BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

INITIAL BRIEF OF THE KROGER CO.

I. PROCEDURAL HISTORY

On March 20, 2012, the Dayton Power and Light Company ("DP&L" or "the Company") filed an application to establish a Standard Service Offer ("SSO") based upon a Market Rate Offer ("MRO") pursuant to Ohio Revised Code ("RC") section 4928.142.[1] On September 7, 2012, DP&L notified the Public Utilities Commission of Ohio ("PUCO or the "Commission") that the MRO would be withdrawn and re-filed.[2] On October 5, 2012 the Company filed a second application for an SSO, this time based on

[1] See, In the Matter of the Application of the Dayton Power & Light Company for Authority to Establish a Standard Service Offer in the Form of a Market Rate Offer, filed 3-30-12.
[2] Id., filed 9-7-12.

an Electric Security Plan ("ESP") pursuant to RC 4928.143.[3] On December 12, 2013, the Company filed a second revised application for approval of an SSO, correcting various errors in the original revised application.[4] The second revised application continues to seek commission approval of an SSO offering based on an ESP pursuant to RC 4928.143.[5]

Significantly, the second revised application requests an ESP with a term that would run from January 1, 2013 through December 31, 2017. The application seeks authority to provide SSO rates that will, eventually, be primarily based upon power purchased by DP&L through a competitive bidding process. The schedule set forth in the application provides for SSO rates to be initially based upon a blended rate, with a mixture of competitively bid generation and DP&L owned generation.[6] The process for a switch to pure competitively bid based SSO rates is somewhat accelerated when compared to that which would ordinarily be permitted under an MRO, apparently in order to allow SSO customers to take advantage of comparatively low current market rates.[7] In return for this more rapid move to pure market rates based on a competitive bidding process, DP&L requests approval of a non-bypassable Service Stability Rider ("SSR") "that will allow DP&L an opportunity to earn a reasonable return on equity."[8] Stated more plainly, DP&L seeks authority to collect a staggering $137.5 million annually through the ESP term to ensure "stability" as it transitions to 100% compatibly

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[3] Id., filed 10-5-12.
[4] See, section II, page 2-6 of DP&L's Second Revised Application for Approval of an Electric Security Plan.
[5] Id.
[6] See, DP&L "ESP Rate Blending Plan" at 1-3.
[7] Second Revised Application, at 7-8.
[8] Id., at 2.

bid generation rates. DP&L claims that the Company's "financial integrity will be threatened without such a charge."[9]

The second revised application also requests authority for a "switching tracker" deferring the value of any customer shopping that exceeds 62% as a regulatory asset.[10] This regulatory asset would accumulate interest at a rate commensurate with DPL's cost of debt.[11] Finally, DP&L's second revised application requests permission to collect a Reconciliation Rider ("RR") to compensate DP&L for costs incurred in administering and implementing the competitive bidding process ("CBP"), as well as for various "competitive retail enhancements" from all customers on a non-bypassable basis.[12]

II. LAW

Pursuant to Section 4928.141 of the Ohio Revised Code, titled "Distribution Utility to Provide Standard Service Offer," an electric distribution utility ("EDU") shall provide consumers, on a comparable and non-discriminatory basis within its certified territory, a SSO of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. An EDU is required to apply to the PUCO to establish the SSO in accordance with section 4928.142 or 4928.143 of the Revised Code and, at its discretion, may apply simultaneously under both sections, except that the EDU's first standard SSO application at minimum shall include a filing under section 4928.143 of the Revised Code. Only a SSO authorized in accordance with section 4928.142 or 4928.143 of the Revised Code, shall serve as the EDU's SSO for the purpose of compliance with this

[9] Id., at 8.
[10] Id.
[11] Id., at 16.
[12] Revised ESP application at 13.

section; and that SSO shall serve as the EDU's default SSO for the purpose of section 4928.14 of the Revised Code.

R.C. 4928.142 "Standard generation service offer price - competitive bidding" provides that for the purpose of complying with section 4928.141 of the Revised Code, an EDU may establish a SSO for retail electric generation service that is delivered to the utility under a market-rate offer ("MRO"). The MRO shall be determined through a competitive bidding process that includes various characteristics.

Additionally, R.C. 4928.143 "Application for approval of electric security plan – testing" provides that for the purpose of complying with section 4928.141 of the Revised Code, an EDU may file an application for public utilities commission approval of an electric security plan ("ESP") as prescribed under division (B) of this section. An ESP shall include provisions relating to the supply and pricing of electric generation service. The burden of proof in an SSO proceeding is on the EDU. RC 4928.143(B)(2)(d) allows an ESP to include terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, by-passability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service.

The Commission shall approve or modify and approve an application for an ESP under R.C. 4928.143 if it finds that its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. Further, R.C. 4928.02 "State policy" states that it is the policy of this state to do the following throughout Ohio:

(A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;

(B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;

(C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;

(D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure;

(E) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language;

(F) Ensure that an electric utility's transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces;

(G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;

(H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates;

(I) Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power;

(J) Provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates;

(K) Encourage implementation of distributed generation across customer classes through regular review and updating of administrative rules governing critical issues such as, but not limited to, interconnection standards, standby charges, and net metering;

(L) Protect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource;

(M) Encourage the education of small business owners in this state regarding the use of, and encourage the use of, energy efficiency programs and alternative energy resources in their businesses;

(N) Facilitate the state's effectiveness in the global economy.

III. ISSUES

The Initial Brief of The Kroger Co. ("Kroger") addresses the following aspects of DP&L's Revised Electric Security Plan ("ESP"):

1. DP&L's proposed Service Stability Rider ("SSR");

2. DP&L's proposed Switching Tracker; and

3. DP&L's proposed Reconciliation Rider.

Absence of comment regarding any particular aspect of DP&L's filing does not signify support (or opposition) toward the Company's filing with respect to the issue that is not discussed.

IV. LEGAL ARGUMENT

DP&L's request for an ESP fails to satisfy the legal standard set forth in RC 4928.143 for several important reasons. Essentially, the request shifts significant financial costs of maintaining DP&L's "financial integrity" to shopping customers in return for nothing close to any commensurate benefit to those customers. The sole justification for these charges is “stability,” in the sense that the Company will be more financially healthy, and therefore “stable” if the charges are collected on a non-bypassable basis.[13] The ability to collect significant sums of money for generation related costs from customers who purchase their generation from non-utility electric suppliers, and in some cases have been purchasing generation from other sources for an extended period of time, is a significant financial windfall to DP&L. Not surprisingly, from the Company's perspective, the collection of the non-bypassable charges makes the Company “stable.” Indeed, a company that provides no service to its customers, but charges those customers as if they were actually receiving something would inarguably be very financially stable. However, the cause of the costs to be recovered through the SSR, identified by DP&L mainly as increased customer shopping, is DP&L's own aggressive pricing of its generation, which makes shopping for generation increasingly attractive. These pricing decisions have allowed the Company to recover generous returns on equity in the short-term, but may have negative long-term effects on the Company's financial health. It is not fair or reasonable to expect shopping customers, particularly long term shopping customers, to “bail-out” DP&L from the consequences of the Company's short-term pricing strategies.[14] Collection of the SSR is also wholly inconsistent with the stated policies of the State of Ohio, which are clearly meant to encourage competitive supply and customer choice.

The primary focus of DP&L's filing is the incorporation of a competitive pricing component into its standard service offer (“SSO”) rates, and the associated increase in

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[13] Transcript of Proceedings, Volume XI, filed herein on April 15, 2013, at pages 2880, lines 24-25; page 2881, lines 1-5.
[14] Transcipt of Proceedings, Volume VII filed herein on April 9, 2013 at page 1682, lines 4-15.

"stability" revenues the Company claims is necessary to fund the SSO rate reduction.[15] The SSR also compensates for SSO revenues lost due to the relatively recent surge in shopping activity that has occurred in DP&L's service territory.[16] DP&L's proposed ESP fails to provide a reasonable and coherent rate treatment for all customers, but especially for customers that have been shopping for several years. In effect, DP&L proposes to underwrite the anticipated reduction in its SSO rates, and an anticipated increase in shopping activity, by increasing the non-bypassable "stability" related charge to shoppers by an incredible 88%.[17] This proposition is fundamentally unreasonable, especially as it relates to customers who shop, and have shopped for generation for an extended period.[18]

In light of the absence of express statutory support for continued transition related charges, and taking into consideration the previous disposition of DP&L's transition cost recovery by the Commission and the stated policy of the State to encourage competition, the Commission should reject DP&L's proposal to make the SSR non-bypassable because the continuation and increase of those charges constitutes unreasonable and redundant transition cost recovery. Likewise, if the Commission finds that DP&L's proposed SSR promotes a type of "certainty for retail electric service" then the Commission should balance several factors in determining the appropriate level of the charges[19]. Taking into account all of these factors, if the Commission determines that a "stability" charge is warranted, the charge should be no

[15] Kroger's Exhibit Number 1, Pre-Filed Testimony of Kevin Higgins (hereinafter, Kroger Exhibit1) filed herein March 1, 2013 at page 4, lines 1-24.
[16] Id.
[17] Id.
[18] Id.
[19] Id.

greater than the current Rate Stabilization Charge ("RSC"), particularly as it applies to long-term shoppers, or those customers who have been shopping continuously for at least three (3) years. There is no evidence in this docket that these long term shopping customers impose, or will impose in the future, any greater costs on DP&L today than when the RSC was adopted.[20]

Additionally, the Commission should establish a sunset date after which individual shopping customers are no longer subject to an SSR, or other type of "stability" related charge. A sunset date of five (5) years, measured from the date of the individual customer's initiation of Competitive Retail Electric Service, is a reasonable time period for the Company to collect stability charges from shopping customers under the circumstances set forth in DP&L's filing.[21] In fact, the State of Ohio implemented a similar mechanism for ensuring appropriate allocation of costs incurred due to customer shopping where competitive gas choice was introduced, as noted by hearing examiner Price.[22]

The Commission should also reject DP&L's proposal for a "Switching Tracker." The Switching Tracker proposal is an overt attempt at improper transition cost recovery. Moreover, it creates substantial rate uncertainty for all customers going forward and therefore cannot reasonably be considered to foster or promote rate stability or rate certainty.[23]

The Commission should reject DP&L's proposal to make its proposed Reconciliation Rider ("RR") non-bypassable. Each of the existing riders that the

[20] Id., at 5.
[21] Id.
[22] Transcript volume V11, pages 1648-1650
[23] Kroger Exhibit 1 at page 5

Company proposes to reconcile through the RR are currently bypassable. DP&L provides no adequate reason for making these riders non-bypassable. Shopping customers do not cause these costs to be incurred and, appropriately, should not be obligated to pay for them.

A. PROPOSED SERVICE STABILITY RIDER

DP&L proposes the SSR as a non-bypassable rider, designed to collect $137.5 million annually, based on the Revised ESP filed December 12, 2012. According to the second revised testimony of Craig L. Jackson, the SSR is intended to provide the Company an opportunity to earn a reasonable return on equity, which has declined due to increased customer shopping and decreasing capacity and wholesale power prices.[24] The SSR is a de facto extension and expansion of the RSC, which is comprised exclusively of generation costs designed to collect approximately $73 million per year.[25]

Taking the proposed SSR in combination with the proposed Switching Tracker discussed below, it is obvious that DP&L is proposing to require shopping customers to pay a form of transition cost recovery, i.e. an attempt to recover generation costs that are "stranded" due to shopping.[26] Transition cost recovery for DP&L was fully resolved and completed several years ago as a result of a Stipulation approved by the Commission in Case No. 99-16879-EL-ETP. The Commission's approval of the Stipulation in that docket approved the collection of substantial transition costs, but also provided that recovery of transition costs was to be completed by the end of 2003. In

[24] Second Revised Testimony of Craig L. Jackson, filed herein on December 2012, at page 13 at lines 6-9; also, Transcript of Proceedings, Volume I, filed herein on April 1, 2013, at page 248, lines 7-20, (cross examination of Craig L.Jackson.)
[25] *In the Matter of the Application of The Dayton Power & Light Company for Relocation of the Rate Stabilization Surcharge,* PUCO Case No. 07-1252-EL-ATA, Finding and Order (April 30, 2008).
[26] Id., at 5-6.

Section VII of that Stipulation, DP&L specifically agreed not to attempt to recover any transition costs beyond that date. Allowing the SSR to be collected from shopping customers on a non-bypassable basis would improperly extend the recovery of transition costs beyond that terminal date, agreed upon by the Company.[27]

No provision in Am. Sub. S.B. 3, which began the restructuring of the Ohio retail electric market over ten years ago, provide for any new additional round of transition cost recovery for historically-incurred fixed generation costs. Indeed, § 4928.40, which was enacted as part of that legislation, expressly limits recovery of transition revenues to a date no later than December 31, 2010. In light of the absence of express statutory support for continued transition charges, and taking into consideration the previous disposition of DP&L's transition cost recovery by the Commission, the Commission must reject DP&L's proposal to make the SSR non-bypassable because collection of SSR on a non-bypassable basis would constitute unauthorized, unreasonable and redundant transition cost recovery. Moreover, aside from the absence of statutory support for continued transition charges, it is facially unfair, unjust and unreasonable to require shopping customers to compensate DP&L for current or stranded generation related costs while those customers purchase their full generation requirements from a CRES provider. In effect, approval of this proposal would double charge shopping customers for generation related costs.

In approving AEP-Ohio's RSR, the Commission determined that AEP-Ohio's RSR "provides certainty for retail electric service, as is consistent with Section

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[27] Id., at 6.

4928.143(B)(2)(d), Revised Code."[28] The cited section of the Revised Code states that an ESP may provide for or include, without limitation:

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

The Commission should balance several factors in considering the request for recovery of the SSR charge. On the one hand, the Commission may find that DP&L's proposed SSR provides some type of "certainty for retail electric service," as the Commission found in the AEP case. Such a finding, if made, should be balanced against the requirement in Ohio Revised Code § 4928.40 that transition charges end no later than December 31, 2010. The Commission should give weight to the substantial advance notice that DP&L was given by the statute that transition charges would cease and that shopping customers would not have an obligation to underwrite utility generation costs indefinitely. The Commission should also give weight to the Stipulation in Case No. 99-16879-EL-ETP which provided that recovery of transition costs was to be completed by the end of 2003.[29]

Further, the Commission should also take into consideration the going-forward level of the current non-bypassable RSC and the implications for long-term shopping customers (i.e., customers who have been shopping continuously for at last three

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

years).[30] Through the RSC, shopping customers contribute to DP&L's generation cost while purchasing their full generation requirements from a CRES provider. The proposed SSR would dramatically increase what is essentially this same charge by 88%, by increasing the revenue recovery from approximately $73 million per year under the current RSC to $137.5 million under the proposed SSR. Yet it is impossible to conceive that by simply continuing to purchase power from CRES providers, long-term shopping customers could reasonably have incurred — or will incur in the future — any greater unit-cost responsibility to bear a portion of DP&L's legacy costs than they are required to bear today. Other than the right to return to (unattractive) SSO rates, these customers receive no benefit from DP&L in exchange for the substantial RSC they are currently responsible to pay. Increasing these charges by a whopping 88% under the guise of "service stability" is fundamentally unfair and unreasonable, but is especially onerous as it applies to shopping customers.

One of DP&L's stated revenue concerns, theoretically justifying imposition of the charge, is the impact of increased levels of shopping. But the Commission should also strongly consider that the SSO rates from which shopping customers have been fleeing were fully and fairly negotiated by DP&L in a stipulation that exempted DP&L from the Significantly Excessive Earnings Test ("SEET") for three years (2009-2011).[31] It is well understood that SSO rates are not based on cost-of-service. In negotiating the current SSO rates, DP&L gained the freedom and ability to earn rates of return beyond SEET levels for three years, but also assumed the risk that setting SSO rates too high might

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

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

result in a loss of sales to CRES in the market.[32] Had market prices increased, DP&L would have profited handsomely from this arrangement. But as explained in DP&L's filing, capacity and wholesale power pricing in the market have been declining.[33] Consequently, DP&L's SSO pricing has become increasingly unattractive for customers, and as a result, shopping penetration levels have increased sharply. DP&L now seeks to insulate itself from the consequences of its prior aggressive pricing decisions, and recover the costs of these strategies by converting its RSC into the SSR — and increasing the level of these charges by 88%. The Commission should be mindful of the economic "moral hazard" involved in such a proposition. It is clearly unfair to require shopping customers to bear the cost of DP&L's risky and imprudent pricing decisions. Also, notably, the majority of the shopping load has gone to DP&L's affiliate, DPL Energy Resources ("DPLER"), and thus, this load has remained within DP&L's corporate family.[34] Taking into account all of these factors, if the Commission determines that any level of SSR is warranted, the charge should be no greater than the current RSC, particularly for longer-term shopping customers, as there is no evidence that these customers are imposing any greater costs on DP&L today than when the RSC was adopted.[35]

In addition, the Commission should establish a sunset date after which individual shopping customers are no longer subject to the SSR. There should be a firm date

[32] Id., at 9.

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

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

[35] Id., at 10.

beyond which those customers who purchase generation from a CRES supplier should no longer be forced to subsidize the generation related costs of DP&L. For this purpose, a reasonable sunset date of five years measured from the date of the individual customer's initiation of Competitive Retail Electric Service should be established as a firm cut-off date, after which no shopping customer should be required to pay any generation related "stability" charge.

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

In order to properly consider the unfairness of the SSR, the Commission should also note the degree of subsidization that the charge shifts onto shopping customers.[36]

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[36] Id., at 11. Also, as noted herein, a similar approach was utilized where competitive gas service was adopted in Ohio. While perhaps not perfect, the adoption of a cur-off date recognizes that long term shoppers do not cause certain supply costs and should therefore not be charged for those costs. See, footnote 24 herein.

For example, for a hypothetical customer taking service at primary voltage, that customer will have paid DP&L approximately $60.13 per kW applied to its average monthly demand plus 14.34 cents/kWh applied to its average monthly energy usage over a five (5) year period. These charges would have been paid to DP&L to help underwrite the costs of DP&L's generation service even though the hypothetical customer would have purchased its generation service from a CRES provider, and therefore not contributed to those generation related costs in any way, over the entire five-year period.

Kroger witness Higgins has summarized patterns of historical customer switching data collected by the Commission in Exhibit KCH-1, page 1. Using this information as a guide, Higgins' estimates that in 2014, no more than 11% of customer load would be exempt from the SSR.[37] Similarly, at the beginning of 2015 the exemption rate would also be approximately only 11%, increasing to 43% at the beginning of 2016. These estimates are presented Exhibit KCH-1, page 2.

Mr. Higgins also examined the ROE projections proffered by DP&L witness William J. Chambers in his confidential Second Revised Exhibits WJC-1 through WJC-5.[38] Without endorsing necessarily each of Mr. Chambers' assumptions, Higgins notes that Second Revised Exhibit WJC-2 forecasts ROEs under the assumption that DP&L's proposed SSR is adopted (with no additional switching) and Second Revised Exhibit WJC-4 forecasts ROEs under the assumption that DP&L's proposed SSR is rejected (with no additional switching). The current RSC, including the recommended five-year sunset provision, produces revenues that are approximately 47% to 52% of DP&L' s

[37] Although shopping load was 18.7% at the end of 2008, by the end of 2009 it had fallen to 11%; thus, the continuously shopping load by the beginning of 2014 would be no greater than 11%.
[38] Id, at 12.

proposed SSR in 2013 and 2014. Consequently, using Mr. Chambers' assumptions, Higgins' recommended alternative to DP&L's proposal should produce ROEs for those two years that are approximately midway between the ROEs projected by Mr.Chambers in Second Revised Exhibit WJC-2 and Second Revised Exhibit WJC-4. In Mr. Higgins' opinion, these projected ROEs are reasonable in light of all the surrounding circumstances, taking into account the fact that DP&L has had thirteen years' notice that retail competition was imminent, that shopping customers have and will continue to make material contributions to DP&L's generation costs some thirteen (13) years since the introduction of retail competition in Ohio, and that the (current) SSO prices negotiated by DP&L (in combination with the RSC) provided the Company with double-digit ROEs in recent years, even though those SSO prices ultimately proved to be uncompetitive in the market, and strongly encouraged shoppers to go elsewhere to procure generation.

Moreover, as noted in the ESP filing, DP&L is winding down its days as a regulated generation service provider. The Company's need to attract capital on behalf of retail customers going forward should be directed primarily to the provision of distribution service.[39]

Further, projecting ROEs beyond 2014 becomes increasingly speculative and unreliable. Net operating income forecasts are driven by projected differentials in the change in revenues and expenses that may or may not come to fruition. These forecasts are increasingly inaccurate far into the future. Such projections should not be used to "lock in" a bad deal nor should they be used to forever tax long-term shopping

[39] Id., at 13.

customers with the burden of paying twice for generation: once to a CRES provider and a second time to DP&L.

B. SWITCHING TRACKER

As explained in the second revised testimony of Craig L. Jackson, DP&L proposed Switching Tracker would defer for later recovery the difference between the level of shopping as of August 30, 2012 (62%) and the actual level of shopping. The tracker would be calculated monthly by multiplying the incremental switching proportion by the distribution load, and applying a $/MWh cost based on the difference between the Blended SSO rate and the CB rate in effect. The monthly tracker balance would be added to a regulatory asset, which would accrue carrying charges at DP&L's cost of long-term debt. DP&L proposes the Switching Tracker balance be recovered from all customers beginning January 1, 2014.

The Switching Tracker is an overt attempt at improper transition cost recovery. Moreover, it creates substantial future rate uncertainty for customers going forward and therefore cannot reasonably be considered to be a feature of rate "stability" or rate "certainty."[40] Significantly, in approving AEP-Ohio's RSR the Commission rejected AEP-Ohio's decoupling proposal, stating:

> "Moreover, we find that the certainty and stability the RSR provides would be all but erased by its design as a decoupling mechanism. We agree with OCC that the ability for AEP-Ohio to decouple the RSR would cause financial uncertainty, as truing up or down each year will create customer confusion in their rates."
> [Opinion and Order at 32.]

DP&L's Switching Tracker is similarly flawed. As such, it must be rejected by the Commission as ineffective in providing rate certainty or stability to customers. In the

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[40] Id., at 14.

event the Commission does not reject the Switching Tracker, the Switching Tracker should, at the very least, be made by-passable to long-term shopping customers. DP&L inarguably has not and will not incur generation costs on behalf of long term shopping customers, and it is therefore fundamentally unfair and unreasonable to charge existing shoppers for lost revenues from customers who may switch to competitive generation suppliers in the future.

C. PROPOSED RECONCILIATION RIDER

As described in the direct testimony of Emily W. Raab, the proposed Reconciliation Rider ("RR") is intended to be a non-bypassable charge that would include any deferred balance that exceeds 10% of the base recovery rate associated with any of the following "true-up" riders: the FUEL Rider, the RPM Rider, TCRR-B, AER, and the proposed Competitive Bid True-up (CBT) Rider. In addition, the RR would include the costs of administering the Competitive Bidding Process, and the costs of certain "competitive retail enhancements."

DP&L's proposal to make the RR non-bypassable should clearly be rejected by the Commission because each of the existing riders that the Company proposes to reconcile through the RR is, properly, by-passable today.[41] The CBT Rider is also proposed to be by-passable.

Shopping customers do not cause the costs recovered by these riders to be incurred and, appropriately, are not obligated to pay for them. DP&L has attempted to confound this issue by arguing that if the balance of these riders becomes "excessive", it

[41] Id., at 15.

would further improve the economics of shopping, resulting in additional switching. (The so-called "death spiral" scenario.)

This leads to the Company's claim that to prevent this occurrence, shopping customers should be assigned cost responsibility for these currently by-passable riders if the deferral balance exceeds 10%. This is, of course, merely another incarnation of the improper and unreasonable transition cost claim discussed earlier herein.[42]

DP&L attempts to buttress its argument by depicting shoppers as "escaping" costs incurred on shoppers' behalf. This argument completely ignores the circumstances of long term shopping customers such as Kroger who have been shopping for years, and would nevertheless be saddled with the reconciliation of otherwise by-passable costs that indeed were absolutely <u>not</u> incurred on those customers' behalf. In fact, DP&L's proposal results in a completely unreasonable and baseless assignment of cost responsibility upon these long term shopping customers. In short, the proposal to make Rider RR non-bypassable is nothing more than an attempt to levy an improper tax, particularly as the Rider relates to collection from long term shopping customers that should be enthusiastically rejected by the Commission.

Finally, to the extent that DP&L incurs legitimate administrative costs to provide bona fide "competitive retail enhancements" that directly benefit shopping customers, these costs can properly be segregated and charged to shopping customers on a non-bypassable basis. There is no good ratemaking reason to include these and similar costs in the proposed RR.[43]

Respectfully submitted,

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[42] Rate Blending Plan at page 13.
[43] Id., at 16.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing pleading was served this _____ day of May, 2013, via electronic mail upon the following:

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Summary of Switching Rates from Dayton Power and Light's Standard Generation Service to Competitive Retail Electric Service Based on Year-End Number of Customers [1]

Dayton Power and Light Service Area	2008	2009	2010	2011	2012
Switch Rate (% of Customers) [2]	0.15%	0.18%	1.91%	12.56%	25.06%[3]

Summary of Switching Rates from Dayton Power and Light's Standard Generation Service to Competitive Retail Electric Service Based on Year-End Sales (MWhs) [1]

Dayton Power and Light Service Area	2008	2009	2010	2011	2012
Switch Rate (% of MWhs) [4]	18.71%	11.05%	43.24%	51.15%	60.44%[3]

[1] Data Source: http://www.puco.ohio.gov/puco/index.cfm/industry-information/statistical-reports/electric-customer-choice-switch-rates/

[2] Includes residential, commercial, industrial and other customers

[3] Figure represents switch rate as of Sept 30, 2012

[4] Includes sales to residential, commercial, industrial and other customers

Upper Range Estimate of SSR Exemption Rates Based on Beginning of Year Sales (MWhs)[1]

Dayton Power and Light Service Area	2014	2015	2016	2017
Exempt Rate (% of MWhs)[2]	11.05%	11.05%	43.24%	51.15%

[1] Data Source: http://www.puco.ohio.gov/puco/index.cfm/industry-information/statistical-reports/electric-customer-choice-switch-rates/ & Exhibit KCH-1.p. 1

[2] Includes sales to residential, commercial, industrial and other customers