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Via E-File

June 5, 2013

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

In re: Case Nos. 12-426-EL-SSO, 12-427-EL-ATA, 12-428-EL-AAM, 12-429-EL-WVR, 12-672-EL-RDR

Dear Sir/Madam:

Please find attached the REPLY BRIEF OF THE OHIO ENERGY GROUP for filing in the above-referenced matter.

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

Respectfully yours,

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DFB/kew
Encl.
Cc: ALJ Bryce McKenney
ALJ Gregory Price
Certificate of Service

BEFORE THE

PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of 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 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

REPLY BRIEF OF
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BEFORE THE

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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

REPLY BRIEF OF THE OHIO ENERGY GROUP

The Ohio Energy Group ("OEG") hereby submits this Reply Brief in response to certain arguments raised in the initial briefs of The Dayton Power and Light Company ("DP&L" or "Company"), the Office of the Ohio Consumers' Counsel ("OCC"), and the Staff of the Public Utilities Commission of Ohio ("Commission" or "PUCO"). OEG's decision not to respond to other arguments raised in this proceeding should not be construed as implicit agreement with those arguments.

I. DP&L Failed to Provide a Valid Basis for Establishing Its Proposed Service Stability Rider and Switching Tracker.

In its Initial Post-Hearing Brief, DP&L claims that its proposed Service Stability Rider ("SSR") and Switching Tracker satisfy the "stability" or "certainty" criterion set forth in R.C. Code §4928.143(B)(2)(d).[1] But the Company has yet to prove that customers would actually receive rate stability or certainty as a result of establishing those proposed rate mechanisms. In fact, the SSR would only provide customers with certainty that

[1] The Dayton Power & Light Company's Initial Post-Hearing Brief ("DP&L Brief") at 14.

their rates would be increased by a fixed amount ($137.5 million annually). It would not stabilize the rates that customers ultimately pay the Company during the Electric Security Plan ("ESP") period. And the Company's Switching Tracker proposal would vary customers' rates by unknown amounts from year to year based upon shopping rates, *increasing* uncertainty about the rates that customers would ultimately be charged. Hence, DP&L has failed to demonstrate that the proposed SSR and/or Switching Tracker are justified pursuant to R.C. §4928.143(B)(2)(d).

Given that the Company failed to prove that the SSR and/or the Switching Tracker satisfy the requirements of R.C. §4928.143(B)(2)(d), there is no other valid legal basis for establishing the Company's proposed rate mechanisms. DP&L does not have a statutory entitlement to an "opportunity" to earn a regulated return on generation assets that have not been regulated since 2001.[2] That regulated generation ratemaking paradigm has not existed since 2000 and the Commission cannot and should not attempt to reestablish it, even temporarily.[3] Particularly since DP&L already benefitted substantially from its unregulated status (retaining $1.244 billion in earnings over the last twelve years),[4] the Commission should not now create the "worst of all worlds" for customers by choosing this time to re-regulate the Company's return on equity on its fixed generation assets.

DP&L argues that its remarkable past earnings should not be considered by the Commission for purposes of this case.[5] The Company cites telecom and gas cases decided from 1925 to 1947 in its attempt to reinforce this point. But those cases are easily distinguishable since they were decided under a traditional, regulated ratemaking regime. DP&L does not operate under such a regime. If it had, DP&L likely would not have retained such tremendous earnings over the last twelve years. Additionally, DP&L notes that customers benefitted as a result of the Company's below-market pricing during the last decade.[6] But any benefits customers received do not justify

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[2] Tr. Vol. III at 709:12-15 ("*Q. Would you agree that the generation business within DP&L is not regulated by the Public Utilities Commission of Ohio*? [Company witness Rice] *Yes, I would.*"); OEG Ex. 1 at 3:20-22; In addition, the Company no longer uses regulatory accounting for its generating assets. Tr. Vol. I at 123:9-11 ("*Q. And DP&L no longer uses regulatory accounting for its generation assets, correct?* [Company witness Jackson]. *That's correct.*").
[3] OEG Ex. 1. at 5:12-16.
[4] OEG Ex. 1 at 15:2-16:1.
[5] DP&L Brief at 47-48.
[6] DP&L Brief at 48.

completely disregarding the $1.244 billion in earnings that DP&L retained as a result of its unregulated status when analyzing the Company's current request to effectively re-regulate its generation in this case.

Not only did DP&L fail to provide a valid legal basis for establishing its proposed SSR and Switching Tracker, its request for the SSR also lacks a valid financial basis. Though DP&L attempts to assuage the Commission in addressing intervenor criticisms of its SSR calculation,[7] the fact remains that there is a significant risk of the Company over-recovering if its proposed SSR is adopted. That risk arises from the major flaws in the Company's financial statements, including: 1) the incorporation of DP&L's unregulated generation assets and related revenues and costs in its projected financial statements;[8] 2) the assumption that there will be no distribution rate increases during the ESP period, even though distribution costs are projected to increase;[9] 3) the assumption that all growth in unregulated generation plant investment as well as in regulated transmission and distribution plant investment over the five-year ESP period will be financed through common equity rather than debt; 4) the failure to reflect any effects of significant cost reduction initiatives that were and/or are under consideration in the projected financial statements; and 5) the intentional use of the "low" estimate of RPM to project the capacity revenues used in the projected financial statements rather than the average of the estimates that it obtained from its consultants for this purpose. Given these major flaws, establishing the SSR as proposed by DP&L introduces a significant risk of over-recovery by the Company, which is contrary to the Commission's directive under R.C. 4928.02(A) to ensure the availability to customers of reasonably priced retail electric service.

Accordingly, in light of the lack of any valid basis for establishing either the SSR or the Switching Tracker, the Commission should reject the Company's proposals in this case. Alternatively, if the Commission establishes the SSR, at minimum, the Commission should reduce the SSR to no more than the $73 million annually that is presently recovered through the Rate Stabilization Charge ("RSC") in order to reduce the risk of over-recovery from customers.[10]

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[7] DP&L Brief at 39-42.
[8] Company Exs. 1 and 1A, Jackson Testimony at 10.
[9] Tr. Vol. I at 118:3-5 ("[Company witness Jackson]. *I think, yeah, just as I had mentioned, we had not included any impact of a distribution rate case in my projections.*").
[10] OEG Ex. 1 at 11:17-12:2.

II. If the Commission Approves DP&L's Proposed Service Stability Rider, It Should Also Adopt OEG's Recommended Cost Allocation and Rate Design, Which is the Only Recommended Methodology That Properly Reflects the Nature of the Costs That Would Be Recovered Under the Rider.

In their initial briefs, DP&L, OCC, and Staff propose conflicting methods for allocating and recovering the costs associated with the Company's proposed SSR, each of which should be rejected. DP&L proposes to allocate any approved SSR costs by using the present RSC method and adding a customer charge component.[11] Staff proposes to use the existing RSC method without adding a new customer charge component.[12] And OCC proposes to allocate all of the SSR costs on the basis of energy usage.[13] But none of these proposed methods properly reflect the nature of the costs that would be collected through the proposed SSR.

The SSR is intended to "[t]*o permit DP&L to maintain its financial health and to give DP&L an opportunity to earn a reasonable return on equity*."[14] As discussed in detail in OEG's initial post-hearing brief, this objective is markedly different than that of the RSC, which was originally established to allow 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, which costs are imposed by final rule, regulation or administrative or court order*."[15] Unlike the RSC, which may be characterized as a POLR charge and/or a fuel adjustment charge in part,[16] the proposed SSR is intended to enhance the Company's return on equity during the ESP period. Hence, given that these two riders are intended to accomplish markedly

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[11] DP&L Brief at 60; *See also* Company Ex. 7.
[12] Post-Hearing Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio ("Staff Brief") at 22.
[13] OCC advocates that the Switching Tracker be advocated on the basis of energy usage as well. Post-Hearing Brief of the Office of the Ohio Consumers' Counsel ("OCC Brief") at 82-90. Ohio Partners for Affordable Energy and the Edgemont Neighborhood Coalition also support OCC's recommendation. Post-Hearing Brief of Ohio Partners for Affordable Energy and the Edgement Neighborhood Coalition ("OPAE/Edgemont Brief") at 17-18.
[14] DP&L Second Revised Application (Dec. 12, 2012), Book I at 8.
[15] OEG Post-Hearing Brief at 12-15 (citing In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for The Dayton Power and Light Company, PUCO Case No. 02-2779-EL-ATA, Stipulation and Recommendation (May 28, 2003), Provision IX(E)).
[16] At the hearing, Company witness Parke stated that he understands the RSC to be a POLR charge. Tr. Vol. III at 823:24-824:1 ("*Q. What is that general understanding?* [Company witness Parke]. *That the rate stabilization charge was a POLR charge.*"). The first ESP Stipulation provided that customers of government aggregations who elected not to pay the RSC in 2011 and 2012 would return to electric utility service at market-based rates, which suggests that the existing RSC is a POLR charge. 2009 ESP Order at 5. In addition, in Case No. 05-276-EL-AIR, In the Matter of the Application of The Dayton Power and Light Company for the Creation of a Rate Stabilization Surcharge Rider and Distribution Rate Increase, the Commission permitted recovery of additional revenues associated with fuel price increases.

different objectives, it is unreasonable merely to use the present RSC rate design, and implicit cost allocation, to assign the SSR revenue requirement to rate classes.

The SSR is intended to enhance the rate of return on equity that would otherwise be earned by DP&L on its fixed and unregulated generation assets during the ESP period. SSR costs are therefore demand-related production costs that should be allocated on the basis of demand, where possible. Consequently, the Commission should require DP&L to allocate the SSR revenue requirement to rate classes using a 1 coincident peak ("1 CP") production demand allocator.[17] Similarly, for demand-metered rate classes, the entirety of the allocated SSR costs should be recovered through the kW demand charge. These modifications properly reflect the nature of the costs being recovered through the proposed SSR and are necessary to ensure that customers are provided reasonably priced retail electric service in accordance with R.C. 4928.02(A).

OCC states that "*fair distribution/allocation of charges can only be achieved when there is a clearly established relation between the basis for the charges and the design of the rates.*"[18] Yet OCC's proposed SSR allocation, based upon kWh energy usage, would not result in a fair distribution/allocation of the charges under that rider. Rather, it would create a wide chasm between the nature of the costs to be recovered under the SSR and the manner in which those costs are recovered. OCC claims that the objective of the SSR is to compensate DP&L "*for the impact on its financial integrity of its allegedly 'lost' margin on electricity sales that it would have made if customers had not switched to another supplier to purchase electricity, coupled with the market price for generation being lower than DP&L's embedded generation-related cost of service.*"[19] In making this claim, OCC attempts to rebrand the SSR and to tie its costs to the Company's volumetric sales. But the SSR calculation is intended to provide DP&L a specific rate of return on equity on its fixed generation assets during the ESP period.[20] Thus, the SSR is a capacity charge that should be allocated on a demand basis, where possible.

Staff attempts to quickly dismiss OEG's proposed allocation by simply stating that the allocations proposed by parties to this case have no merit or are baseless,[21] but the Commission should not be so easily

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[17] Honda also supports allocating the SSR on a 1 CP basis. Brief of Intervenor Honda of America MFG, Inc. ("Honda Brief") at 5.
[18] OCC Brief at 85.
[19] OCC Brief at 86.
[20] *See* Staff Brief at 10.
[21] Staff Brief at 22.

dissuaded. Staff fails to provide any reason why the Commission should not establish an SSR allocation method that actually reflects the nature of the costs being recovered under that mechanism. Even without a cost-of-service study in the record, the Commission can easily assess the nature of costs to be recovered under the SSR and can establish a cost allocation/rate design that properly reflects that nature. OEG's proposed methodology does just that.

III. CONCLUSION.

As many parties to this case have argued,[22] the Commission should reject the Company's proposed SSR and Switching Tracker in this proceeding. Alternatively, if the Commission establishes an SSR at some level, the Commission should limit that level to no more than the present $73 million Rate Stabilization Charge. In addition, the SSR revenue requirement (if any) should be allocated using a 1 CP demand allocation method and, for demand-metered rate classes, the entirety of the allocated SSR costs should be recovered through the kW

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[22] OPAE/Edgemont Brief at 15 ("*OPAE and Edgemont agree that there is no legal or financial basis for the Commission to adopt the SSR.*"); Initial Brief of the Federal Executive Agencies ("FEA Brief") at 4 ("*DP&L's SSR is not based on a competent assessment of the Company's regulated cost of service, and therefore, it is not appropriate to impose the SSR charge as proposed on retail customers.*"); OCC Brief at 42 ("*DP&L's proposed Service Stability Rider would constitute a subsidy of its generation service, which is no longer subject to regulation as of December 31, 2005.*"); Initial Brief of The Kroger Company ("Kroger Brief") at 8 ("*Collection of the SSR is wholly inconsistent with the stated policies of the State of Ohio, which are clearly meant to encourage competitive supply and customer choice.*"); Initial Brief of the Ohio Hospital Association ("OHA Brief") at 2 ("*DP&L's request for a switching tracker and a Service Stability Rider ('SSR') both should be rejected by the Commission.*"); Post-Hearing Brief of FirstEnergy Solutions Corp. ("FirstEnergy Brief") at 57 ("*DP&L's request for an SSR is simply an attempt at end run around Ohio's competitive market and should be rejected.*"); Initial Brief of Industrial Energy Users- Ohio at 18 ("*DP&L's SSR and ST proposals are strategically asymmetrical, unbalanced, unjust, unreasonable and unlawful, attempts to recover additional transition revenue.*"); Post Hearing Brief of Wal-Mart Stores East, LP and Sam's East, Inc. ("Wal-Mart Brief) at 9-10 ("*...the SSR and ST would inappropriately charge all competitively supplied customers for SSO-related generation costs and "lost opportunity" and inappropriately shifts risk that DP&L, as a generation service provider, faces in a competitive environment to customers who have chosen to take service from a competitor which results in misalignment of cost causation and cost responsibility principles and results in inequitable rates as those customers will pay a cost for which they will receive no benefit.*"); Post Hearing Brief of the OMA Energy Group at 3 ("*DP&L's SSR does not comply with Ohio's policy of ensuring the availability of reasonably priced retail electric service.*"); Initial Post-Hearing Brief of Interstate Gas Supply, Inc. D/B/A/ IGS Energy ("IGS Brief") at 9 (*"Two riders—the Service Stability Rider ("SSR") and Switching Tracker ("ST")—are anticompetitive subsidies that are inconsistent with state policy and violate Ohio law. These mechanisms are designed to increase the profitability of unregulated affiliates at the expense of ratepayers.*"); Honda Brief at 5 ("*DP&L witness Jackson's calculations appear to be incomplete and faulty, and if the Commission agrees with this assessment, then witness Chambers' findings are also faulty and DP&L has failed to prove its need for the SSR.*"); OPAE/Edgemont Brief at 10 ("*OPAE and Edgemont agree with the Staff, OCC, and practically every consumer and marketer intervenor in these proceedings that the proposed switching tracker is anti-competitive, unfair, unlawful, illogical, and unreasonable.*"); Staff Brief at 2-5; OCC Brief at 64 ("*The Commission should reject DP&L's request for a switching tracker because it is unlawful, unjust, and unreasonable...*"); Kroger Brief at 9 ("*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.*"); FirstEnergy Brief at 59 ("*There is no justification for the anticompetitive* [Switching Tracker] *under Ohio law.*"); Initial Brief of the Retail Energy Supply Association at 15 ("*Rider ST would amount to a second subsidy for DP&L for its financial integrity.*").

demand charge. These modifications properly reflect the nature of the costs being recovered through the proposed SSR and are necessary to ensure that customers are provided reasonably priced retail electric service in accordance with R.C. 4928.02(A).

Respectfully submitted,

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June 5, 2013

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