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

REPLY BRIEF
OF THE RETAIL ENERGY SUPPLY ASSOCIATION

June 5, 2013

TABLE OF CONTENTS

I. Introduction

The Retail Energy Supply Association ("RESA")[1] is a national trade association of 20 energy suppliers, several of whom are certified as competitive retail electric service ("CRES") providers, and have been active in Ohio's retail electric and natural gas markets for many years. RESA members provide competitive service to residential, commercial, industrial, and governmental customers in Ohio. In particular, some of RESA's members currently provide CRES to retail customers in The Dayton Power and Light Company ("DP&L") service territory. RESA submits these reply comments address the following issues: (1) needed data enhancements for the DP&L system; (2) how such upgrades should be paid for; (3) the reasons the Commission should not establish a non-bypassable rider for the existing Yankee 1 Solar Generating facility; (4) the reason the Commission should allow DP&L to move the Network Integrated Transmission Service ("NITS") to a non-bypassable rider; and (5) rejection of the costly, anticompetitive Switching Tracker.

In this Reply Brief, RESA has chosen to respond to only certain issues and arguments in the initial briefs filed by DP&L and other intervenors, which RESA believes were not fully addressed in its initial brief. RESA's decision to not address any particular issue raised by DP&L or other intervenors should not be construed as acquiescence or agreement by RESA with such positions.

II. Several of DP&L's Proposed Riders are Problematic and Should be Rejected

[1]RESA is a broad and diverse group of 20 retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented, outcome than a regulated utility structure. RESA's membership recently changed. Its members include: AEP Energy LLC, Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions, LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd.; and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization, but may not represent the views of any particular member of RESA.

DP&L's second Electric Security Plan ("ESP") proposal contains numerous discrete additional charges to be paid by retail customers in the form of riders. The riders not only impact the amount retail customers pay DP&L, but some of the requested riders have the effect of discouraging or limiting shopping, Specifically, the costly, anticompetitive riders which should be rejected by the Commission include the Switching Tracker (Rider "ST"), the Alternative Energy Rider - Nonbypassable ("AER-N"), and the Reconciliation Rider ("Rider RR"). In addition to the arguments RESA detailed in its Initial Brief, RESA objects to this list of DP&L new non-bypassable riders for the following reasons:

A. Switching Tracker

DP&L's proposed Rider ST seeks later recovery from *all* customers for the difference between the level of switching as of the initial ESP filing date (62% of the retail load) and the actual level of switching, plus carrying costs.[2] DP&L proposes to begin recovery of the deferred amounts on January 1, 2014. The record reflects DP&L's own estimates of the amounts that could be collected (excluding carrying costs) for just the first two years of the ESP II are:

2013: $32.8 million
2014: $23.3 million[3]

Thus, DP&L illustrates a recovery, in the first 24 months alone, of more than $56.1 million in principal with additional amounts for carrying charges. The record reveals DP&L has already passed its proposed trigger point of 62% shopping.[4] Thus, DP&L is requesting that all customers collectively pay DP&L the difference between what DP&L receives in the market for the generation it is selling and what it would charge for its legacy rates. As DP&L Witness Jackson admitted on cross-examination, the effect of Rider ST is to make DP&L financially *indifferent* to

[2]DP&L Ex. 9 at 16.
[3]DP&L Ex. 1 at CLJ-5 and CLJ-6; Hearing Transcript [Tr.] at 210.
[4]Tr. at 209

shopping.[5]

DP&L argues that its Rider ST is a lawful charge and points for support to (a) Section 4928.143(B)(2)(d), Revised Code, and (b) the Commission's recent decision in another company's ESP proceeding.[6] Both of those arguments are flawed. First, Section 4928.143(B)(2)(d), Revised Code, permits an electric distribution utility to charge for generation or generation assets *only* if doing so "…. would have the effect of stabilizing or providing certainty regarding retail electric service." Insuring that DP&L will receive the same amount of money as if none of its existing standard service customers were permitted to shop is not required by the statute, or even within the design of the statute. Nor is Section 4928.143(B)(2)(d), Revised Code, intended to bolster the reliability of the DP&L system. The only argument that could be raised to defend the notion that Rider ST is needed to support retail service is that it would act as a financial safety net for DP&L. That very task though is accomplished already by DP&L's proposed Service Stability Rider ("SSR"). Thus, at best Rider ST is a duplicate of Rider SSR, and at worst it is a transfer to retail customers of all of DP&L's financial risk of having generation units with costs far above market. The language of Section 4928.143(B)(2)(d), Revised Code, simply does not authorize utility revenue guarantees. In fact, under traditional cost-of-service ratemaking in Ohio (Section 4909.18, Revised Code), electric distribution utilities ("EDUs") were only authorized rates that presented an opportunity for the utility to earn a reasonable rate of return, not the cash equivalent of selling all its existing customers power at the cost-of-service based rates.

DP&L's second argument is that the Commission's decision to approve AEP's retail

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[5] Tr. at 251-252.

[6] *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO et al., Opinion and Order (August 8, 2012) and Entry on Rehearing (January 30, 2013). Columbus Southern Power Company and Ohio Power Company are collectively referred to herein as "AEP."

stabilization rider ("RSR") justifies a conclusion that DP&L's Rider ST should likewise be approved. AEP's Rider RSR functions as a generation revenue decoupling charge, and establishes an annual target for revenues based on a particular return on equity percentage.[7] Plus, AEP's RSR "freezes" the non-fuel generation rate. DP&L's Rider ST has none of those features. In addition, AEP's RSR is not tied to real-time switching levels.[8] While the Commission's consideration and decision related to AEP's RSR may indicate a willingness to consider a revenue safety net similar to what DP&L requests in its Rider SSR, it is not precedent for fixing an above-market price for power and making retail customers pay the difference for a utility's off-system sales.

While DP&L's "support" for its Rider ST is repeated through references to the testimony that discusses its proposed SSR, the SSR is a separate and distinct proposal from Rider ST. If one were to accept that DP&L's Rider ST is for stability, it is a *second* stability proposal by DP&L in these proceedings. DP&L does not need, nor has it justified, multiple stability charges.

Riders are a type of rate that pairs a particular service cost with a particular charge.[9] Since DP&L is proposing Rider ST, it bears the burden of first proving the discrete cost being addressed by Rider ST, and then proving that the projected revenue to be collected will match that cost. Simply put, DP&L has not met its burden of proving that Rider ST is necessary, or that it adequately pairs a revenue stream equivalent with actual costs. The design of Rider ST is also troubling. DP&L has provided no reason why a customer who started shopping during the period of its first ESP caused or created a cost to DP&L for the lost revenue attributable to a

[7]*AEP*, *supra*, at 27-28.
[8]"At the conclusion of the modified ESP, the Commission will determine the deferral amount and make appropriate adjustments based on AEP-Ohio's actual shopping statistics and the amount that has been collected towards the deferral through the RSR, as necessary." *AEP*, *supra*, Opinion and Order at 36.
[9]Tr. at 828. *See*, *also*, Section 4928.05(A)(2), Revised Code, which allows the Commission to establish a reconcilable rider for transmission costs, and Rule 4901-1-20-03, Appendix A at ¶(C)(4) and ¶(G)(2), wherein the Commission required various riders for the EDU transition plans for specific purposes.

standard service customer deciding that it will shop during its second ESP. Numerous parties, including the Staff, have argued against Rider ST.[10] The Commission should see through DP&L's veiled justifications and reject DP&L's Rider ST.

B. Alternative Energy Rider – Nonbypassable

Section 4928.64(B), Revised Code, provides that all load-serving entities, be they EDUs or CRES providers, must each year have Ohio-sited solar renewable energy credits (OH-SRECs) equal to a percentage of their kilowatt-hour ("kWh") sales for the past year. Sales are based on a three-year average, and excess OH-SRECs can be banked or sold.[11] Further, the OH-SREC requirement, as a percentage of sales, increases every year until 2025 in accordance with the chart listed in Section 4928.64, Revised Code. Thus, while a particular CRES provider's or EDU's OH-SRECs requirement may annually go up or down based on overall sales, the overall demand for OH-RECs should continue to grow through at least 2025, in accordance with the annual percentage increases in the OH-SRECs[12] needed for the same level of sales. To date, compliance with the OH-SREC mandate (and the overall solar mandate) has been met largely by acquiring and retiring OH-SRECs.

DP&L built the Yankee 1 Solar Generating Facility ("Yankee 1") in 2010 and, since then, has collected the value of the OH-SRECs Yankee 1 produced.[13] Like all solar units, Yankee 1 is producing electricity on an intermittent basis,[14] and its value for capacity or energy production purposes is limited. The need for Yankee 1, if there is a need at all, is for OH-SRECs.[15] DP&L

[10] *See, e.g.*, RESA Ex. 6 at 17; IEU Ex. 3 at 15, 26; OCC Ex. 28 at 22-28; OEG Ex. 1 at 11-12; Kroger Ex. 1 at 5, 14-15; Staff Ex. 10 at 7-10.
[11] Rules 4901:1-40-04(D)(3) and 4901:1-40-06(A)(1), Ohio Administrative Code; Tr. 2293.
[12] The only exception to the ascending overall need for OH-SRECs between now and 2025 would be a substantial decrease in overall kWh use in Ohio which is not recaptured.
[13] Tr. at 1339, 1422.
[14] Unlike base or peaking units which can be scheduled on when needed, solar generators' output is based on the availability and amount of sunlight. Tr. at 1421.
[15] Tr. at 1339-1340.

proposes to charge all its customers, regardless of whether DP&L provides them with power and capacity, for the cost of Yankee 1.[16] The mechanism for this universal charge to all customers is the proposed AER-N. AER-N is a non-bypassable charge based on the cost of Yankee 1 and ongoing operation and maintenance costs.[17] While the Application is crystal clear that shopping and non-shopping customers alike will pay for Yankee 1, the Application provides no certainty or even a rudimentary plan for shopping customers to receive the OH-SRECs themselves or the value of the OH-SRECs, the power, or the capacity during the life of Yankee 1. Since the record in these proceedings is virtually devoid of any cost data for building Yankee 1, the following critical information is unknown: (a) the relative cost of the OH-SRECs that Yankee 1 produces; (b) a forecast of the amount of energy Yankee 1 will produce; and (c) in light of the fact that Yankee 1 is an intermittent source, whether it contributes to the availability of peak day capacity. Simply put, neither the cost nor the prudency of building Yankee 1 has been established in these proceedings; yet, DP&L asks that the Commission order that shopping customers pay for Yankee 1, leaving only the amount to be paid for later determination. To that end, DP&L indicates that it will file its cost support for the establishment of the AER-N rate within 6 months of a final order in this proceeding.[18]

The legal basis for DP&L's claim that it is entitled to a ruling that all customers must pay for Yankee 1 is Section 4928.143(B)(2)(c), Revised Code, which states in pertinent part:

> (B) Notwithstanding any other provision of Title [49] of the Revised Code to the contrary * * *
>
> (2) The plan may provide for or include, without limitation, any of the following:
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> * * *
>
> (c) The establishment of a nonbypassable surcharge for the life of an

[16]DP&L Ex. 12 at 12.
[17]Tr. at 2292.
[18]DP&L Ex. 9 at 15-16.

> electric generating facility that is owned or operated by the electric distribution utility, was sourced through a competitive bid process subject to any such rules as the commission adopts under division (B)(2)(b) of this section, and is newly used and useful on or after January 1, 2009, which surcharge shall cover all costs of the utility specified in the application, excluding costs recovered through a surcharge under division (B)(2)(b) of this section. However, <u>no surcharge shall be authorized unless the commission first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility</u>. Additionally, if a surcharge is authorized for a facility pursuant to plan approval under division (c) of this section and <u>as a condition of the continuation of the surcharge, the electric distribution utility shall dedicate to Ohio consumers the capacity and energy and the rate associated with the cost of that facility</u>. Before the commission authorizes any surcharge pursuant to this division, it may consider, as applicable, the effects of any decommissioning, deratings, and retirements. [Emphasis added.]

DP&L contends that Yankee 1 is owned and operated by a utility, was sourced through a competitive bid, was used and useful after January 1, 2009, and was found to be needed by the Commission. Additionally, DP&L contends that, once there has been a finding of need for the facility, the statute does not require proof of need for the facility. Therefore, in DP&L's view, the evidence demonstrates that Yankee 1 satisfies the statute.[19]

DP&L's position however ignores several key considerations. First, the statute upon which DP&L bases its legal claim requires the surcharge to cover all costs. In these proceedings, DP&L has not met its burden of proof related to its costs for Yankee 1. The only information DP&L provided was that the capital costs for the facility, as of December 31, 2011, were approximately $3.3 million.[20] DP&L provided the Commission with none of the revenue requirement information in these proceedings.[21] Instead, DP&L filed a motion to waive providing detailed cost information on the sole ground that "DP&L will file its application to recover such charges

[19]DP&L Initial Brief at 54-55.
[20]Tr. at 1314.
[21]Tr. at 1315-1316.

for its Yankee Solar Generating facility within six months of a Commission order."[22] As a result, the Commission does not have key evidence in the record with which it can weigh and determine the requested surcharge because *DP&L* elected not to present it for Commission consideration. Given the procedural events that transpired with these proceedings (namely, the filing of an MRO application, followed by an ESP application, followed by an amended ESP application) and the fact that the facility was operational in March 2010,[23] DP&L had ample opportunity to gather and present the complete cost information. Simply put, if DP&L is basing its legal claim for a mandatory payment from all customers for Yankee 1 on Section 4928.143 (B)(2)(c), Revised Code, it must fulfill all the requirements of that statute. This is particularly true here when, given the passage of time, there is no good reason why the cost data on a project built in 2010 has not been submitted. Following DP&L's logic, DP&L is entitled to a non-bypassable charge for Yankee 1 before it submits the cost data. If that were true then the cost data must have no bearing on whether Yankee 1 must be paid for by all customers. DP&L's logic is at odds with the General Assembly's intent to have cost data before the Commission so the Commission can determine if the facility is needed by all customers. One wonders if the Commission would compel all customers to buy the output from Yankee 1 if it was a million dollars a MWh. Based on the record, that cannot be ruled out at this time. RESA does not anticipate that Yankee 1 will cost a million dollars a MWh, but it demonstrates the need for the Commission to make decisions with the statutorily required information prior to committing all customers to pay for a unit with a long lifetime. RESA believes that DP&L cannot both claim it is entitled to a finding from the Commission of a non-bypassable charge under a statute that

[22] *See*, DP&L's ESP Application at 9-10, filed on October 5, 2012, seeking a waiver of Rule 4901:1-35-03(C)(9)(b)(i)-(v), Ohio Administrative Code.
[23] Tr. at 1313.

requires cost data, and simultaneously waive the statutory requirement to submit the cost data prior to the decision.

Second, the Yankee facility was not *sourced* through a true competitive bid as called for by the statute[24] – the bidding that occurred was for selecting the construction contractors to build Yankee at DP&L's specifications.[25] As of this writing, the Commission has not promulgated competitive bidding rules, nor has the Joint Commission on Agency Rule Review accepted such rules, but the clear language of the statute shows what the General Assembly wanted was the optimal generation unit. In that regard, a true competitive bid should be more than just what will it cost to "bolt together" DP&L's set of plans. A true resourced competitive bid should find out who can produce the generation, capacity, and OH-SRECs at the lowest cost. A true competitive bid would allow the providers with the most efficient solar generator design, the sunniest location, and most efficient delivery system to win the monopoly supply obligation.

This brings us to the third point – the Commission has not determined that Yankee 1 is entitled to a non-bypassable rider. The determination of need previously made by the Commission was for the *facility*[26] It predated the request by DP&L for monopoly status and a requirement that all its customers, whether they take generation from DP&L or not, must pay for Yankee 1. In the long-term forecast case, the Commission *only* found the following:

> There is a need for a 1.1 MW solar generation <u>facility</u> known as Yankee 1 and for additional solar generation facilities during the LTFR planning period. [Emphasis added.]

As noted above, the amount of OH-SRECS required under Section 4928.64, Revised Code, is industry wide in Ohio. Further, the OH-SRECs are freely transferable, and can be sold to the

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[24]Section 4928.143(B)(2)(c), Revised Code.
[25]Tr. at 1324.
[26]*In the Matter of the Long-Term Forecast Report of The Dayton Power and Light Company and Related Matters*, Case No. 10-505-EL-FOR, Opinion and Order at 5 (April 19, 2011).

EDUs and CRES providers because future power sales need OH-SRECs. In the long-term forecast case, the Commission also considered a Stipulation submitted by the parties. The Stipulation, as approved by the Commission, contains nothing related to cost recovery (approval or rate design), except to state that DP&L will seek recovery of its capital and operating costs for Yankee 1. The Commission's Opinion and Order approving the Stipulation only finds a need for more solar generation; it does not find that Yankee 1 should be made non-bypassable.

DP&L in its initial brief tries to further bootstrap the above general observation into a finding that Yankee 1 should be non-bypassable by arguing that another Commission case[27] supports a finding that the need was determined based on resource planning projections submitted by the EDU.[28] That other proceeding did not involve resource planning projections; rather, it involved DP&L's request for a force majeure adjustment to DP&L's 2009 solar energy resource requirements. Thus, those statements made in the 2009 proceeding have no bearing on the statutory requirement applicable under the ESP statute. The Commission has not determined the need for the OH-SRECs based on resource planning projections submitted by DP&L in these proceedings or in another applicable proceeding.

Fourth, DP&L's proposed AER-N will cause shopping customers to potentially *pay twice* for OH-SRECs. As a non-bypassable rider, the rider will be imposed on shopping and non-shopping customers alike. However, the shopping customers already pay their CRES providers' costs of OH-SREC compliance. DP&L's proposal will not avoid that impact. In fact, DP&L has made no attempt to explain how the generation and OH-SRECs paid for by shopping customers via Rider AER-N would be delivered to them. The silence here must be interpreted as they will

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[27] *In the Matter of the Application of The Dayton Power and Light Company for Approval of a Force Majeure Determination for a Portion of the 2009 Solar Energy Resources Benchmark Requirement Pursuant to Section 4928.64(C)(4) of the Ohio Revised Code*, Case No. 09-1989-EL-ACP, Finding and Order (March 17, 2010).
[28] DP&L initial Brief at 55.

not be delivered to the shopping customers, and thus shopping customers will pay CRES providers to provide OHS-SRECs for their usage, as well as pay DP&L for Yankee 1.

Fifth, DP&L's failure to explain how it will make the shopping customers whole for their payment of Rider AER-N violates the second underscored portion of Section 4928.143(B)(2)(c), Revised Code, above. In order to keep a non-bypassable charge for monopoly generation, the EDU has to "dedicate to Ohio consumers the capacity and energy and the rate associated with the cost of that facility." Nothing in DP&L's proposal reflects that it will dedicate the capacity, energy and OH-SRECs from Yankee 1 to shopping customers. Finally, DP&L's silence on the subject of OH-SRECs for shopping customers paying for Yankee 1 is not merely poor drafting, but intentional. DP&L Witness Seger-Lawson, on cross-examination, confirmed that DP&L has not planned to dedicate the capacity, energy, and OH-RECs.[29]

In sum, given these five flaws in the request by DP&L for the AER-N, subject to later establishment of the amount of rate, the AER-N should be rejected. DP&L has not met the minimum standards of the statute, including not providing cost data, not conducting a competitive bid, and most importantly not committing the output to the residents of Ohio who will fund the project. The Commission should reject the AER-N.

C. Reconciliation Rider

DP&L's proposed Rider RR is a catch all for various unrelated expenses. The one factor the multiple cost components have in common is that DP&L seeks to levy them on a kWh basis on all customers. The major cost components in Rider RR are:

- Recoupment of the Competitive Bid Expenses – the costs associated with administering and implementing the competitive bid process.
- Recoupment of the competitive enhancement costs associated with the six specific enhancements proposed by DP&L.

[29]Tr. at 1340.

- Transfer of cost responsibility for deferred amounts in excess of 10 percent of the base recovery rate for generation cost riders: Fuel Adjustment; AER; TCRR-Bypassable, RPM and the CBT Rider. Rider RR would also collect any remaining deferral amount as of June 1, 2016, of the Fuel Rider, RPM Rider, and TCRR-Bypassable.[30]

RESA does not object to DP&L seeking recovery of the above list of cost components. The objections lie with making costs non-bypassable when they are clearly for generation, and the lack of transparency created when numerous expenses are lumped in a single rider. Beginning with the Competitive Bid Expenses, those are legitimate business expenses, but the auction only benefits standard service customers and thus should only be paid by standard service customers. As proposed by DP&L in the ESP Application, though, shopping customers are to subsidize standard service customers by paying in part for the procurement of generation. Thus, the auction expenses should be bypassable and put into an energy cost component. Second, RESA agrees that competitive enhancements should be recovered by DP&L through a non-bypassable rider. However, the competitive enhancements should be placed in their own riders, apart from Rider RR, so that the cost-recovery can be readily identified and monitored. The Commission did this with DP&L's last data upgrade,[31] and it ought to once again establish a separate rider that will sunset once the cost of the enhancements have been recouped. Mixing the competitive enhancements with other cost components blurs the costs to customers and the status of final recovery.

Third, the deferrals in excess of 10 percent of the base recovery rate for several generation

[30]DP&L Ex. 10 at 8-13; DP&L Ex. 9 at 14; Tr. 1333.

[31]*See, Dominion Retail Inc. v. The Dayton Power and Light Company*, Case No. 03-2405-EL-CSS, which was consolidated with *Miami Valley Communications Council v. The Dayton Power and Light Company*, Case No. 04-85-EL-CSS and *In the Matter of the Application Not for an Increase in Rates of The Dayton Power and Light Company for Approval to Modify its Existing Alternative Generation Supplier (AGS) Tariff Sheet No. G8*, Case No. 03-2341-EL-ATA. An Opinion and Order for the consolidated cases was issued February 2, 2005. Thereafter, DP&L applied and was approved to establish a rate to recover from all customers the costs of the data system upgrade. *In the Matter of the Application of The Dayton Power and Light Company for Approval of Tariff Changes Associated with the Request to Implement a Billing Cost Recovery Rider*, Case No. 05-792-EL-ATA, Opinion and Order (March 1, 2006).

expense riders are problematic because they would impose shifting costs applicable to standard service customers upon shopping customers. For example, the Fuel Rider is solely to recover the cost of generation fuel and power purchases. Making those costs non-bypassable means that shopping customers who are paying their supplier for fuel and power purchases are now being asked to also pay for past fuel and power purchases for standard service customers. This is discriminatory on its face, and violates the principle of cost allocation based on benefit. Similarly, the alternative energy costs (in addition to Yankee 1) used exclusively for standard service customers would be moved to shopping customers when in excess of the 10% trigger. Next is Rider Transmission Cost Recovery Rider ("TCRR"). Transmission is a generation expense that only benefits the customer whose power is being transported. All standard service transmission costs now collected under the bypassable Rider TCRR would become non-bypassable under the proposal to the extent it exceeds the trigger and become non–bypassable via Rider RR. Finally, regarding Rider RPM and Rider CBT, DP&L has failed to justify their inclusion in Rider RR, or demonstrate how the services purchased in those riders benefit shopping customers.

In sum, the design of Rider RR is faulty because it aggregates unrelated, primarily generation expenses and charges all customers. Such a rate design violates the principle of assigning cost on the basis of cost causation, and makes the utility charges less transparent. The Commission should reject Rider RR. The generation riders for which DP&L seeks to transfer all costs over the 10% trigger to customers who do not buy generation should remain as they are today – bypassable riders. The cost of the data enhancements should be recouped in a separate non-bypassable rider so that it can be audited easily by the Commission and sunset immediately after the cost of the enhancements are recouped.

III. Transmission Cost Recovery Rider Split is Appropriate and Consistent with Other Utilities' Rider Structure

Currently, DP&L has the TCRR for recovery of all transmission and related costs, and it is bypassable. DP&L proposes to split the TCRR so that there will be a non-bypassable TCRR ("TCRR-N") for non-market based transmission costs, and a bypassable TCRR ("TCRR-B") for the market-based transmission costs.[32] The TCRR-N would recover certain costs, like NITS and regional transmission expansion plan costs. NITS and the regional transmission expansion plan costs are not market-determined and are collected by the regional transmission organization ("RTO").[33] In other words, everyone pays for NITS in accordance with an RTO tariff. There is no opportunity to obtain a better or less costly NITS service. Having NITS and the regional transmission expansion services billed directly as DP&L proposes will add to cost transparency and assist customers who wish to shop. DP&L also defended its request to direct bill the NITS cost because NITS are already collected by the RTO in a non-bypassable charge manner. Under DP&L's TCRR-N proposal, all charges for NITS will be paid to the RTO for all shopping and standard service offer customers.[34] DP&L also requested a waiver from Rule 4901:1-36-04(B), Ohio Administrative Code, to accomplish the "split" between the competitive transmission services and the monopoly transmission services.

The Industrial Energy Users-Ohio ("IEU") opposes this split proposal, arguing first that it *potentially* can cause shopping customers to be billed multiple times for transmission service, namely through the CRES contract, DP&L's new TCRR-N, and through the collection of the under-recovered TCRR balance that currently exists. Second, IEU alleges that the split proposal

[32]DP&L Ex. 11 at 3.
[33]Currently, DP&L charges NITS costs to standard service offer customers, while CRES providers pay DP&L (through the RTO tariff) for NITS costs. DP&L Ex. 11 at 4.
[34]*Id*. at 3-6.

violates Rule 4901:1-36-04(B), Ohio Administrative Code.[35] Also, Wal-Mart Stores East LP and Sam's East Inc. (collectively "Wal-Mart") oppose the split proposal, arguing that shopping customer contracts may include costs for transmission services and the proposal will cause those customers to pay twice.[36]

The argument of multiple billings is speculative, as a change in regulation such as the Commission's ordering the direct billing of NITS will trigger contractual provisions that require CRES contract amendments for changes in law. More importantly, the Commission in its order can require all CRES providers doing business in the DP&L service area to exclude the NITS and transmission expansion costs once those are direct-billed. The Commission recently did exactly that in the case of concerns for double-billing of the balancing fee in Columbia Gas of Ohio, Inc.'s territory.[37] Thus, the only question for the Commission is whether direct billing of NITS and RTO transmission expansion charges improves the information available to customers or obscures it. The Commission has approved such transmission rider splits for the FirstEnergy companies and Duke Energy Ohio Inc.[38] There is no evidence in the record of double-billing or confusion caused by having a split transmission charge.

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[35]IEU Ex. 2 at 38; IEU Initial Brief at 53.
[36]Wal-Mart Ex. 1 at 18.
[37]*In the Matter of the Application to Modify, in Accordance with Section 4929.08, Revised Code, the Exemption Granted to Columbia Gas of Ohio, Inc., in Case No. 08-1344-GA-EXM*, Case No. 12-2637-GA-EXM, Opinion and Order at 46 (January 9, 2013).
[38]The Commission approved such a transmission cost split for FirstEnergy in *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order at 11, 58. For Duke, the Commission approval occurred in *In the Matter of the Application of Duke Energy Ohio Inc. for Approval of the Establishment of Rider BTR and Associated Tariff Approval*, Case No. 11-2641-EL-RDR, Opinion and Order at 7, 17.

IV. Competitive Enhancements are Critical for DP&L's Competitive Market[39]

DP&L proposed six competitive enhancements as part of its ESP:

- Eliminate the minimum stay and return to firm provisions in its generation tariffs.
- Implement a web-based portal for CRES providers to obtain DP&L customer information.
- Implement an auto-cancel feature to DP&L's Bill-Ready billing option
- Remove the enrollment verification that requires a CRES provider to have the first four characters of the customer name on the account, as well as the correct account number.
- Support DP&L's response to Historical Interval usage data requests via Electronic Data Interchange ("EDI").
- Provide a standardized sync list on a monthly basis.[40]

The six enhancements are legitimate and fairly low-cost, estimated to only cost $2.5 million.[41] The problem is that the six data enhancements that DP&L proposes will not bring its system up to the industry standard in Ohio. RESA, in its testimony, lists the additional data upgrades needed to bring DP&L up to current Ohio standards, and then additional data enhancements that would bring DP&L up to best industry practices. In the modern world, information system upgrades are a periodic necessity. In 2005, the Commission approved the last data system upgrade for DP&L's CRES service.[42] The total cost of that upgrade was $16 million.[43] The Commission, after a hearing, approved a modest surcharge to all customers to recover the costs of that upgrade. For example, a customer using 750 kWh per month paid one mil per kWh per month for that specific upgrade.[44] The work was completed and the upgrade fee ended roughly in 2011.[45] RESA believes the same process should be followed here, and given the widespread

[39]The discussion of a purchase of receivables program will be addressed separately in this Reply Brief.
[40]DP&L Ex. 9 at 14-15; Tr. 1407-1411.
[41]OCC Ex. 18 at 3.
[42]*Dominion Retail Inc.*, *supra,* Case Nos. 03-2405-EL-CSS et al., Opinion and Order (February 2, 2005); *Request to Implement a Billing Cost Recovery Rider*, *supra*, Case No. 05-792-EL-ATA, Opinion and Order (March 1, 2006).
[43]Tr. at 1394.
[44]Tr. at 1398.
[45]Tr. at 1397.

availability of the services and systems being advocated, the cost this time should be less than $16 million.

A. DP&L's Response to Others' Proposed Enhancements does not Hold Water

DP&L opposes all proposed competitive enhancements, except the six that it has offered.[46] DP&L elected not to address in its Initial Brief the vast majority of the proposed enhancements, but it did argue that, collectively, they are not necessary. Unlike RESA and Constellation who presented witnesses to explain why the data enhancements are both necessary and beneficial, DP&L did not present any expert testimony to explain *why* the information system upgrades are not necessary. DP&L relies solely on three sweeping "not necessary" arguments to reject all of RESA's proposed competitive enhancements. First, DP&L contends that, since it is not violating any Commission rules, it is not necessary to implement any of RESA's proposed enhancements. That argument does not "hold water" because the Commission's rules do not address any minimum information-sharing standards that must be met. *See*, Chapters 4901:1-10 and 4901:1-21, Ohio Administrative Code. Rather, the Commission has left those details to be worked out in each of the EDU competitive markets.

Second, DP&L contends that the "decision of whether additional competitive enhancements should be required should be made in a rule-making proceeding * * *." DP&L cites to several open dockets, including Case No. 12-3151-EL-COI.[47] Just last week, the Commission scheduled a series of workshops for discussion and planning of changes for the CRES markets in Ohio.[48] However, the Commission need not, and *should not* await those workshops or any pending rulemaking proceeding to make determinations about RESA's proposed competitive enhancements

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[46]DP&L Initial Brief at 101.
[47]DP&L Initial Brief at 100.
[48]*In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI, Entry (May 29, 2013).

for the DP&L service territory. Already, the Commission has considered enhancements in many ESP proceedings and ruled on them. In fact, just last August, the Commission ordered competitive enhancements for AEP's service territory.[49] The Commission has the experience and knowledge to consider RESA's proposed enhancements and need not defer to another proceeding a determination of what enhancements should be implemented. The Staff likewise believes that the Commission has the ability *in these proceedings* to review the enhancement proposals and determine which ones are appropriate for implementation.[50]

Moreover, there is no reason that DP&L's systems and processes should not be at least on par with the other Ohio EDUs. Currently, DP&L's systems and processes are lagging behind those of other Ohio EDUs and utilities in other states.[51] It is not surprising that upgrades are needed since so many of these enhancements are based on information technology ("IT"). Not since 2001 and 2005 has DP&L implemented certain IT upgrades specific to the competitive market.[52] It is time for DP&L to implement RESA's proposed competitive enhancements.

Third, DP&L claims that there is no information on costs and benefits of RESA's proposed enhancements, and therefore, the Commission has no evidence to accept any of the proposed competitive enhancements.[53] This is a self-fulfilling prophecy. Since these are upgrades to DP&L's existing information system, only DP&L is in a position to provide the Commission with cost estimates for improvements. Thus, DP&L is in a position to veto any improvement simply by not studying it. The CRES providers have worked with the Commission and other EDUs over many years to create robust and healthy competitive markets in Ohio. These

[49] *AEP*, Case No. 11-346-EL-SSO et al, *supra*, Opinion and Order at 41.
[50] Tr. at 1727.
[51] DP&L does not have the systems and processes that other Ohio EDUs have in place, and it does not follow best practices in other states. *See*, RESA Ex 6 at 5-9; Constellation Ex. 1 at 45-52; RESA Initial Brief at 18-25.
[52] Tr. at 1374, 1377, 1392, 1394.
[53] DP&L Initial Brief at 100-101.

enhancements are not brand new or unknown issues. Plus, RESA Witness Bennett explained how critical and fundamental RESA's proposed enhancements are.[54] In other words, he explained the benefits of RESA's proposed enhancements.[55] The Commission has knowledge about many of RESA's proposed enhancements, and has made specific determinations about many of these proposed enhancements in the past, including web-based systems,[56] billing system modifications,[57] eligible-customer list information,[58] and peak load contribution values and network service peak load values.[59] Moreover, the Commission has been involved with EDI issues for many years.[60]

In sum, the benefits of the improvements suggested by RESA are not only known but they are currently in service in other EDU service areas today. What is not known is the cost to upgrade DP&L's existing information systems to supply the enhanced data upgrades other than the six upgrades which DP&L studied. DP&L has a projected cost estimate of $2.5 million,

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[54]RESA Ex. 6 at 4-9.

[55] Other witnesses in these proceedings also discuss competitive enhancements. *See, e.g.*, Constellation Ex. 1 at 45-50 and Duke Energy Retail Sales LLC Ex. 1 at 6-7.

[56]*AEP*, Case Nos. 11-346-EL-SSO et al., *supra*, Opinion and Order at 40-41.

[57]*See, e.g., Dominion Retail Inc. v. The Dayton Power and Light Company*, Case Nos. 03-2405-EL-CSS et al., Opinion and Order (February 2, 2005); and *In the Matter of the Application of The Dayton Power and Light Company for Approval of Tariff Changes Associated with the Request to Implement a Billing Cost Recovery Rider*, Case No. 05-792-EL-ATA, Opinion and Order (March 1, 2006).

[58] The Commission first established the content of eligible-customer lists by rule (Rule 4901:1-10-29(E), Ohio Administrative Code) in *In the Matter of the Commission's Promulgation of Amendments to the Electric Service and Safety Standards Pursuant to Chapter 4928, Revised Code*, Case No. 99-1613-EL-ORD, Finding and Order (April 7, 2000). Rule 4901:1-10-29(E) currently states:

> Electric utilities shall make eligible-customer lists available to certified CRES providers in spreadsheet, word processing, or an electronic non-image-based format, with formula intact, compatible with personal computers. Such lists shall be updated quarterly. The eligible customer list shall, at a minimum, contain customer name, service and mailing address, rate schedule (class and sub-class), applicable riders, load profile reference category, meter type, interval meter data indicator, budget bill indicator, meter read date or schedule, and historical consumption data (actual energy usage plus any applicable demand) for each of the most recent twelve months.

[59]*AEP*, Case Nos. 11-346-EL-SSO et al., *supra*, Opinion and Order at 40-41.

[60]*In the Matter of the Establishment of Electronic Data Interchange Standards and Uniform Business Practices for the Electric Utility Industry*, Case No. 00-813-EL-EDI, Finding and Order (July 19, 2000); *In the Matter of the Establishment of Electronic Data Interchange Standards and Uniform Business Practices for the Electric Utility Industry*, Case No. 12-1770-EL-EDI, Finding and Order (August 1, 2012); and *In the Matter of the Establishment of Electronic Data Interchange Standards and Uniform Business Practices for the Electric Utility Industry*, Case No. 13-02-EL-EDI.

including a $500,000 cost over-run contingency for the six items. The public portion of the record in the matter at bar reveals that the anticipated total load in DP&L service area will be roughly 13.82 billion kWh each year of the ESP.[61] If the upgrade is amortized over the requested ESP period, which would be the same amount of time over which the Commission amortized DP&L's 2005 upgrade costs, the cost per kWh for the six upgrades would be less than 4/10 of one mil per kWh.[62] That is less than half of what residential customers paid for the 2005 Commission-authorized upgrades.

B. OCC's Cost-Recovery Position is Ill-Advised

OCC advocates that the costs of DP&L's proposed competitive enhancements be recovered solely from CRES providers, not from DP&L's customers. OCC's position should be rejected for several reasons. First, the Commission has not adopted this cost-recovery approach for any of the EDUs since the start of the competitive markets. Plus, OCC presented no reason that would justify a "change in course."

Second, OCC's claim that DP&L's proposed competitive enhancements really only benefit the CRES providers is incorrect and short-sighted. RESA does not deny that some of the DP&L-proposed enhancements will be beneficial to the CRES providers, but as amply demonstrated during the hearing, customers – both shopping and non-shopping customers – will also benefit from the six enhancements proposed by DP&L.[63] For example, elimination of the minimum stay will benefit the non-shopping customers.[64] (All customers will benefit from RESA's proposed

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[61] DP&L Ex. 5 at RJM-1.

[62] Estimated cost of DP&L's proposed six enhancements = $2.5 million (OCC Ex. 18 at 3).

- Projected annual MWh sales for the ESP period 13.8 MWh (DP&L Ex. 5 at RJM-1)
- Five-year projected total = 69 million MWh
- Cost per kWh: $2.5 Million / 69 Billion MWh = $.00003623 per kWh
- Cost per kWh (5 years, no carrying costs included) = .000035
- Cost for a residential customers using 750 kWh = $.035

[63] Tr. at 1288, 1289, 2185-2189.

[64] Tr. at 2185-2186.

enhancements as well.) In addition, the competitive market in DP&L's territory will be improved overall with these enhancements, which again is a benefit for *all* customers.

Third, OCC's position may cause CRES providers to turn away at the very time that the Commission seeks to further grow DP&L's competitive market. CRES providers may very well refuse to participate in DP&L's market because they cannot develop competitive offers in DP&L's territory vis-à-vis DP&L's standard service offer, since their costs alone would increase. In addition, suppliers who remain in the DP&L market and those customers who are first adopters would be forced to pay for these enhancements, while other suppliers and customers can simply wait until the enhancements are paid off and avoid the costs but reap the benefits. The policy of the State of Ohio includes ensuring diversity of electric supplies and suppliers, and ensuring effective competition. Section 4928.02(C) and (H), Revised Code. The Commission should recognize that OCC's approach will be contrary to those very policies. For all of these reasons, the Commission should find that OCC's cost-recovery recommendation for the competitive enhancements is an unwise change.

C. Staff's Cost-Recovery Position is Also Ill-Advised

Staff recommended an allocation of the costs of the approved competitive enhancements -- 60 percent charged to CRES providers, 15 percent charged directly to DP&L, and 25 percent charged to DP&L's customers via Rider RR-N (non-bypassable).[65] Staff acknowledged several flaws with its approach:

> (1) The EDU has not in the past directly contributed to the cost of its distribution assets and therefore Staff's approach to the competitive enhancements would be a departure from historical cost-recovery of assets;
>
> (2) EDUs would not propose competitive enhancements in the future if they will have to share in the cost, which has a negative impact on future developments and improvements;

[65]Staff Ex. 7 at 6; Tr. at 1728, 1732-1733, 1765.

(3) With Staff's recommended approach, suppliers currently in DP&L's service territory will essentially be required to pay for the majority of the competitive enhancements and would not be reimbursed by later CRES entrants; and

(4) Shopping customers will be made to pay for the competitive enhancements via higher CRES bills and pay again through Rider RR-N.[66]

In addition to all the flaws, the Staff's recommendation does not comport with the pro-competition policies of the State, as set forth in Section 4928.02, Revised Code. As a result, bottom line is that the Staff's recommendation should be rejected.

V. Purchase of Receivables Program is a Key Enhancement that Should be Offered for Consolidated Billing of Residential and Small Commercial Customers

DP&L argues against implementation of a purchase of receivables ("POR") program for consolidated billing of residential and small commercial customers.[67] DP&L states that the requests for such a program from multiple intervenors[68] are not specific enough, and that a POR program is programming-intensive, is costly, is not beneficial to DP&L, and is not beneficial to customers.[69] DP&L is correct that the intervenors who presented evidence in support of a POR program did not present detailed tariff language for adoption. Nonetheless, the issue was amply presented, and DP&L's arguments to the contrary are unconvincing.

First, DP&L's claim that a POR program is programming-intensive and costly is essentially saying the same thing. However, there are no details to explain the bases for such statements by DP&L, and those are relative terms without real context. Moreover, DP&L's thoughts about a POR program was based on "conversations," which DP&L did not explain.[70] There simply is no context or information upon which the Commission can accept DP&L's claims about a POR

[66] Tr. at 1729, 1773, 1769-1770.
[67] DP&L Initial Brief at 101-102.
[68] RESA Ex. 6 at 10-14; Constellation Ex. 1 at 50-51; DERS Ex. 1 at 5-6; and IGS Ex. 1 at 9-13.
[69] Tr. at 1427, 2309.
[70] Tr. at 2309.

program.

Second, evidence in the record from multiple intervenors demonstrates the importance of a POR program.[71] A POR program is ***<u>the key factor</u>*** to a successful retail market for residential and small commercial customers.[72] That includes the very segment in DP&L's territory that is far from robust.[73] In addition, a POR program is considered to be "one of the most significant steps the Commission could take to encourage more CRES providers to enter into the DP&L market and help remedy a major barrier to competition * * *."[74] "[W]hen a utility offers a POR program in its service territory, more suppliers enter the market and the market becomes more competitive."[75] The Commission should recognize that key, significant modifications should be made so that not only market growth can occur, but also a healthy, robust market remains. A POR program is the answer.

Third, POR programs have been successfully implemented in Ohio and have successfully assisted in the growth of those markets. The major gas utilities in Ohio implemented POR programs, and Duke Energy Ohio Inc. has implemented a POR program for both its natural gas and electric business segments.[76] With all of those POR programs in Ohio, millions of shopping customers have become accustomed to having a single point of contact for billing and collection.

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[71]RESA Ex. 6 at 10-14; Constellation Ex. 1 at 50-51; DERS Ex. 1 at 5-6; and IGS Ex. 1 at 9-13.
[72] Constellation Ex. 1 at 51.
[73]As of August 2012 (which is the vintage of the most-recent switching data by customer class in the record), only 24.7% of residential customers were shopping. DP&L Ex. 2 at 6.
[74]RESA Ex. 6 at 11.
[75]IGS Ex. 1 at 12.
[76]*See, e.g., In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer pursuant to Section 4928.143, Revised Code, in the form of an Electric Security Plan, Accounting Authority Modifications, and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO, Opinion and Order at 33 (November 22, 2011); *In the Matter of the Application of The Cincinnati Gas & Electric Company for Approval of Its Revisions to Rate FRAS Gas Tariff Schedule in Response to H.B. 9*, Case No. 02-2895-GA-ATA, Entry at 12, 14 (April 27, 2005); *In the Matter of the Application of The East Ohio Gas Company dba Dominion East Ohio for Approval of a Plan to Restructure Its Commodity Service Function*, Case No. 05-474-GA-ATA, Opinion and Order at 6, 27 (May 26, 2006); and *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 07-1285-GA-EXM, Finding and Order (November 4, 2008).

It is reasonable and logical to implement a similar program in DP&L's territory for the electric customers. Why not require the offering of more services and options for customers in DP&L's territory? A POR program will "ensure diversity of electricity supplies and suppliers," which will be consistent with the State of Ohio's electric policy. *See*, *e.g.*, Section 4928.02(C), Revised Code.

The Commission has ample information to consider and require implementation of a POR program in DP&L's territory.[77] As RESA suggested in its Initial Brief, payment can be accomplished by DP&L charging a discreet, per-bill fee for those electing POR to pay for the system changes necessitated by the POR program, or by DP&L creating a discount level at which DP&L purchases the receivables that will leave DP&L whole.[78]

VI. Conclusion

For all of the foregoing reasons, as well as those reasons set forth in RESA's Initial Brief, the Commission should reject or modify DP&L's proposed ESP. If modifications are made, the Commission should:

- Implement a POR program in DP&L's service territory for residential and small commercial customers.
- Change the threshold for requiring the installation of interval meters to 200 kW, as has been put into place in other EDU tariffs.
- Reject the proposed Switching Tracker.
- Reject the proposed Alternative Energy Rider – Nonbypassable
- Reject the proposed Reconciliation Rider, but allow for recovery of (a) competitive bid expenses on a bypassable basis, (b) a POR program via a per-bill charge to the registered CRES providers or an appropriate discount level, and (c) the other competitive enhancements via separate non-bypassable riders.
- Approve DP&L's proposed Transmission Cost Recovery Rider – Nonbypassable and Transmission Cost Recovery Rider – Bypassable.
- Approve DP&L's proposed competitive enhancements.
- Require implementation of a web-based system with detailed information-sharing

[77]Again, a POR program is not a new concept or one with which the Commission is unfamiliar. POR programs exist in Ohio. (The preceding footnote lists many of the cases in which those POR programs were initiated.)
[78]RESA Initial Brief at 35.

capabilities as outlined by RESA.

- Require customer lists to be in a standard format and updates to be provided at least quarterly.
- Add EDI interfaces.
- Make certain identified customer-specific information readily available.
- Change certain EDI processes.
- Adopt a number of enhancements proposed by Constellation.
- Eliminate discriminatory charges for consolidated bills, bill-ready billing code modifications, and dual bills.
- Require meetings to discuss supplier-consolidated billing and the other new business practices proposed by Constellation.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 5th day of June 2013 by electronic mail upon the persons listed below.

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