson
2750 Monroe Boulevard
Audubon, PA 19403
Email: evelyn.robinson@pjm.com

ATTORNEY FOR PJM INTERCONNECTION, L.L.C.

Michael J. Settineri
Stephen M. Howard
Gretchen L. Petrucci
Ilya Batikov
William A. Sieck
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, OH 43215
Email: mjsettineri@vorys.com
smhoward@vorys.com
glpetrucci@vorys.com
ibatikov@vorys.com
wasieck@vorys.com

ATTORNEYS FOR DYNEGY INC., PJM POWER PROVIDERS GROUP, AND RETAIL ENERGY SUPPLY ASSOCIATION

Michelle Grant
Dynegy Inc.
601 Travis Street, Suite 1400
Houston, TX 77002
Email: michelle.d.grant@dynegy.com

ATTORNEYS FOR DYNEGY INC.

Glen Thomas
1060 First Avenue, Suite 400
King of Prussia, PA 19406
Email: gthomas@gtpowergroup.com

Sharon Theodore
Electric Power Supply Association
1401 New York Ave. NW 11th Floor
Washington, DC
Email: stheodore@epsa.org

Laura Chappelle
201 North Washington Square, Suite 910
Lansing, MI 48933
Email: laurac@chappelleconsulting.net

ATTORNEYS FOR PJM POWER PROVIDERS GROUP

Richard L. Sites
Ohio Hospital Association
155 East Broad Street, 3rd Floor
Columbus, OH 43215-3620
Email: rick.sites@ohiohospitals.org

Matthew W. Warnock
Dylan F. Borchers
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
Email: mwarnock@bricker.com
dborchers@bricker.com

ATTORNEYS FOR THE OHIO HOSPITAL ASSOCIATION

Terrence N. O'Donnell
Raymond D. Seiler
Christine M. Pirik
William V. Vorys
Dickinson Wright PLLC
150 East Gay Street, Suite 2400
Columbus, OH 43215
Email: todollell@dickinsonwright.com
rseiler@dickinsonwright.com
cpirik@dickinsonwright.com
wvorys@dickinsonwright.com

ATTORNEYS FOR MID-ATLANTIC RENEWABLE ENERGY COALITION

John R. Doll
Matthew T. Crawford Doll, Jansen & Ford
111 West First Street, Suite 1100
Dayton, OH 45402-1156
Email: jdoll@djflawfirm.com
mcrawford@djflawfirm.com

ATTORNEYS FOR UTILITY WORKERS OF AMERICA LOCAL 175

Ellis Jacobs
Advocates for Basic Legal Equality, Inc.
130 West Second Street, Suite 700 East
Dayton, OH 45402
Email: ejacobs@ablelaw.org

ATTORNEY FOR EDGEMONT NEIGHBORHOOD COALITION

Amy B. Spiller
Jeanne W. Kingery
Elizabeth H. Watts
Duke-Energy Ohio, Inc.
139 East Fourth Street, 1303-Main
Cincinnati, OH 45202
Email: amy.spiller@duke-energy.com
jeanne.kingery@duke-energy.com
elizabeth.watts@duke-energy.com

ATTORNEYS FOR DUKE-ENERGY OHIO, INC.

Devin D. Parram
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
Email: dparram@bricker.com

ATTORNEY FOR PEOPLE WORKING COOPERATIVELY, INC.

C. David Kelley
Dana N. Whalen
Adams County Prosecutor's Office
110 West Main Street
West Union, OH 45693

ATTORNEYS FOR ADAMS COUNTY, MONROE TOWNSHIP, AND MANCHESTER LOCAL SCHOOL DISTRICT

Carl Tamm, President
Classic Connectors, Inc.
382 Park Avenue East
Mansfield, OH 44905
Email: crtamm@classicconnectors.com

Miranda Leppla, Counsel of Record
1145 Chesapeake Ave., Suite 1
Columbus, OH 43212-3449
Email: mleppla@theoec.org

ATTORNEY FOR ENVIRONMENTAL DEFENSE FUND

CERTIFICATE OF FILING

I certify that this NOTICE OF APPEAL has been filed with the docketing division of the Public Utilities Commission of Ohio in accordance with sections 4901-1-02(A) and 4901-1-36 of the Ohio Administrative Code.

Michael L. Kurtz, Esq. (0033350)
David F. Boehm, Esq. (0021881)
Jody Kyler Cohn, Esq. (0085402)

COUNSEL FOR APPELLANT, THE OHIO ENERGY GROUP

EXHIBIT A

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY TO ESTABLISH A STANDARD SERVICE OFFER IN THE FORM OF AN ELECTRIC SECURITY PLAN.	CASE NO. 08-1094-EL-SSO
IN THE MATTER OF THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY FOR APPROVAL OF REVISED TARIFFS.	CASE NO. 08-1095-EL-ATA
IN THE MATTER OF THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY FOR APPROVAL OF CERTAIN ACCOUNTING AUTHORITY.	CASE NO. 08-1096-EL-AAM
IN THE MATTER OF THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY FOR WAIVER OF CERTAIN COMMISSION RULES.	CASE NO. 08-1097-EL-UNC

FINDING AND ORDER

Entered in the Journal on August 26, 2016

I. SUMMARY

{¶ 1} The Commission grants The Dayton Power and Light Company's motion to implement the provisions, terms, and conditions of its first electric security plan until a subsequent standard service offer is authorized by the Commission.

II. PROCEDURAL HISTORY

{¶ 2} The Dayton Power and Light Company (DP&L) is a public utility as defined under R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an electric distribution utility (EDU) shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either

a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} On September 2, 2003, in Case No. 02-2779-EL-ATA, et al., the Commission issued an Opinion and Order (Order) approving a stipulation establishing a rate stabilization period and authorizing DP&L to implement a rate stabilization surcharge (RSS). The RSS allowed DP&L to recover costs associated with fuel price increases or actions taken in compliance with environmental and tax laws, regulations or court or administrative orders, and costs associated with physical security and cyber security relating to the generation of electricity from plants owned by DP&L and its affiliates. *In re The Dayton Power and Light Co.*, Case No. 02-2779-EL-ATA, et al., Opinion and Order (Sept. 2, 2003).

{¶ 5} Thereafter, on December 28, 2005, in Case No. 05-276-EL-AIR, the Commission adopted a stipulation authorizing DP&L to split its previously approved RSS into two separate components: (1) a rate stabilization charge (RSC) and (2) an environmental investment rider (EIR). The RSC was authorized to pay DP&L for costs associated with its provider of last resort (POLR) obligations, while the EIR authorized DP&L to recover environmental plant investments and incremental operations and maintenance, depreciation, and tax costs to install environmental control devices on its generating units. The Commission determined the RSC and EIR were both fair, reasonable, and supported by the record. *In re The Dayton Power and Light Co.*, Case No. 05-276-EL-AIR, Opinion and Order (Dec. 28, 2005). The Supreme Court of Ohio subsequently affirmed the Commission's decision and upheld both the RSC and the EIR. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 114 Ohio St.3d 340, 2007-Ohio-4276.

{¶ 6} By Order issued on June 24, 2009, in this case, the Commission approved a stipulation and recommendation establishing DP&L's first ESP (*ESP I*). *In re The Dayton Power and Light Co.*, Case No. 08-1094-EL-SSO, et al., (*ESP I Case*), Opinion and Order (June

24, 2009). The RSC, EIR, and a fuel and purchased power rider (fuel rider) were included in *ESP I*.

{¶ 7} Thereafter, by Order issued on September 4, 2013, in Case No. 12-426-EL-SSO, the Commission approved DP&L's proposal for a second ESP (*ESP II*) with certain modifications. Included in *ESP II* was a service stability rider (SSR) for DP&L's financial integrity. *In re The Dayton Power and Light Co.*, Case No. 12-426-EL-SSO, et al. (*ESP II Case*), Opinion and Order (Sept. 4, 2013).

{¶ 8} However, on June 20, 2016, the Supreme Court of Ohio issued an opinion reversing the decision of the Commission approving *ESP II*. *In re Application of Dayton Power & Light Co.*, --- Ohio St.3d ---, 2016-Ohio-3490, --- N.E.3d ---. Subsequently, on July 19, 2016, a mandate from the Supreme Court of Ohio was filed in the *ESP II Case* requiring the Commission to modify its order or issue a new order.

{¶ 9} On July 27, 2016, DP&L filed a motion and memorandum in support in the *ESP II Case* to withdraw its application for *ESP II*. Pursuant to R.C. 4928.143(C)(2)(a), "[i]f the Commission modifies and approves an application [for an ESP], the electric distribution utility may withdraw the application, thereby terminating it, and may file a new standard service offer under this section or a standard service offer under section 4928.142 of the Revised Code." Contemporaneous with this Order, the Commission grants DP&L's motion to withdraw *ESP II*, thereby terminating it.

{¶ 10} Pursuant to R.C. 4928.143(C)(2)(b), "[i]f the utility terminates an application * * * or if the commission disapproves an application * * *, the commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent offer is authorized pursuant to this section or section 4928.142 of the Revised Code, respectively." Accordingly, on July 27, 2016, DP&L filed a motion in this proceeding to implement *ESP I* pursuant to R.C.

4928.143(C)(2)(b). Thereafter, on August 1, 2016, DP&L filed proposed tariffs to implement *ESP I*.

{¶ 11} Memoranda contra to DP&L's motion to implement *ESP I* were filed in this case by the Ohio Manufacturers' Association (OMA), the Kroger Company (Kroger), the Ohio Consumers' Counsel (OCC), Industrial Energy Users - Ohio (IEU-Ohio), Ohio Energy Group (OEG), and the Retail Energy Supply Association (RESA). By Entry issued on August 3, 2016, the Commission requested comments from parties regarding DP&L's proposed tariffs. Comments on DP&L's proposed tariffs were filed by Ohio Partners for Affordable Energy (OPAE), Honda of America Manufacturing, Inc. (Honda), the City of Dayton (Dayton City), OCC, IEU-Ohio, Interstate Gas Supply, Inc. (IGS), RESA, Kroger, and OMA. On August 18, 2016, DP&L filed a reply to the memoranda contra and comments regarding DP&L's motion and proposed tariffs to implement *ESP I*. We note that some parties combined arguments regarding DP&L's motion to withdraw *ESP II* with arguments regarding DP&L's motion and proposed tariffs to implement *ESP I*. In this case, the Commission is only considering DP&L's motion to implement *ESP I* and the proposed tariffs. As we noted above, the Commission granted DP&L's motion to withdraw *ESP II*, thereby terminating it, in the *ESP II Case*.

III. ARGUMENTS OF THE PARTIES

{¶ 12} Pursuant to R.C. 4928.143(C)(2)(b), "[i]f the utility terminates an application * * * or if the commission disapproves an application * * *, the commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent offer is authorized." DP&L argues in its motion to implement *ESP I* that the Commission must issue an order authorizing it to implement *ESP I*, pursuant to R.C. 4928.143(C)(2)(b) until the Commission approves a subsequent SSO.

{¶ 13} OPAE, Honda, Dayton City, OCC, IEU-Ohio, IGS, RESA, Kroger, and OMA assert that the Supreme Court of Ohio's decision reversing the Commission's decision in *ESP II* should result in a rate decrease, whereas DP&L's proposed tariffs would increase rates to customers. Further, the parties aver that DP&L's proposed tariffs to implement *ESP I* should be moot because the Commission should require DP&L to continue *ESP II* without the SSR. They argue that DP&L's request to implement *ESP I* with the RSC is an attempt to circumvent the Supreme Court of Ohio's decision reversing the SSR.

{¶ 14} Honda, Dayton City, IEU-Ohio, OCC, and Kroger then argue that if the Commission authorizes DP&L to implement *ESP I*, the RSC should not be included because it expired by its own terms and should be terminated. They note that when *ESP I* was originally authorized, DP&L was providing service as a provider of last resort and the RSC was a POLR charge. However, they argue this justification for the RSC is no longer applicable because POLR service is now provided by competitive bidding process auction participants. Since DP&L no longer bears the risk of providing POLR service, they argue that it should not be permitted to collect the RSC. Further, the parties assert that the RSC would unlawfully authorize DP&L to collect transition revenues or equivalent revenues, much like the SSR that was reversed by the Supreme Court of Ohio. *In re Application of Dayton Power & Light Co.*, ---Ohio St.3d---, 2016-Ohio-3490, ---N.E.3d---. However, in its reply, DP&L argues the RSC should be implemented as a provision, term, or condition of *ESP I* for three reasons: (1) R.C. 4928.143(C)(2)(b) requires the Commission to continue the provisions, terms, and conditions of *ESP I*, (2) no party sought rehearing of the Commission's Order in the *ESP I Case* so they are barred from re-litigating the RSC due to the doctrines of res judicata and collateral estoppel, and (3) the RSC is a permissible charge authorized by the Commission pursuant to R.C. 4928.143(B)(2)(d).

{¶ 15} Similarly, OCC argues the Commission should not authorize DP&L to collect the EIR. OCC notes the EIR was authorized in *ESP I* to compensate DP&L for investments in its generation units to address United States Environmental Protection Agency (US

EPA) regulations. OCC asserts that DP&L is already collecting the EIR through base generation rates. Therefore, OCC avers that implementing the EIR would authorize DP&L to charge customers twice for the same service. Further, OCC asserts the EIR would unlawfully authorize DP&L to collect transition revenues or equivalent revenues, much like the RSC or the SSR that was reversed by the Supreme Court of Ohio. *In re Application of Dayton Power & Light Co.*, ---Ohio St.3d---, 2016-Ohio-3490, ---N.E.3d---.

{¶ 16} IEU-Ohio, OMA, and Kroger argue that if the Commission authorizes DP&L to implement *ESP I*, then the Commission should require DP&L to implement the provisions, terms, and conditions of *ESP I* as they were originally authorized. The parties argue that R.C. 4928.143(C)(2)(b) requires DP&L to implement *ESP I* exactly as it was. To do this, IEU-Ohio initially asserts the Commission should direct DP&L to delete its transmission cost recovery rider-bypassable (TCRR-B) and transmission cost recovery rider-nonbypassable (TCRR-N) tariff sheets to implement just the bypassable transmission cost recovery rider authorized in *ESP I*. IEU-Ohio then argues the Commission should direct DP&L to remove its request for shared savings from its application in Case No. 16-329-EL-RDR to update and reduce its energy efficiency rider rates. Further, IEU-Ohio asserts the Commission should direct DP&L to delete the storm cost recovery rider tariff sheet and the reconciliation rider tariff sheet. However, IGS, RESA, and OCC support maintaining some provisions of *ESP II* and support maintaining the integrity of the current market structure, including maintaining competitively bid generation rates and the TCRR-N.

{¶ 17} In its reply, DP&L argues that its proposed tariffs to maintain certain aspects of *ESP II* and market structure will minimize customer and market impacts. DP&L asserts that the parties ignore the following key points: (1) competitive bidding has occurred in DP&L's service territory, and parties have already entered into binding contracts in reliance upon that process, (2) several riders in *ESP I* were not impacted by *ESP II*, and (3) DP&L's rates would actually be significantly higher if new rates were implemented exactly

as they were in *ESP I* in 2013. When DP&L filed its proposed tariffs, it noted that it would honor existing contracts with winning competitive bid suppliers through the end of their term in May 2017 and maintain current PJM obligations for all suppliers. Therefore, DP&L intends for its tariffs to reflect the competitive bid rate in order to minimize rate impacts to customers.

{¶ 18} Finally, Honda and Dayton City request clarification concerning DP&L's calculation of fuel costs under the fuel rider and the continuation of the competitive bidding process. Honda and Dayton City also request the Commission establish a procedural schedule in this matter.

IV. COMMISSION CONCLUSION

{¶ 19} The Commission notes that on December 28, 2005, in Case No. 05-276-EL-AIR, the Commission adopted a stipulation authorizing DP&L to split its previously approved RSS into two separate components: the RSC and the EIR. The RSC was authorized to pay DP&L for costs associated with its POLR obligations, while the EIR authorized DP&L to recover environmental plant investments and incremental operations and maintenance, depreciation, and tax costs to install environmental control devices on its generating units. The Commission determined both the RSC and EIR were fair, reasonable, and supported by the record. *In re The Dayton Power and Light Co.*, Case No. 05-276-EL-AIR, Opinion and Order (Dec. 28, 2005). Thereafter, the Supreme Court of Ohio affirmed our decision. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 114 Ohio St.3d 340, 2007-Ohio-4276. By Order issued on June 24, 2009, in this case, the Commission approved a stipulation establishing *ESP I* and continuing the RSC and EIR as terms of *ESP I*. *ESP I Case*, Opinion and Order (June 24, 2009). Further, along with the RSC and EIR, the Commission authorized a fuel and purchased power rider, a storm cost recovery rider, an energy efficiency rider, and a transmission cost recovery rider. No party appealed the Commission's decision approving *ESP I*.

{¶ 20} Pursuant to R.C. 4928.143(C)(2)(b), if the utility terminates an ESP, the Commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent SSO. We note that we have granted DP&L's motion to withdraw *ESP II*, thereby terminating it. Accordingly, with the termination of *ESP II*, the Commission finds that DP&L shall implement the provisions, terms, and conditions of *ESP I*, along with any expected increases or decreases in fuel costs, pursuant to R.C. 4928.143(C)(2)(b), until a subsequent SSO is authorized.

{¶ 21} As a preliminary matter, the Commission grants DP&L's proposals to recover the costs of energy and capacity obtained through the competitive bid process to serve non-shopping customers through base generation rates (the "standard offer" tariff sheet) and to set the fuel rider to zero, excluding amounts being reconciled from prior periods. R.C. 4928.143(C)(2)(b) requires the Commission to adjust for any expected increases or decreases in fuel costs from those contained in the previous SSO. We find that R.C. 4928.143(C)(2)(b) allows adjustment for purchased power as well as fuel. In this case, all of DP&L's non-shopping customers are being served by energy and capacity purchased from the wholesale markets through the competitive bidding process. It is long standing regulatory practice for "fuel" and "purchased power" to be used interchangeably. For example, DP&L's existing fuel rider specifically includes both fuel and purchased power costs. Therefore, the Commission finds that DP&L's proposed tariffs should be approved as it relates to honoring existing contracts with winning competitive bid suppliers and maintaining current PJM obligations for all suppliers. This will maintain the integrity of the competitive bid process and allow non-shopping customers to continue to benefit from market-based rates.

{¶ 22} With respect to the EIR, the Commission notes the EIR is a bypassable rider, and thus, was part of the rate offered to non-shopping customers in *ESP I*. The EIR was authorized in *ESP I* to allow DP&L to recover environmental plant investments and incremental operations and maintenance, depreciation, and tax expenses to install

environmental control devices on its generating units to comply with US EPA regulations. However, when the EIR was originally authorized, those generating units were being used to provide public utility service to non-shopping customers as part of the standard service offer. With the implementation of the competitive bidding process to procure retail electric generation from wholesale suppliers, those generating units and their associated environmental controls are not currently being used to provide public utility service to non-shopping customers under the standard service offer. Therefore, while the EIR is a provision, term, or condition of *ESP I*, the environmental controls for which the EIR recovered DP&L's investments are no longer used and useful in rendering public utility service to customers. Accordingly, similar to the fuel rider, the EIR should be approved as a provision, term, or condition of *ESP I*, but should be set to zero. We also note the SSO for non-shopping customers in *ESP I* included base generation rates, the EIR, and the fuel rider. Thus, the energy and capacity obtained by the competitive bidding process should replace the EIR, as well as base generation rates and the fuel rider. As proposed by DP&L, the costs of such energy and capacity will be recovered through the standard offer tariff.

{¶ 23} The RSC is a nonbypassable POLR charge to allow DP&L to fulfill its POLR obligations. While POLR service is currently provided by competitive bidding process auction participants, DP&L retains its obligation, over the long term, to serve as provider of last resort. We note there are no further competitive auctions scheduled to procure energy and capacity for non-shopping customers after May 31, 2017. R.C. 4928.141 provides that the EDU must provide consumers with an SSO of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. Therefore, pursuant to R.C. 4928.141, DP&L maintains a long-term obligation to serve as provider of last resort, even while POLR services are being provided by competitive bidding auction participants in the short-term. Further, we have already determined the RSC is a valid provision, term, or condition of *ESP I*. The Commission stated in its December 19, 2012, Entry in this case, "[t]he Commission finds that the provisions, terms, and conditions of the ESP include the RSC.

As one of the provisions, terms, or conditions of the current ESP, the RSC should continue with the ESP until a subsequent standard service offer is authorized." *ESP I Case*, Entry (Dec. 19, 2012). On February 19, 2013, the Commission issued an Entry on Rehearing upholding its determination that the RSC is a provision, term, or condition of *ESP I*. *ESP I Case*, Entry on Rehearing (Feb. 19, 2013). No party appealed this ruling by the Commission. Accordingly, the Commission has already determined the RSC is a provision, term, or condition of *ESP I*; therefore, we find the parties' arguments both lack merit and are barred by the doctrines of res judicata and collateral estoppel.

{¶ 24} Further, the Commission finds the elimination of the transmission cost recovery riders, TCRR-B and TCRR-N, would unduly disrupt both the competitive bidding process supplying the SSO and individual customer contracts with suppliers of competitive retail electric service (CRES Providers). The wholesale suppliers for SSO customers rely upon DP&L to acquire certain transmission services under the TCRR-N and may not have included the costs of these transmission services in their bids to serve SSO customers. Thus, elimination of the TCRR-N may severely disrupt existing contracts for wholesale suppliers and discourage future participation in the competitive bidding process. Preservation of the integrity of the competitive bidding process is of the highest priority for the Commission. Likewise, CRES Providers also rely upon DP&L to procure certain transmission services under the TCRR-N and could be forced to terminate or renegotiate their contracts with their customers if the TCRR-N were eliminated. Further, if a mechanism like the TCRR-N is eliminated in this case and then restored in DP&L's next SSO, contracts between CRES Providers and individual customers could be further disrupted by the subsequent regulatory change. Accordingly, we will not accept IEU-Ohio's recommendation to eliminate the TCRR-N and TCRR-B at this time.

{¶ 25} However, the Commission understands that a number of mercantile customers could benefit by shopping for all transmission services. The Commission encourages such customers, and IEU-Ohio, to work with Staff to determine whether a

filing under R.C. 4905.31 could enable these customers to receive an exemption from the TCRR-N and to shop for transmission services.

{¶ 26} We also disagree with IEU-Ohio's claim that the Commission should direct DP&L to delete its storm cost recovery rider from DP&L's tariffs. The stipulation approved by the Commission in the *ESP I Case* specifically authorized DP&L to request a separate rider to recover the costs of storm damage. Therefore, the storm cost recovery rider is a provision, term or condition of *ESP I*, and DP&L should be permitted to continue its current storm cost recovery rider. *ESP I Case*, Opinion and Order (June 24, 2009) at 5-6.

{¶ 27} Likewise, the Commission disagrees with IEU-Ohio's argument that the Commission should direct DP&L to reduce the rates of the energy efficiency rider to the amounts recovered under *ESP I* and to remove its request for shared savings from DP&L's application in Case No. 16-329-EL-RDR. R.C. 4928.143(C)(2)(b) does not require the Commission to reestablish the "rates" of the previous SSO; the statute requires the Commission to continue the "provisions, terms, and conditions" of the previous SSO. Further, we note the stipulation in the *ESP I Case* specifically allows DP&L to implement an energy efficiency rider to recover costs related to programs implemented to achieve compliance with the statutory energy efficiency and peak demand reduction standards. *ESP I Case*, Opinion and Order (Sept. 4, 2013) at 5. Moreover, we find that the issue of whether DP&L should receive shared savings is better resolved in Case No. 16-329-EL-RDR.

{¶ 28} In conclusion, the Commission finds that DP&L's motion to implement *ESP I* should be granted. Therefore, within seven days, DP&L shall file final tariffs, consistent with this Finding and Order, subject to review by the Commission. Finally, the Commission finds that no hearing is necessary in this matter.

V. ORDER

{¶ 29} It is, therefore,

{¶ 30} ORDERED, That DP&L's motion to implement previously authorized rates be granted. It is, further,

{¶ 31} ORDERED, That, within seven days, DP&L file, in final form, two complete copies of its tariff, consistent with this Finding and Order. One copy shall be filed in this case docket and one copy in its TRF docket. It is, further,

{¶ 32} ORDERED, That the effective date of the new tariff shall be a date not earlier than the date of this Finding and Order, and the date upon which the final tariffs are filed with the Commission. It is, further,

{¶ 33} ORDERED, That nothing in this Finding and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 34} ORDERED, That DP&L notify all customers regarding the availability of the new tariffs via a bill message, via a bill insert, or via a separate mailing within 30 days of the effective date of the tariffs. A copy of the customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least 10 days prior to its distribution to customers. It is, further,

{¶ 35} ORDERED, That a copy of this Finding and Order be served upon each party of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

Lynn Slaby

M. Beth Trombold

Thomas W. Johnson

M. Howard Petricoff

GAP/BAM/sc/vrm

Entered in the Journal
AUG 26 2018

Barcy F. McNeal
Secretary

EXHIBIT B

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY TO ESTABLISH A STANDARD SERVICE OFFER IN THE FORM OF AN ELECTRIC SECURITY PLAN.	CASE NO. 08-1094-EL-SSO
IN THE MATTER OF THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY FOR APPROVAL OF REVISED TARIFFS.	CASE NO. 08-1095-EL-ATA
IN THE MATTER OF THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY FOR APPROVAL OF CERTAIN ACCOUNTING AUTHORITY.	CASE NO. 08-1096-EL-AAM
IN THE MATTER OF THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY FOR WAIVER OF CERTAIN COMMISSION RULES.	CASE NO. 08-1097-EL-UNC

ENTRY ON REHEARING

Entered in the Journal on October 12, 2016

I. SUMMARY

{¶ 1} The Commission grants the applications for rehearing for further consideration of the matters specified in the applications for rehearing.

II. DISCUSSION

{¶ 2} The Dayton Power and Light Company (DP&L) is a public utility as defined under R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} On August 26, 2016, the Commission issued an Order granting DP&L's motion to implement previously authorized rates. Additionally, the Commission directed DP&L to file tariffs to implement the Commission's Order.

{¶ 4} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

{¶ 5} On September 23, 2016, and on September 26, 2016, applications for rehearing were filed by Ohio Partners for Affordable Energy, Edgemont Neighborhood Coalition, Industrial Energy Users - Ohio, Ohio Energy Group, the Ohio Manufacturers' Association, the Kroger Company, and the Ohio Consumers' Counsel. Thereafter, on October 3, 2016, DP&L filed a memorandum contra to the applications for rehearing.

{¶ 6} The Commission finds that the applications for rehearing should be granted for the limited purpose of further consideration of the matters specified in the applications for rehearing. We find that sufficient reason has been set forth by the parties to warrant further consideration of the matters raised in the applications for rehearing.

III. ORDER

{¶ 7} It is, therefore,

{¶ 8} ORDERED, That the applications for rehearing be granted for further consideration of the matters specified in the applications for rehearing. It is, further,

{¶ 9} ORDERED, That a copy of this Entry on Rehearing be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

Lynn Slaby

M. Beth Trombold

Thomas W. Johnson

M. Howard Petricoff

BAM/sc

Entered in the Journal

OCT 12 2016

Barcy F. McNeal

Barcy F. McNeal
Secretary

EXHIBIT C

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY TO ESTABLISH A STANDARD SERVICE OFFER IN THE FORM OF AN ELECTRIC SECURITY PLAN.	CASE NO. 08-1094-EL-SSO
IN THE MATTER OF THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY FOR APPROVAL OF REVISED TARIFFS.	CASE NO. 08-1095-EL-ATA
IN THE MATTER OF THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY FOR APPROVAL OF CERTAIN ACCOUNTING AUTHORITY.	CASE NO. 08-1096-EL-AAM
IN THE MATTER OF THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY FOR WAIVER OF CERTAIN COMMISSION RULES.	CASE NO. 08-1097-EL-UNC

THIRD ENTRY ON REHEARING

Entered in the Journal on December 14, 2016

I. SUMMARY

{¶ 1} The Commission finds that the assignments of error raised in the applications for rehearing lack merit. Accordingly, the Commission denies the applications for rehearing.

II. PROCEDURAL HISTORY

{¶ 2} The Dayton Power and Light Company (DP&L) is a public utility as defined under R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an electric distribution utility (EDU) shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer in

accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} By Opinion and Order (Order) issued on June 24, 2009, in this case, the Commission adopted the stipulation and recommendation of the parties (Stipulation) to establish DP&L's first ESP (*ESP I*). Included as terms, conditions, or charges in *ESP I* we are a rate stabilization charge (RSC), an environmental investment rider (EIR), and a fuel and purchased power rider. Thereafter, by Entry issued on December 19, 2012, the Commission continued *ESP I*, including the RSC, until a subsequent SSO could be authorized.

{¶ 5} By Order issued on September 4, 2013, the Commission modified and approved DP&L's application for a second ESP (*ESP II*). Included in *ESP II* was a service stability rider (SSR) for DP&L's financial integrity. *In re The Dayton Power and Light Co.*, Case No. 12-426-EL-SSO, et al. (*ESP II Case*), Opinion and Order (Sept. 4, 2013). On June 20, 2016, the Supreme Court of Ohio issued an opinion reversing the decision of the Commission approving *ESP II* and disposing of all pending appeals. *In re Application of Dayton Power & Light Co.*, ___Ohio St.3d___, 2016-Ohio-3490, ___N.E.3d___. Subsequently, on July 16, 2016, a mandate from the Supreme Court of Ohio was filed in the *ESP II Case* requiring the Commission to modify its order or issue a new order. Therefore, on August 26, 2016, in the *ESP II Case*, the Commission modified *ESP II* pursuant to the Court's directive and then granted DP&L's application to withdraw *ESP II*, thereby terminating it.

{¶ 6} R.C. 4928.143(C)(2)(b) provides that if the utility terminates an application for an ESP or if the Commission disapproves an application, the Commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent SSO, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent SSO is authorized. By Order issued on August 26, 2016, in this case, the Commission granted DP&L's application to implement its most recent SSO, which is *ESP I*, pursuant to R.C. 4928.143(C)(2)(b). Additionally, the Commission directed DP&L to file tariffs to implement *ESP I*.

{¶ 7} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

{¶ 8} On September 23 and 26, 2016, applications for rehearing were filed by Ohio Partners for Affordable Energy, Edgemont Neighborhood Coalition (OPAE Edgemont), Industrial Energy Users - Ohio (IEU-Ohio), Ohio Energy Group (OEG), the Ohio Manufacturers' Association (OMA), the Kroger Company (Kroger), and the Ohio Consumers' Counsel (OCC) regarding the Commission's August 26, 2016, Order granting DP&L's application to implement *ESP I* pursuant to R.C. 4928.143(C)(2)(b). Thereafter, on October 3 and 6, 2016, DP&L filed memoranda contra to the applications for rehearing.

{¶ 9} By Entry issued on October 12, 2016, the Commission granted rehearing for the limited purpose of further consideration of the matters raised in the applications for rehearing. We found that sufficient reason was set forth by the parties to warrant further consideration of the matters raised in the applications for rehearing.

{¶ 10} Thereafter, on November 14, 2016, OCC filed an application for rehearing regarding the Commission's granting of rehearing for the limited purpose of further consideration of the matters specified in the applications for rehearing. On November 25, 2016, DP&L filed its memorandum contra to OCC's application for rehearing.

III. DISCUSSION

{¶ 11} Initially, the Commission notes that many of the assignments of error raised by the parties are not relevant to this case. Pursuant to R.C. 4928.143(C)(2)(a), "If the Commission modifies and approves an application [for an electric security plan], the electric distribution utility may withdraw the application, thereby terminating it, and may file a new standard service offer * * * ". Accordingly, in the *ESP II Case*, DP&L withdrew its application for *ESP*

II, which was granted by the Commission, thereby terminating *ESP II*. *ESP II Case*, Finding and Order (Aug. 26, 2016).

{¶ 12} Additionally, pursuant to R.C. 4928.143(C)(2)(b), "[i]f the utility terminates an application * * * or if the commission disapproves an application * * *, the commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent offer is authorized pursuant to this section or section 4928.142 of the Revised Code, respectively." Accordingly, on July 27, 2016, DP&L filed a motion in this proceeding to implement *ESP I* pursuant to R.C. 4928.143(C)(2)(b), and then filed proposed tariffs. Therefore, in this case, the Commission is only considering rehearing on its decision to implement *ESP I* pursuant to R.C. 4928.143(C)(2)(b). Assignments of error related to DP&L's withdrawal of *ESP II* and the Commission's granting of DP&L's withdrawal, thus terminating *ESP II*, are not relevant to this case and should have been raised in the *ESP II Case*. Likewise, assignments of error related to the service stability rider (SSR) are not relevant to this proceeding. The SSR was authorized in *ESP II* and all issues regarding the SSR should be raised in that proceeding.

{¶ 13} The assignments of error that are not relevant in this case include OPAE Edgemont's first assignment of error, in which OPAE Edgemont argues the Commission unlawfully acted outside the scope of its authority in granting DP&L's application to withdraw *ESP II*. Additionally, three of the assignments of error raised by OEG are moot or otherwise not relevant in this proceeding. First, OEG argues that the Commission erred by finding the Supreme Court of Ohio reversed the Commission's entire decision in the *ESP II Case*. Second, OEG asserts the Commission erred by allowing DP&L to withdraw and terminate *ESP II*. Third, OEG argues the Commission erred by failing to address OEG's request for a refund of the SSR. Each of these three assignments of error are regarding the Commission's decision to grant DP&L's withdrawal of *ESP II* pursuant to R.C. 4928.143(C)(2)(a).

{¶ 14} Finally, two of the assignments of error raised by IEU-Ohio are moot or otherwise not relevant in this proceeding. First, IEU-Ohio argues the Commission's Order was unlawful or unreasonable for failing to address IEU-Ohio's argument that the Commission should initiate a proceeding to refund the SSR. Second, IEU-Ohio asserts the Commission's Order was unlawful and unreasonable for failing to initiate a proceeding to account for amounts billed and collected under the SSR. Each of these assignments of error relate to *ESP II* and the SSR. Neither *ESP II* nor the SSR were litigated or considered in this case. Accordingly, rehearing is denied on these assignments of error for being moot or otherwise not relevant in this proceeding.

A. Assignment of Error 1

{¶ 15} OEG, OMA, and Kroger argue the Commission misapplied R.C. 4928.143(C)(2)(b) by allowing DP&L to recover competitive bid process energy and capacity costs through base generation rates and setting the fuel rider to zero, excluding amounts being reconciled from prior periods. OMA asserts it supports the policy rationale for the Commission's decision to maintain the market-based framework, but is concerned the Order sets a dangerous legal precedent that will enable utilities in future cases to pick provisions across multiple ESPs that they find most favorable.

{¶ 16} DP&L argues the parties ignore several key points: 1) competitive bidding has occurred in DP&L's service territory, and parties have entered into contracts in reliance upon that process; 2) several riders are not impacted by *ESP II* (e.g., Universal Service Rider, Energy Efficiency Rider, Alternative Energy Rider); and 3) DP&L's rates would actually be significantly higher if new rates were implemented exactly how they existed in 2013. Therefore, DP&L argues, granting rehearing on this assignment of error would not be in the public interest. DP&L asserts the Commission should reject this assignment of error. According to DP&L, granting rehearing on this assignment of error would disrupt the competitive market and related contracts, and result in rates that are significantly higher than those proposed by DP&L.

CONCLUSION

{¶ 17} The Commission finds rehearing on these assignment of error should be denied. R.C. 4928.143(C)(2)(b) provides that if the utility terminates an application for an ESP, the Commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent SSO, along with any expected increases or decreases in fuel costs from those contained in that offer. *ESP I* is DP&L's most recent SSO, and included in *ESP I* is a "bypassable fuel recovery rider to recover retail fuel and purchased power costs, based on least cost fuel and purchased power being allocated to retail customers." Stipulation (Feb. 24, 2009) at 3. Therefore, allowing DP&L to recover the cost of fuel and purchased power, including energy and capacity obtained though the competitive bidding process, is consistent with the provisions of *ESP I*. Moreover, the Commission authorized DP&L to recover the costs of energy and capacity obtained through the competitive bid process to serve non-shopping customers through base generation rates rather than the fuel and purchased power rider in order to minimize any rate impacts due to the different rate designs implemented in DP&L's legacy base generation rates and the fuel and purchased power rider.

{¶ 18} R.C. 4928.02(G) provides that it is the policy of the state of Ohio to recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment. We find that such flexible regulatory treatment is absolutely necessary in this instance to protect the public interest, maintain reasonable rates, ensure the integrity of existing contracts, and otherwise protect Ohio's competitive bid process for procuring wholesale power. Accordingly, we refuse to take any action which threatens the integrity of the competitive bid process.

{¶ 19} Further, all of DP&L's non-shopping customers are being served by energy and capacity purchased from the wholesale markets through the competitive bid process. DP&L customers benefit from the lesser rates resulting from the competitive bid process, and we find that the process should be maintained. We held in our Order, and now affirm, that DP&L's proposed tariffs should be approved as the proposed tariffs honor existing contracts

with winning competitive bid suppliers and maintain current PJM obligations for all suppliers, for the benefit of customers. Accordingly, rehearing on this assignment of error is denied.

B. Assignment of Error 2

{¶ 20} OEG, OMA, Kroger, and IEU-Ohio argue the Commission misapplied R.C. 4928.143(C)(2)(b) by retaining the transmission cost recovery riders from *ESP II*. In *ESP II*, the Commission authorized a bypassable transmission cost recovery rider (TCRR-B) and a nonbypassable transmission cost recovery rider (TCRR-N). IEU-Ohio asserts that regardless of the merit of the rationales offered by the Commission, the Commission is without authority to authorize the continuation of the TCRR-N now that *ESP II* has been terminated. IEU-Ohio avers the Commission is required, pursuant to R.C. 4928.143(C)(2)(b), to restore the fully bypassable TCRR-B, which was one of the provisions, terms, and conditions of *ESP I*. Further, IEU-Ohio argues the Commission is required to comply with its rules, including Ohio Adm.Code 4901:1-36-04(B), which requires transmission riders to be fully bypassable. Finally, IEU-Ohio asserts the TCRR-N is preempted by federal law because it blocks customers from taking service directly under PJM's open access transmission tariff (OATT) and because costs are not allocated and billed in the same manner as required by PJM's OATT.

{¶ 21} DP&L argues the parties ignore that existing competitive retail electric service (CRES) supply contracts, existing SSO auction-winning bids, and related Master SSO Supply Agreements are all premised upon the TCRR-N/TCRR-B structure that was put in place in *ESP II*. These contracts and winning bids assume that transmission costs will be incurred and recovered by DP&L through the TCRR-N. DP&L asserts that if the Commission were to eliminate the TCRR-N, ample lead time would be required to prepare and adjust existing and new contracts.

CONCLUSION

{¶ 22} The Commission finds that rehearing on this assignment of error should be denied. The Revised Code requires the Commission to both return DP&L to *ESP I* and to recognize the emergence of competitive electricity markets through flexible regulatory treatment. We note that R.C. 4928.143(C)(2)(b) requires DP&L to return to *ESP I*, including the terms, conditions, and charges thereof. However, *ESP I* does not prohibit a nonbypassable transmission cost recovery rider. The Stipulation in this case expressly provides that DP&L may apply to the Commission for approval of separate rate riders to recover "TCRR costs" and "RTO costs not recovered in the TCRR." Stipulation (Feb. 24, 2009) at 11. The Stipulation does not address whether such riders should be bypassable or non-bypassable. Therefore, we find that the TCRR-N is authorized by the Stipulation in *ESP I*.

{¶ 23} Further, R.C. 4928.02(G) is clear that the Commission must "recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment." The Commission understands that terminating the TCRR-N could have a disruptive effect on electricity markets and that existing CRES supply contracts were entered into with the expectation that the TCRR-N would continue for the duration of *ESP II*. The TCRR-N was authorized for the duration of *ESP II*, so CRES providers and participants in the competitive bidding process to serve the SSO had a reasonable expectation that the TCRR-N would continue until May 31, 2017. DP&L and IGS each point out that existing CRES contracts, existing SSO auction winning bids, and related Master SSO Supply Agreements are all premised upon the structure of having a non-bypassable transmission cost recovery rider. Those contracts and winning bids assume that transmission costs will be recovered by DP&L through the TCRR-N until May 31, 2017.

{¶ 24} Finally, we find that some of the additional arguments raised by IEU-Ohio lack merit. IEU-Ohio argues the Commission violated its rules, including Ohio Adm.Code 4901:1-36-04(B), which requires transmission riders to be fully bypassable. However, Ohio Adm.Code 4901:1-36-02(B) expressly provides that the Commission may, upon an application

or a motion filed by a party, waive any requirement of the chapter, other than a requirement mandated by statute, for good cause shown. Regarding the TCRR-N, such a motion was made by DP&L and granted by the Commission. *ESP II; In re The Dayton Power and Light Co. for Waiver of Certain Commission Rules,* Case No. 12-429-EL-WVR. Additionally, IEU-Ohio argues the TCRR-N is preempted by federal law because it blocks customers from taking service under PJM's open access transmission tariff (OATT) and costs are not allocated and billed in the same manner as required by PJM's OATT. However, the TCRR-N never actually prohibited customers from obtaining transmission services from PJM's OATT.

C. Assignment of Error 3

{¶ 25} OMA, Kroger, OPAE Edgemont, OCC, IEU-Ohio, and OEG argue the Commission's Order is unjust or unreasonable because it authorizes DP&L to collect the RSC. They argue that through the RSC, DP&L will unlawfully collect the equivalent of transition revenues, much like the SSR in *ESP II* that was overturned by the Court. The parties assert the Commission should follow the holdings from the Court's decisions to strike down unlawful stability charges. They argue that these stability charges allow utilities to unlawfully collect the equivalent of transition revenues, in violation of R.C. 4928.38. OEG asserts that the Court's citation to the AEP Ohio ESP case can have only one meaning: that DP&L's SSR, which is a financial integrity charge equivalent to AEP Ohio's RSR, provides DP&L with unlawful transition revenue and is barred by R.C. 4928.38. Similarly, OCC accuses the Commission of ignoring the Court's opinion.

{¶ 26} OMA and Kroger then assert that DP&L's provider of last resort (POLR) obligations are not a legitimate justification for the RSC. They argue that since DP&L is not currently providing POLR services, it should not be permitted to collect costs that are intended to compensate it for providing that function. OMA and Kroger argue the Commission's justification of the RSC as a legitimate POLR charge is misplaced. They argue that auction participants provide POLR services because of their commitment to supply power through the competitive bid process. OMA and Kroger aver that if DP&L is not

currently providing the POLR function, it should not be permitted to collect costs that are intended to compensate it for providing that function.

{¶ 27} OPAE Edgemont argues the ESP, including the RSC, expired on December 31, 2012, pursuant to the terms of the Stipulation. *ESP I*, Opinion and Order at 5. Therefore, since the RSC expired, it is no longer a term, condition, or charge in *ESP I*.

{¶ 28} DP&L argues that the RSC is a lawful charge, agreed to by the parties, and implemented by the Commission. DP&L asserts that R.C. 4928.143(C)(2)(b) requires the Commission to implement "the provisions, terms, and conditions of the utility's most recent standard service offer." There is no dispute that *ESP I* is DP&L's most recent SSO. Further, there is no dispute that the RSC was a term of *ESP I*. Therefore, DP&L argues, the Commission properly authorized DP&L to implement the RSC as a term of its most recent SSO, pursuant to R.C. 4928.143(C)(2)(b).

{¶ 29} DP&L then argues that the parties' arguments are barred by R.C. 4903.10(B) and the doctrines of res judicata and collateral estoppel. DP&L notes that no party in this case sought rehearing of the Commission decision approving the Stipulation, and no party appealed the decision. It is well settled, and expressly provided in R.C. 4903.10(B), that a party cannot challenge a decision if it did not seek rehearing of that decision. Further, the intervenors arguments are also barred by the doctrines of collateral estoppel (issue preclusion) and res judicata (claim preclusion). "Claim preclusion prevents subsequent actions, by the same parties or their privies, based upon any claim arising out of a transaction that was the subject matter of a previous action. Where a claim could have been litigated in the previous suit, claim preclusion also bars subsequent actions on that matter." *O'Nesti v. DeBartolo Realty Corp.*, 113 Ohio St.3d 59, 2007-Ohio-1102, 862 N.E.2d 803, ¶6 (2007). "Issue preclusion, on the other hand, serves to prevent relitigation of any fact or point that was determined by a court of competent jurisdiction in a previous action between the same parties or their privies. Issue preclusion applies even if the causes of action differ." *O'Nesti* at ¶7. "The doctrine of res judicata requires a plaintiff to present every ground for relief in the first

action, or be forever barred from asserting it." *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 382, 653 N.E.2d 226 (1995). Further, "the doctrine of res judicata is applicable to defenses which, although not raised, could have been raised in the prior action." *Johnson's Island, Inc. v. Bd. of Twp. Trustees*, 69 Ohio St.2d 241, 246, 431 N.E.2d 672 (1982). DP&L asserts that collateral estoppel applies to arguments that could have been brought in an earlier action. In this case, R.C. 4928.39 was in effect at the time *ESP I* was filed and litigated, and parties could have raised their arguments at the time but did not. DP&L asserts that since no party challenged the Commission's decision in *ESP I*, the intervenors are barred by the doctrines of res judicata and collateral estoppel from challenging the lawfulness of the RSC.

{¶ 30} OMA and Kroger assert that the doctrines of res judicata and collateral estoppel do not apply here. They argue that where "there has been a change in the facts in a given action which either raises a new material issue, or which would have been relevant to the resolution of a material issue involved in the earlier action, neither the doctrine of res judicata nor the doctrine of collateral estoppel will bar litigation of that issue in a later action." *State ex. rel. Westchester Estates, Inc. v. Bacon*, 61 Ohio St.2d 42, 45, 529 N.E.2d 1255 (1988). Similarly, OCC argues the Commission's Order is unjust or unreasonable because the Commission held that parties were precluded from re-litigating the RSC due to the doctrines of res judicata and collateral estoppel.

CONCLUSION

{¶ 31} The Commission finds the arguments in support of the assignment of error lack merit. Accordingly, rehearing on this assignment of error should be denied. DP&L's *ESP I* was approved by the Commission's adoption of a Stipulation signed by the parties to this case, including OCC, IEU-Ohio, OMA, Kroger, and OPAE. *ESP I*, Opinion and Order (June 24, 2009) at 13. The Stipulation, which includes the RSC, was adopted by the Commission after holding a hearing and providing parties the opportunity to fully litigate this case. No party argued that the Stipulation did not meet the Commission's three-prong test for review of a stipulation. The parties agreed that 1) the settlement was the product of serious

bargaining among capable, knowledgeable parties; 2) the settlement, as a package, benefits ratepayers and the public interest; and 3) the settlement package does not violate any important regulatory principle or practice. Stipulation (Feb. 24, 2009) at 1-2. The Stipulation states, in no uncertain terms, "[t]his Stipulation contains the entire Agreement among the Signatory Parties, and embodies a complete settlement of all claims, defenses, issues and objects in these proceedings." Stipulation (Feb. 24, 2009) at 17-18.

{¶ 32} With respect to claims that the RSC violates R.C. 4928.38, the Commission notes that, instead of challenging or appealing the RSC as a violation of R.C. 4928.38, the parties signed "a complete settlement of all claims, defenses, issues, and objects." Stipulation (Feb. 24, 2009) at 17-18. The parties chose not to argue at the time that the RSC did not benefit ratepayers or the public interest, that it violated an important regulatory principle or practice, or that it violated R.C. 4928.38. When the Commission approved *ESP I*, R.C. 4928.38 prohibited the collection of transition revenues, yet no party opposed the Stipulation or appealed *ESP I* to the Court. If the parties believed the RSC unlawfully allowed DP&L to collect the equivalent of transition revenues, they had ample opportunity to oppose the stipulation or to appeal the matter to the Court. They did neither.

{¶ 33} Further, the doctrines of res judicata and collateral estoppel prohibit parties from relitigating the RSC. The RSC is a term, condition, or charge of *ESP I* that was litigated along with the rest of *ESP I*. "Collateral estoppel may be applied in a civil action to bar the relitigation of an issue already determined by an administrative agency and left unchallenged if the administrative proceeding was judicial in nature and if the parties had an adequate opportunity to litigate their versions of the disputed facts and seek review of any adverse findings." *Tedesco v. Glenbeigh Hosp. of Cleveland, Inc.* (Mar. 16, 1989), Cuyahoga App. No. 54899, 1989 WL 24908. Collateral estoppel, otherwise known as issue preclusion, prohibits the parties from relitigating the RSC in this case.

{¶ 34} Further, the Commission subsequently addressed the question of whether the RSC violates R.C. 4928.38. We determined on December 19, 2012, in this proceeding, that "the

RSC is a provider of last resort (POLR) charge and not a transition charge * * *." Entry (Dec. 19, 2012) at 4. No party filed an application for rehearing regarding that ruling. Therefore, the assignments of error claiming that the RSC is an unlawful transition charge constitute an untimely application for rehearing to our December 19, 2012 Entry and are barred by R.C. 4903.10.

{¶ 35} Finally, the RSC has already been affirmed by the Court. On December 28, 2005, in Case No. 05-276-EL-AIR, the Commission adopted a stipulation authorizing DP&L to split its previously approved rate stabilization surcharge into two separate components: (1) the RSC; and (2) an environmental investment rider (EIR). As noted above, the RSC was authorized to pay DP&L for costs associated with its POLR obligations. The Commission determined in Case No. 05-276-EL-AIR, that the RSC and EIR were both fair, reasonable, and supported by the record. *In re The Dayton Power and Light Co.*, Case No. 05-276-EL-AIR, Opinion and Order (Dec. 28, 2005). The parties then appealed the Commission's decision, including the RSC. The Supreme Court of Ohio affirmed the Commission's decision and upheld both the RSC[1] and the EIR. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 114 Ohio St.3d 340, 2007-Ohio-4276. Accordingly, we find the assignment of error lacks merit, is barred by the doctrines of res judicata and collateral estoppel, and should otherwise be denied.

D. Assignment of Error 4

{¶ 36} OCC argues in its November 14, 2016, application for rehearing that the Commission erred by not granting and holding rehearing on the matters specified in OCC's previous application for rehearing. OCC asserts that the errors in the Commission's Order, for which OCC filed its application for rehearing, were clear and the Commission should have granted rehearing. Similarly, OCC argues that the Commission erred by granting rehearing to allow itself more time to issue a final appealable order. By doing so, OCC argues, the Commission failed to fulfill its duty to hear matters pending before it without

---

1 Although the Court upheld the RSC, it remanded the matter to the Commission to remove the RSC from DP&L's distribution tariffs and place it in DP&L's generation tariffs. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 114 Ohio St.3d 340, 2007-Ohio-4276 at *349-350, ¶41.

unreasonable delay and with due regard to the rights and interests of all litigants before it. OCC asserts the Commission's Entry on Rehearing permits the Commission to evade a timely review and reconsideration of its order by the Ohio Supreme Court and precludes parties from exercising their right to appeal a Commission order, which is a right established, inter alia, under R.C. 4903.10, 4903.11, and 4903.13.

{¶ 37} DP&L asserts that the Commission has a longstanding practice of granting applications for rehearing for further consideration, which allows the Commission to review the myriad of complex issues facing Ohio's diverse public utilities. DP&L argues that this practice is not only consistent with R.C. 4903.10, but has been expressly permitted by the Supreme Court of Ohio. *State ex rel. Consumers' Counsel v. Pub. Util. Comm.*, 102 Ohio St.3d 301, 2004-Ohio-2894, 809 N.E.2d 1146, ¶19. DP&L avers that is was lawful and reasonable for the Commission to take additional time to consider the issues raised in the many applications for rehearing filed in this case.

CONCLUSION

{¶ 38} The Commission finds that the assignment of error lacks merit and rehearing should be denied. As set forth above, the Commission has fully considered the assignments of error raised by OCC in its September 26, 2016 application for rehearing. However, as we discussed above, OCC's assignments of error lack merit and we have denied rehearing on those assignments of error. The Commission's Order issued on August 26, 2016 is required by R.C. 4928.143(C)(2)(b), which provides that the Commission shall implement "the provisions, terms, and conditions of the utility's most recent standard service offer." Further, there has been no unreasonable delay in this case, and no party has been prejudiced by the Commission's granting of rehearing for the limited purpose of further consideration of the matters specified in the applications for rehearing.

IV. ORDER

{¶ 39} It is, therefore,

{¶ 40} ORDERED, That the applications for rehearing be denied. It is, further,

{¶ 41} ORDERED, That a copy of this Entry on Rehearing be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

Lynn Slaby

M. Beth Trombold

Thomas W. Johnson

M. Howard Petricoff

BAM/sc

Entered in the Journal

DEC 14 2016

Barcy F. McNeal

Barcy F. McNeal
Secretary

EXHIBIT D

BOEHM, KURTZ & LOWRY
ATTORNEYS AT LAW
36 EAST SEVENTH STREET
SUITE 1510
CINCINNATI, OHIO 45202
TELEPHONE (513) 421-2255

TELECOPIER (513) 421-2764

VIA E-FILE

September 26, 2016

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

In Re: Case Nos. 08-1094-EL-SSO, 08-1095-EL-ATA, 08-1096-EL-AAM, 08-1097-EL-UNC, 12-426-EL-SSO, 12-427-EL-ATA, 12-428-EL-AAM, 12-429-EL-WVR, and 12-672-EL-RDR

Dear Sir/Madam:

Please find attached the APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT OF THE OHIO ENERGY GROUP for filing in the above-referenced matters.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,

Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
BOEHM, KURTZ & LOWRY

MLKkew
Cc: Certificate of Service

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. 08-1094-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.	:	Case No. 08-1095-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code § 4905.13.	:	Case No. 08-1096-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Amended Corporate Separation Plan.	:	Case No. 08-1097-EL-UNC
In the Matter of the Application of 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 Dayton Power And Light Company For Approval of Revised Tariffs.	:	Case No. 12-427-EL-ATA
In the Matter of the Application of Dayton Power And Light Company For Approval of Certain Accounting Authority.	:	Case No. 12-428-EL-AAM
In the Matter of the Application of Dayton Power And Light Company For Waiver of Certain Commission Rules.	:	Case No. 12-429-EL-WVR
In the Matter of the Application of Dayton Power And Light Company to Establish Tariff Riders.	:	Case No. 12-672-EL-RDR

APPLICATION FOR REHEARING OF THE OHIO ENERGY GROUP

Pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35, the Ohio Energy Group ("OEG") submits this Application for Rehearing of the Finding and Orders ("Orders") issued by the Public Utilities Commission of Ohio ("Commission") in the above-captioned dockets on August 26, 2016. OEG submits that the Orders are unlawful and unreasonable because:

1) The Commission erred by finding that the Supreme Court of Ohio ("Court") reversed the Commission's entire decision with respect to The Dayton Power and Light Company's ("DP&L" or "Company") 2016 Electric Security Plan ("ESP").

2) The Commission erred by allowing DP&L to withdraw its 2016 ESP in violation of R.C. 4928.143(C)(2)(a).

3) The Commission misapplied R.C. 4928.143(C)(2)(b) by selectively retaining elements of DP&L's 2016 ESP.

4) The Commission erred by failing to address OEG's request for a refund of the unlawful transition revenues collected by DP&L through the Service Stability Rider ("SSR") since that rider's inception.

A memorandum in support of this Application for Rehearing is attached.

Respectfully submitted,

David F. Boehm, Esq.
Michael L. Kurtz, Esq.
Jody Kyler Cohn, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Ph: (513) 421-2255 Fax: (513) 421-2764
E-Mail: Dboehm@BKLlawfirm.com
Mkurtz@BKLlawfirm.com
Jkylercohn@BKLlawfirm.com

September 26, 2016

COUNSEL FOR OHIO ENERGY GROUP

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. 08-1094-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.	:	Case No. 08-1095-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code § 4905.13.	:	Case No. 08-1096-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Amended Corporate Separation Plan.	:	Case No. 08-1097-EL-UNC
In the Matter of the Application of 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 Dayton Power And Light Company For Approval of Revised Tariffs.	:	Case No. 12-427-EL-ATA
In the Matter of the Application of Dayton Power And Light Company For Approval of Certain Accounting Authority.	:	Case No. 12-428-EL-AAM
In the Matter of the Application of Dayton Power And Light Company For Waiver of Certain Commission Rules.	:	Case No. 12-429-EL-WVR
In the Matter of the Application of Dayton Power And Light Company to Establish Tariff Riders.	:	Case No. 12-672-EL-RDR

MEMORANDUM IN SUPPORT

I. The Commission Erred By Finding That The Supreme Court Of Ohio Reversed The Commission's Entire Decision With Respect To DP&L's 2016 Electric Security Plan.

Contrary to the Commission's interpretation, the Court did not reverse the entire Opinion and Order approving the DP&L's 2016 ESP.[1] In addressing the limited legal challenges to DP&L's 2016

[1] *Finding and Order, Case Nos. 12-426-EL-SSO et al* ("2012 Case Order") at 4 (citing *In re Application of Dayton Power & Light Co.*, Slip Opinion No. 2016-Ohio-3490 (June 20, 2016)).

ESP, the Court was concise, stating: *"[t]he decision of the Public Utilities Commission is reversed on the authority of* **In re Application of Columbus S. Power Co....*2016- Ohio-1608*..."**[2] Hence, the scope of the Court's decision with respect to DP&L's 2016 ESP was limited by its findings in the *Columbus S. Power Co.* case (the "AEP Ohio ESP Appeal").

The vast majority of the Court's decision in the AEP Ohio ESP Appeal was dedicated to addressing Ohio Power Company's ("AEP Ohio") *"financial integrity"* charge – the Retail Stability Rider ("RSR").[3] The Court found that a *"financial integrity"* charge such as the RSR provided the utility with *"the equivalent of transition revenue"* in violation of R.C. 4928.38.[4] The Court reversed and remanded the part of the Commission's decision approving the RSR, ordering the Commission to determine the amount of unlawful *"transition revenue"* that AEP Ohio had collected from customers through the RSR and to refund that amount to customers on remand through an offset to its current RSR charge.[5] The only other part of the AEP Ohio's ESP reversed and remanded to the Commission concerned the utility's significantly excessive earnings test threshold.[6] Aside from those two components reversed by the Court, the remainder of the AEP Ohio's ESP stayed intact.

Given the limited scope of the Court's decision in the AEP Ohio ESP Appeal, the Court's citation to that case as the sole basis for its decision on DP&L's 2016 ESP can have only one meaning: that DP&L's SSR, which is a *"financial integrity"* charge equivalent to AEP Ohio's RSR, similarly provides DP&L with unlawful transition revenue and is therefore barred by R.C. 4928.38. But no aspect of the Court's limited AEP Ohio ESP Appeal decision provides a rationale upon which to reverse all of the non-SSR components of DP&L's 2016 ESP. For example, in DP&L's 2016 ESP, the Commission approved a competitive bidding process and master supply agreement,[7] changes to the Alternative

---

[2] Id. (emphasis added).
[3] *In re Application of Columbus S. Power Co.*, Slip Opinion No. 2016-Ohio-1608.
[4] Id. at ¶25.
[5] Id. at ¶40.
[6] Id. at ¶66.
[7] Opinion and Order, Case Nos. 12-426-EL-SSO *et al* (September 4, 2013) at 16.

Energy rider true-up process,[8] Reconciliation Riders,[9] bifurcation of the Transmission Cost Recovery Rider,[10] competitive retail enhancements,[11] and an Economic Development Fund.[12] Nowhere in the AEP Ohio ESP Appeal is there language that could reasonably be interpreted as reversing these components of DP&L's 2016 ESP. Consequently, the Commission's finding that the *entire* 2016 ESP Order was reversed on the basis of the AEP Ohio ESP Appeal is unfounded.

II. The Commission Erred By Allowing DP&L To Withdraw Its 2016 ESP In Violation of R.C. 4928.143(C)(2)(a).

The Commission misapplied R.C. 4928.143(C)(2)(a) when it allowed DP&L to withdraw the Electric Security Plan initially approved in Case Nos. 12-426-EL-SSO *et al* (the "2016 ESP") and to reinstate most of the ESP approved in Case Nos. 08-1094-EL-SSO *et. al* (the "2008 ESP") in its place.[13] R.C. 4928.143(C)(2)(a) provides:

> *If the commission modifies and approves an application under division (C)(1) of this section, the electric distribution utility may withdraw the application, thereby terminating it, and may file a new standard service offer under this section or a standard service offer under section 4928.142 of the Revised Code.*[14]

The right of a utility to withdraw an ESP under R.C. 4928.143(C)(2)(a) is intended to address circumstances under which a *proposed* ESP application is modified by the *Commission*.

Here, the circumstances at issue were vastly different than those envisioned by the Legislature in enacting R.C. 4928.143(C)(2)(a). DP&L's 2016 ESP was not merely a proposal. Rather, that ESP was the result of a final, appealable Commission order, as the Company itself conceded.[15] And the Commission did not *voluntarily* modify DP&L's 2016 ESP. Rather, the only modifications required –

---

[8] Id. at 31.
[9] Id. at 35.
[10] Id. at 36.
[11] Id.at 38.
[12] Id. at 42.
[13] 2012 Case Order at 4-6; Finding and Order, Case Nos. 08-1094-LE-SSO *et al* at ("2008 Case Order") at 7-11.
[14] Emphasis added.
[15] Fifth Entry on Rehearing, Case Nos. 12-426-EL-SSO *et al* (July 23, 2014); Notice of Cross-Appeal of the Dayton Power and Light Company (September 19, 2014) at 2 (*"Consequently, the Commission's ESP Orders are now final and appealable."*).

immediate cessation of the SSR during the 2016 ESP period and a refund of previously collected SSR charges - were entirely the result of the Court's mandate and therefore involuntary on the part of the Commission. Accordingly, given that DP&L's requests strayed far from the situation contemplated by the plain language R.C. 4928.143(C)(2)(a), that statute was not a basis upon which to approval withdrawal of its 2016 ESP.

A utility's statutory right to withdraw an ESP does not extend indefinitely. That right does not apply when the utility accepts a Commission-modified ESP by allowing that ESP to go into effect and then the Commission's final order is later modified by the Court. The law gives the utility a limited "*veto*" right over Commission modifications of a proposed application; it does not give the utility a "*veto*" right over decisions of the Court.

Once the 2016 ESP was subject to a final, appealable Commission order and DP&L allowed the ESP to go into effect, the Company could no longer invoke R.C. 4928.143(C)(2)(a) to withdraw that ESP. Allowing the Company to do so undermines the statutory appellate process provided for under R.C. 4903.13. The utility's statutory right to withdraw a proposed ESP must be read in concert with the other parties' statutory right to appeal a final Commission order and to receive the full relief ultimately provided by the Court. *"All statutes relating to the same general subject matter must be read in pari material, and in construing these statutes in pari material, this court must give them a reasonable construction so as to give proper force and effect to each and all of the statutes."*[16] The best way to harmonize those two statutes is to bar a utility from invoking R.C. 4928.143(C)(2)(a) after the date upon which the Commission issues a final appealable order on the utility's proposed ESP and the utility has accepted the Commission's modifications by allowing the ESP to go into effect.

In 2015, the Court stated that *"[i]f the **commission** makes a modification to a proposed ESP that the utility is unwilling to accept, R.C. 4928.143(C)(2)(a) allows the utility to withdraw the ESP*

[16] *State ex rel. Herman v. Klopfleisch*, 72 Ohio St. 3d 581, 585, 651 N.E.2d 995, 998 (1995) (citing *United Tel. Co. v. Limbach* (1994), 71 Ohio St.3d 369, 372, 643 N.E.2d 1129, 1131).

application."[17] But the Court has never stated that a utility is entitled to thwart the Court's appellate mandate by withdrawing its ESP after receiving an unfavorable decision from the Court.

Approving DP&L's requests renders the appellate process ineffective and puts this Commission on a collision course with the Court. Reinstatement of most of DP&L's 2008 ESP simply replaces one unlawful *"financial integrity" charge (the SSR) with another (the Rate Stabilization Charge included in* DP&L's 2008 ESP). The cursory nature of the Court's remand order seems to demonstrate a certain amount of frustration with the Commission's recent handling of ESP matters. That frustration will only grow if the Court is effectively ignored in this instance. Approving DP&L's attempted end-run around the Court's recent decision substantially harms customers by forcing them to continue to pay unlawful transition revenues in direct contravention of the Court's mandate, unjustly enriching DP&L's corporate parent, Virginia-based AES.

III. The Commission Misapplied R.C. 4928.143(C)(2)(b) By Selectively Retaining Elements of DP&L's 2016 ESP.

While the Commission invoked R.C. 4928.143(C)(2)(b) to reinstate most of DP&L's 2008 ESP, the Commission did not restore every aspect of that ESP as directed by the statute. Instead, the Commission established a new hybrid ESP, which deviated, at a minimum, from DP&L's 2008 ESP by: 1) allowing DP&L to recover competitive bid process energy and capacity costs through base generation rates and setting the fuel rider to zero, excluding amount being reconciled from prior periods; and 2) retaining the Company's current transmission cost recovery riders.[18] The Commission's decision misapplied R.C. 4928.143(C)(2)(b). The latter statute provides:

> *If the utility terminates an application pursuant to division (C)(2)(a) of this section or if the commission disapproves an application under division (C)(1) of this section, the commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent standard service offer, along with any expected*

[17] *In re Application of Ohio Power Co.*, 144 Ohio St. 3d 1, 2015-Ohio-2056 at ¶26 (emphasis added).
[18] 2008 Case Order at 8-10.

increases or decreases in fuel costs from those contained in that offer, until a subsequent offer is authorized pursuant to this section or section 4928.142 of the Revised Code, respectively.

Hence, the Commission is barred from selectively choosing which portions of a prior ESP will be reinstated and which will be overridden by components of a subsequent ESP. If an ESP is withdrawn pursuant to R.C. 4928.143(C)(2)(a), the Commission must simply reinstate the previous ESP with adjustments for expected fuel costs increases or decreases. The Commission seems aware of this statutory limitation on its authority, seeking to recharacterize competitive bidding process costs as *"fuel costs"* in order to fit that portion of its decision within the parameters of R.C. 4928.143(C)(2)(b).[19] But the costs associated with the competitive bidding process are much more than *"fuel costs"* since they reflect all of the costs of energy and capacity needed to serve non-shopping customers. And the statute's allowance of adjustments for *"fuel costs"* cannot be extended to grant the Commission authority for its decision to retain DP&L's current transmission riders. Accordingly, the Commission exceeded its statutory authority when it crafted a new hybrid ESP to replace DP&L's 2016 ESP.

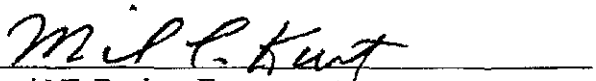
IV. The Commission Erred By Failing To Address OEG's Request For A Refund Of The Unlawful Transition Revenues Collected By DP&L Through The SSR Since That Rider's Inception.

In its Memorandum Contra, OEG argued that the Court's recent decisions require the Commission to order a refund of all SSR charges paid by customers to DP&L since September 4, 2013, when the SSR was initially approved by the Commission.[20] OEG further explained that the Court found no conflict between such a remedy and the retroactive ratemaking principles set forth in *Keco Industries, Inc. v. Cinci. & Suburban Bell Telephone Co.*, 166 Ohio St. 254 (March 27, 1957). Yet the Commission completely failed to address this argument. The Commission cannot simply ignore material arguments

[19] Id. at 8.
[20] OEG Memorandum Contra at 5 (citing *See In re Application of Dayton Power & Light Co.*, Slip Opinion No. 2016-Ohio-3490 (June 20, 2016) and Opinion and Order, Case Nos. 12-426-EL-SSO *et al* (September 4, 2013) at 25).

raised by parties.[21] The Commission should therefore grant rehearing to consider and approve OEG's requested refund.

Respectfully submitted,



David F. Boehm, Esq.
Michael L. Kurtz, Esq.
Jody Kyler Cohn, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Ph: (513) 421-2255 Fax: (513) 421-2764
E-Mail: Dboehm@BKLlawfirm.com
Mkurtz@BKLlawfirm.com
Jkylercohn@BKLlawfirm.com

September 26, 2016

COUNSEL FOR OHIO ENERGY GROUP

[21] *In re Comm Rev. of Capacity Charges of Ohio Power Co.*, Slip Opinion No. 2016-Ohio-1607 at ¶51 (*"AEP is correct that the commission failed to address its arguments in any substantive manner. Accordingly, we remand the cause to correct this error."*).

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or ordinary mail, unless otherwise noted, this 26th day of September, 2016 to the parties listed on the attached Certificate of Service.

Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.

CERTIFICATE OF SERVICE

Philip B. Sineneng, Esq.
THOMPSON HINE LLP
41 South High Street, Suite 1700
Columbus, OH 43215
Philip.Sineneng@ThompsonHine.com

Amy B. Spiller, Esq.
Deputy General Counsel
Jeanne W. Kingery, Esq.
Associate General Counsel
DUKE ENERGY RETAIL SALES, LLC and
DUKE ENERGY COMMERCIAL ASSET
MANAGEMENT, INC.
139 East Fourth Street
1303-Main
Cincinnati, OH 45202
Amy.Spiller@duke-energy.com
Jeanne.Kingery@duke-energy.com

Attorneys for Duke Energy Retail Sales, LLC and Duke Energy Commercial Asset Management, Inc.

Stephen Chriss, Esq.
Wal-Mart Corporation
702 Southwest 8th Street
Bentonville, AR 72716-021
Stephen.Chriss@wal-mart.com

Attorneys for Wal-Mart Stores East, LP and Sam's East, Inc.

Mark A. Hayden, Esq.
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.com

James F. Lang, Esq.
Laura C. McBride, Esq.
CALFEE, HALTER & GRISWOLD LLP
1400 KeyBank Center
800 Superior Avenue
Cleveland, OH 44114
jlang@calfee.com
lmcbride@calfee.com

N. Trevor Alexander, Esq.
CALFEE, HALTER & GRISWOLD LLP
1100 Fifth Third Center
21 E. State Street
Columbus, OH 43215-4243
talexander@calfee.com

David A. Kutik, Esq.
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, OH 44114
dakutik@jonesday.com

Attorney for FirstEnergy Solutions Corp.

Samuel C. Randazzo, Esq.
Frank P. Darr, Esq.
Matthew R. Pritchard, Esq.
MCNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4225
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

Robert A. McMahon, Esq.
EBERLY MCMAHON LLC
2321 Kemper Lane, Suite 100
Cincinnati, OH 45206
bmcmahon@emh-law.com

Rocco O. D'Ascenzo, Esq.
Associate General Counsel
Elizabeth Watts, Esq.
Associate General Counsel
DUKE ENERGY OHIO, INC.
139 East Fourth Street, 1303-Main
Cincinnati, OH 45202
Elizabeth.Watts@duke-energy.com
Rocco.D'Ascenzo@duke-energy.com

Attorneys for Duke Energy Ohio, Inc.

M. Anthony Long, Esq.
Senior Assistant Counsel
HONDA OF AMERICA MFG., INC.
24000 Honda Parkway
Marysville, OH 43040
tony_long@ham.honda.com

Attorney for Honda of America Mfg., Inc.

Jay E. Jadwin, Esq.
AMERICAN ELECTRIC POWER
SERVICE CORPORATION
155 W. Nationwide Blvd., Suite 500
Columbus, OH 43215
jejadwin@aep.com

Attorney for AEP Retail Energy Partners LLC

David F. Boehm, Esq.
Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street Suite 1510
Cincinnati, OH 45202-4454
dboehm@BKLlawfirm.com
mkurtz@BKLlawfirm.com

Attorneys for Ohio Energy Group

Richard L. Sites, Esq.
General Counsel and Senior Director of
Health Policy
OHIO HOSPITAL ASSOCIATION
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620
ricks@ohanet.org

Gregory J. Poulos, Esq.
EnerNOC, Inc.
471 East Broad Street
Columbus, OH 43215
Telephone: (614) 507-7377
gpoulos@enernoc.com

Attorney for EnerNOC, Inc.

Matthew W. Warnock, Esq.
Dylan F. Borchers, Esq.
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
mwarnock@bricker.com
dborchers@bricker.com

Attorneys for Ohio Hospital Association

Colleen L. Mooney, Esq.
OHIO PARTNERS FOR AFFORDABLE ENERGY
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
cmooney2@columbus.rr.com

Attorney for Ohio Partners for Affordable Energy

Ryan P. O'Rourke
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, OH 43215
Email: o'rourke@carpenterlipps.com

Attorneys for The Kroger Company

Mark A. Whitt, Esq.
Andrew J. Campbell, Esq.
WHITT STURTEVANT LLP
The KeyBank Building
88 East Broad Street, Suite 1590
Columbus, OH 43215
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com

Vincent Parisi, Esq.
INTERSTATE GAS SUPPLY, INC.
6100 Emerald Parkway
Dublin, OH 43016
vparisi@igsenergy.com
mswhite@igsenergy.com

Attorneys for Interstate Gas Supply, Inc.

Trent A. Dougherty, Esq.
OHIO ENVIRONMENTAL COUNCIL
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449
trent@theoec.org

Attorneys for the Ohio Environmental Council

Thomas W. McNamee, Esq.
Assistant Attorney General
180 East Broad Street
Columbus, OH 43215
Thomas.mcnamee@ohioattorneygeneral.gov

Attorneys for the Staff of the Public Utilities Commission of Ohio

Maureen R. Willis, Esq.
Assistant Consumers' Counsel
Office of The Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Maureen.willis@occ.ohio.gov

Attorneys for Office of the Ohio Consumers' Counsel

M. Howard Petricoff, Esq.
Stephen M. Howard, Esq.
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
mhpetricoff@vorys.com
smhoward@vorys.com

Attorneys for the Retail Energy Supply Association, Exelon Generation Company, LLC, Exelon Energy Company, Inc., Constellation Energy Commodities Group, Inc., and Constellation NewEnergy, Inc.

Ellis Jacobs, Esq.
Advocates for Basic Legal Equality, Inc.
130 West Second Street, Suite 700 East
Dayton, OH 45402
ejacobs@ablelaw.org

Attorney for Edgemont Neighborhood Coalition

Jennifer L. Spinosi, Esq.
21 East State Street, Suite 1900
Columbus, OH 43215
jennifer.spinosi@directenergy.com

Christopher L. Miller, Esq.
Gregory J. Dunn, Esq.
Alan G. Starkoff, Esq.
ICE MILLER LLP
2540 West Street
Columbus, OH 43215
Christopher.Miller@icemiller.com
Gregory.Dunn@icemiller.com

Attorneys for City of Dayton, Ohio,
Direct Energy Services, LLC
and Direct Energy Business, LLC

Matthew J. Satterwhite, Esq.
Steven T. Nourse, Esq.
AMERICAN ELECTRIC POWER SERVICE CORPORATION
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
mjsatterwhite@aep.com
stnourse@aep.com

Attorneys for Ohio Power Company

Matthew R. Cox, Esq.
MATTHEW COX LAW, LTD.
4145 St. Theresa Blvd.
Avon, OH 44011
matt@matthewcoxlaw.com

Attorney for the Council of Smaller Enterprises

Stephen Bennett, Manager
State Government Affairs
300 Exelon Way
Kenneth Square, PA 19348
stephen.bennett@exeloncorp.com

Bill C. Wells, Esq.
AFMCLO/CL
Industrial Facilities Division
Bldg 266, Area A
Wright Patterson AFB, OH 45433
bill.wells@wpafb.af.mil

Christopher C. Thompson, Esq.
Staff Attorney (admitted *pro hac vice)*
USAF Utility Law Field Support Center
139 Barnes Drive, Suite 1
Tyndall AFB, FL 32403-5319

Attorneys for Federal Executive Agencies

Kimberly W. Bojko, Esq.
Joel E. Sechler, Esq.
Mallory M. Mohler, Esq.
CARPENTER LIPPS & LELAND LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, OH 43215
Bojko@carpenterlipps.com
Sechler@carpenterlipps.com
Mohler@carpenterlipps.com

Attorneys for SolarVision, LLC

Scott C. Solberg, Esq.
Eimer Stahl LLP
224 South Michigan Avenue, Suite 1100
Chicago, OH 60604
ssolberg@eimerstahl.com

Attorney for Exelon Generation Company, LLC

Cynthia Fonner Brady, Esq.
Assistant General Counsel
EXELON BUSINESS SERVICES COMPANY
4300 Winfield Road
Warrenville, IL 60555
Cynthia.Brady@constellation.com

Attorney for Constellation
an Exelon Company

Lt Col John C. Degnan
Thomas A. Jernigan
Ebony M. Payton
Federal Executive Agencies (FAE)
139 Barnes Drive, Suite 1
Tyndall AFB FL 32403
John.Degnan@us.af.mil
Thomas.Jernigan.3@us.af.mil
Ebony.Payton.ctr@us.af.mil

Attorney for Federal Executive Agencies

Robert A. Brundrett, Esq.
The Ohio Manufacturers' Association
33 North High Street
Columbus, OH 43215
Email: rbrundrett@ohiomfg.com

Attorneys for The Ohio Manufacturers'
Association Energy Group

Mary W. Christensen, Esq.
Christensen Law Office LLC
8760 Orion Place, Suite 300
Columbus, OH 43240-2109
mchristensen@columbuslaw.org

Attorneys for People Working Cooperatively,
Inc.

Summary: App for Rehearing Ohio Energy Group (OEGs) Application for Rehearing and Memorandum in Support electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group