BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan.	)	Case No. 12-426-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.	)	Case No. 12-427-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority.	)	Case No. 12-428-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for the Waiver of Certain Commission Rules.	)	Case No. 12-429-EL-WVR
In the Matter of the Application of The Dayton Power and Light Company to Establish Tariff Riders.	)	Case No. 12-672-EL-RDR

POST-HEARING BRIEF OF SOLARVISION, LLC

SolarVision, LLC is an Ohio-based solar company that, along with its subsidiaries, develops, owns, and operates multiple certified renewable energy resource generating facilities. As a solar developer/operator, provider of solar renewable energy credits (SRECs), and active participant in the Ohio SREC competitive market, SolarVision sought and was granted intervention in the above-captioned matters. Of specific interest to SolarVision in these proceedings are two important issues: the establishment and calculation of a three percent cost cap threshold in Rider AER, and the establishment of a non-bypassable charge, Rider AER-N, for recovery of the capital costs associated with the solar generation facility known as Yankee 1. For the reasons discussed herein, the Public Utilities Commission of Ohio (Commission) should

reject The Dayton Power and Light Company's (DP&L or the Company) proposal to establish a fixed three percent cost cap threshold under Rider AER, and should not authorize the establishment of Rider AER-N, and ultimate recovery of capital costs associated with Yankee 1.

I. Procedural History

On March 30, 2012, DP&L filed an application for a standard service offer (SSO) with the Commission pursuant to Section 4928.141, Revised Code. The application was for a market rate offer (MRO) in accordance with Section 4928.142, Revised Code. On September 7, 2012, DP&L withdrew its application.

On October 5, 2012, DP&L filed an application for an electric security plan (ESP) in accordance with Section 4928.143, Revised Code. Additionally, DP&L filed accompanying applications for approval of revised tariffs, approval of certain accounting authority, waiver of certain Commission rules, and to establish tariff riders.

On December 12, 2012, DP&L amended its application for an ESP (Amended ESP Application). Subsequently, a procedural schedule was established for the above-captioned matters. Intervening parties, including SolarVision, engaged in numerous settlement discussions with the Company prior to the established hearing date; however, the parties were ultimately unsuccessful in developing a settlement. A hearing on the matters commenced on March 18, 2013. Among the topics explored at hearing were the Company's determination of the three percent cost cap threshold within Rider AER and the establishment of Rider AER-N to facilitate recovery of the capital costs associated with building the 1.1 MW Yankee 1 solar generation facility. During the course of the hearing, among other topics, DP&L witness Parke and Staff witness Siegfried testified on the Company's determination of the three percent cost cap threshold. Further, DP&L witness Seger-Lawson, OCC witness Hixon, and IEU-Ohio witness

Bowser testified on the proposed recovery of capital costs associated with the Yankee 1 facility under Rider AER-N.

II. Argument

A. The Commission should deny the Company's request to establish a fixed three percent cost threshold in Rider AER.

In paragraph 15 of its Amended ESP Application, DP&L proposes the following:

> 15. During the ESP period, DP&L will continue to meet the alternative energy requirements of Ohio Rev. Code §4928.64 for the SSO load in its service territory in the same way that is (sic) does currently, through purchase of Renewable Energy Credits ("RECs") or through the use of the RECs generated by the Yankee solar generation facility. Renewable compliance costs will continue to be recovered through DP&L's Alternative Energy Rider much like it is today. This rider will be modified to be trued-up on a seasonal quarterly basis.

On page 10 of its ESP Rate Blending Plan, appended to its Amended ESP Application, the Company explains:

> Alternative Energy Rider (AER)
>
> DP&L's AER is designed to recover DP&L's cost of compliance with the ORC § 4928.64 renewable energy targets. DP&L will continue to be responsible for 100% of the renewable energy requirements for all SSO load and therefore the AER will continue in its current form, but will be trued-up on a seasonal quarterly basis to be consistent with other true-up riders. The AER will continue to recover costs such as brokerage fees, REC tracking participation expenses, gains and losses realized from the sale of RECs, audit costs, and carry costs at the costs of long-term debt. The underlying costs of renewable requirements recovered through the AER are expected to increase as the statutory renewable targets increase.

Further, on page 11 of the ESP Rate Blending Plan, DP&L states as follows:

> In addition, DP&L is seeking to establish the AER rate at which the Company will be deemed to have met the statutory 3% cost cap. ORC § 4928.64(C)(3) states in part that the utility need not comply with a renewable energy benchmark to the extent that its cost of complying with the benchmark exceeds the cost of acquiring the requisite electricity by three percent. Therefore, the Company is proposing that when the AER meets or exceeds $0.0012813 per kWh, the Company will be deemed to have met the 3% cost cap and will not need to continue to meet future renewable targets.

In the Second Revised Testimony of Nathan C. Parke, filed with the amended ESP Application on December 12, 2012, Company witness Parke testified that "DP&L is proposing that the AER contain a 3% cost cap provision that establishes a threshold to be consistent with Ohio Revised Code § 4928.64(C)(3)."[1] Company witness Parke further explained that the three percent AER threshold is calculated in the following manner: "[t]he estimated Competitive Bid Process (CBP) auction result is used as the means of otherwise acquiring the electricity. The expected auction result in dollar per kilowatt hour ($/kWh) is $0.0427100; three percent of that figure is $0.0012813."

On March 20, 2013, at the hearing in these matters, DP&L witness Parke testified that the Company's calculation of the three percent AER threshold used an estimated forecasted price for the period of time encompassing the first auction.[2] Company witness Parke further testified that he did not include the price of the SSO load when calculating the fixed three percent cap.[3] He did, however, acknowledge that the renewable portfolio standards (RPS) under Section 4928.64, Revised Code, are based on the sales (or load) of electricity, and if the applicable load increases, the RPS also increase.[4] Thus, DP&L's proposal to establish a specific dollar per kilowatt hour threshold that will remain fixed throughout the ESP period, regardless of the annual RPS or kWh sales is contrary to the law.

Section 4928.64(C)(3), Revised Code, provides, in pertinent part,

> An electric distribution utility or an electric services company need not comply with a benchmark under division (B)(1) or (B)(2) of this section to the extent that its reasonably expected cost of that compliance exceeds *its reasonably expected cost of otherwise producing or acquiring the requisite electricity* by three per cent or more. (Emphasis added).

[1] Second Revised Testimony of Nathan C. Parke at 3, ln 15-16.
[2] Tr. Vol. III at 876, ln 15-24 (Nathan Parke).
[3] Id., Tr. Vol. III at 877, ln 2-10.
[4] Id., Tr. Vol. III at 871, ln 9-21; Tr. Vol III at 883-84, ln 19-25 and 1-8.

Moreover, several key portions of Section 4928.64, Revised Code, indicate that the methodology used by DP&L to calculate the three percent cap are contrary to law. The "requisite" electricity under the law encompasses all electricity "otherwise produc[ed] or acquir[ed]" by DP&L for its customers. The requisite amount will increase if DP&L's load increases. The requisite amount also includes all of DP&L's SSO load, regardless of whether any portion may be included in a competitive bidding process (CBP) auction.

Further, the RPS mandate increases annually. DP&L has attempted to place a finite cap today on a figure determined by ever-evolving requirements. The three percent ceiling established by Section 4928.64, Revised Code, was intended to be variable and fluctuate from year to year. The Company's attempt to identify a static figure for use during the entire proposed ESP period frustrates the purpose of the statute and should be rejected by the Commission.

Staff also does not support the establishment of a fixed three percent cost threshold in this proceeding. Staff witness Stuart Siegfried stated in his March 12, 2013 testimony, and again at hearing on March 25, 2013, that it is not appropriate or necessary to establish a fixed three percent cost threshold in these matters.[5] Staff witness Siegfried further testified that establishing a threshold in this proceeding in the manner proposed by DP&L was premature: "there are questions about methodology and I think that there are proceedings that will be evaluating different options for determining the methodology and I think that those could have some relevant outcomes."[6] Given the issues explained herein relating to the establishment and calculation of a three percent cost cap in Rider AER and Staff's lack of support of the Company's proposal, the Commission should deny the Company's request to establish such an unlawful cap.

[5] Testimony of Stuart M. Siegfried at 4, ln 13-16 (March 12, 2013); Tr. Vol. VI at 1549, ln 2-18 (Stuart Siegfried).
[6] Tr. Vol. VI at 1549, ln 10-14 (Stuart Siegfried).

B. The Commission should not authorize the creation of non-bypassable Rider AER-N for recovery of the capital costs expended in constructing the Company's Yankee 1 solar generation facility.

In its Amended ESP Application, DP&L has proposed the creation of Rider AER-N, a nonbypassable rider under which the Company may recover capital costs associated with building the Yankee 1 solar facility, amounting to approximately $3.3 million.[7] A number of factors weigh against the creation of Rider AER-N, and accordingly, the Commission should deny the Company's request.

First, Rider AER-N is fundamentally anti-competitive. In the context of the deregulated electricity market in Ohio, where customer choice, and thus, competition are the goals, the Commission should not approve the nonbypassable recovery of capital costs expended by an electric distribution utility (EDU) associated with building a facility used for compliance measures. Other energy providers, for instance, certified retail electric service (CRES) providers, who compete directly with EDUs in matters of generation including the acquisition of SRECs in the SREC market, are not permitted to recover their capital expenditures when building generation facilities. Ohio Consumers' Counsel (OCC) witness Beth Hixon testified to this circumstance on March 27, 2013.[8] DP&L witness Dona Seger-Lawson also recognized this fact in her testimony on March 28, 2013.[9] EDUs should not, in a market as dedicated to competition as Ohio's electric market, be provided with an unfair advantage over similarly-situated providers.

Further, as represented by DP&L witness Seger-Lawson, the Company intends to continue to retire SRECs generated at the Yankee 1 facility in order to meet its RPS. The costs

[7] Testimony of Beth Hixon at 20, ln 21-22 (March 1, 2013); Testimony of Joseph Bowser at 10, ln 1-2 (March 12, 2013).
[8] Tr. Vol. VIII at 2105, ln 20-24 (Beth Hixon).
[9] Tr. Vol. IX at 2295, ln 16-23 (Dona Seger-Lawson).

associated with RPS compliance using those RECs are recoverable through bypassable Rider AER. Therefore, permitting the Company to recover the capital and operation and maintenance costs associated with building Yankee 1, which readily generates SRECs, via nonbypassable Rider AER-N, and/or also permitting the Company to recover REC costs under Rider AER,[10] creates an unjust and excessive advantage for the EDU over its competitors, who have no such opportunity for recovery under either option. Specifically, CRES providers who have similar RPS requirements do not receive cost recovery for the production or acquisition of SRECs necessary to meet their customer load. Additionally, Section 4928.64(E), Revised Code, provides that "[a]ll costs incurred by an electric distribution utility in complying with the requirements of this section shall be bypassable by any consumer that has exercised choice of supplier under section 4928.03 of the Revised Code." Thus, EDUs using their own generation facilities to meet RPS requirements should not be able to establish nonbypassable riders to fund the capital costs of those facilities, as RPS compliance costs must, by law, be bypassable. Given these circumstances, the Commission should deny the Company's request to establish Rider AER-N.

III. Conclusion

Based upon the foregoing arguments, the Commission should deny the Company's request to establish a fixed three percent cost threshold in Rider AER. The Commission should further deny the establishment of nonbypassable Rider AER-N for recovery of the capital costs expended in constructing the Company's Yankee 1 solar generation facility. SolarVision

[10] While DP&L witness Seger-Lawson testified in Tr. Vol. IX at 2305, ln 21-24, that if DP&L is not "granted the authority to charge a nonbypassable charge for Yankee, [the Company] would charge the cost of solar RECs through the AER," there is no provision in the Amended ESP Application preventing the Company from charging customers for the cost of SRECs under Rider AER, while also collecting its capital costs pursuant to Rider AER-N.

respectfully requests that the Commission take action in accordance with the arguments presented herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 20th day of May, 2013, via e-mail upon the parties below.

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Summary: Brief Post-Hearing Brief of SolarVision, LLC electronically filed by Mrs. Kimberly W. Bojko on behalf of SolarVision, LLC