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December 12, 2019

Tanowa M. Troupe, Secretary
Public Utilities Commission of Ohio
180 East Broad Street, 11th Floor
Columbus, Ohio 43215

RE: Case Nos. 08-1094-EL-SSO, 08-1095-EL-ATA, 08-1096-EL-AAM, &
08-1097-EL-UNC

Dear Ms. Troupe,

On December 4, 2019, a joint Motion to Reject DP&L's Proposed Tariffs to Increase Consumer Rates was filed in the above-referenced dockets by the Office of the Ohio Consumers' Counsel, The Ohio Manufacturers' Association Energy Group, and The Kroger Company (the "Parties"). The Ohio Manufacturers' Association Energy Group was incorrectly listed as one of the movants. The correct name of the party of record in this matter and who should have been listed as a movant is the Ohio Manufacturers' Association.

The Parties would like to correct the filing of December 4, 2019 by substituting the attached Corrected Motion to Reject DP&L's Proposed Tariffs to Increase Consumer Rates that includes the correct title of the motion and signature blocks, reflecting the Ohio Manufacturers' Association as the party of record in this case and one of the movants. We have also corrected The Kroger Company's counsel of record's name, Ms. Whitfield. Other than the changes to the title and signature blocks, the attached Corrected Motion is the same as the one filed on December 4, 2019. No party will be prejudiced by the technical corrections and substitution of pleadings.

We apologize for any inconvenience. Please do not hesitate to contact me if there are any questions.

Sincerely,


Kimberly W. Bojko

cc: Parties of Record

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)
Dayton Power and Light Company for) Case No. 08-1094-EL-SSO
Approval of its Electric Security Plan.)

In the Matter of the Application of The)
Dayton Power and Light Company for) Case No. 08-1095-EL-ATA
Approval of Revised Tariffs.)

In the Matter of the Application of The)
Dayton Power and Light Company for)
Approval of Certain Accounting Authority) Case No. 08-1096-EL-AAM
Pursuant to Ohio Rev. Code Section)
4905.13.)

In the Matter of the Application of The)
Dayton Power and Light Company for) Case No. 08-1097-EL-UNC
Approval of its Amended Corporate)
Separation Plan.)

**CORRECTED MOTION TO REJECT DP&L'S PROPOSED TARIFFS TO
INCREASE CONSUMER RATES
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL
THE OHIO MANUFACTURERS' ASSOCIATION
AND THE KROGER COMPANY**

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December 4, 2019

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BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL
THE OHIO MANUFACTURERS' ASSOCIATION
AND THE KROGER COMPANY**

I. INTRODUCTION

500,000 customers of DP&L should be receiving long overdue rate decreases as a result of a Supreme Court decision overturning PUCO-authorized subsidies. But DP&L wants to increase monthly rates for customers. The PUCO should follow its Supplemental Opinion and Order in DP&L's third electric security plan case¹ where the PUCO ordered DP&L to reduce DP&L's monthly charges by eliminating its so-called

¹ Case No. 16-0395-EL-SSO (November 21, 2019).

Distribution Modernization Rider (“Rider DMR”). And the PUCO should reject DP&L’s new scheme to continue collecting unlawful subsidies from customers by reinstating select old rates from its first, second, and third electric security plans (“ESP”).²

Since November 1, 2017, DP&L has taken approximately \$218.75 million in subsidies from customers in the Dayton area – where there is financial distress and a poverty level of 35% -- through its so-called Distribution Modernization Rider (“Rider DMR”). But now the PUCO has ordered that Rider DMR is an unlawful charge that customers should not be paying.³ This vast sum of money was taken from consumers by DP&L (and the PUCO) with no allowance of a refund.

But, on November 26, 2019, DP&L filed a plan that defies the PUCO’s ruling – and by necessary extension, the Ohio Supreme Court’s ruling in *Ohio Edison*. DP&L proposed that the PUCO allow it to continue collecting from customers an unlawful above-market transition charge, under a different name (the Rate Stability Charge). DP&L seeks to withdraw and terminate its three-year old application (under R.C. 4928.143(C)(2)(b)) and implement new tariffs. In its tariff filing, DP&L cherry-picks charges from its second and third electric security plan, adds them to charges from its first electric security plan, and asks the PUCO to approve them. DP&L’s maneuvering is *heads I win, tails you lose* for consumers. For consumer protection, DP&L’s proposed tariffs should be rejected.

² Contemporaneously herewith, OCC has filed a Memorandum Contra DP&L’s Motion to Withdraw. See Case Nos. 16-0395-EL-SSO, et al.

³ See Supplemental Opinion and Order.

II. RECOMMENDATIONS

- A. Because DP&L does not have the right to withdraw its application, the PUCO should outright reject DP&L's plan to increase rates to customers.**

As explained in the Memorandum Contra DP&L's Motion to Withdrawal filed contemporaneously in Case Nos. 16-0395-EL-SSO, et al., DP&L cannot withdraw its electric security plan application.⁴ Because it cannot, DP&L must maintain existing rates through the duration of its third electric security plan (six years), minus the unlawful monthly Rider DMR.

On the authority of *In re Application of Ohio Edison Co.*,⁵ the PUCO modified DP&L's electric security plan settlement – it removed Rider DMR.⁶ The PUCO ordered DP&L to remove the Rider DMR charge from customers' bills. Doing so will fulfill the PUCO's decision that Rider DMR is unlawful and the Court's mandate in *Ohio Edison*. Doing so will give DP&L customers much needed and overdue relief.

- B. If the PUCO grants DP&L's Motion to Withdraw (which it should not do), the PUCO should protect consumers and reject DP&L's plan to charge customers a monthly Rate Stabilization Charge since it would allow DP&L to collect more unlawful transition charges, violating Ohio law.**

Included in DP&L's plan to increase rates to customers is a proposal to charge customers a monthly rate stabilization charge that collects the very sort of transition

⁴ See *In the Matter of the Application of the Dayton Power & Light Company for Approval of its Electric Security Plan*, Case No. 16-0395-EL-SSO et al., OCC's Memo Contra.

⁵ 157 Ohio St.3d 73 (2019), reconsideration denied, 156 Ohio St.3d, 2019-Ohio-3331, and reconsideration denied 156 Ohio St.3d 1487.

⁶ See *id.*, Supplemental Opinion and Order (November 21, 2019).

charges the Ohio Supreme Court has rejected.⁷ This time DP&L calls its transition charge a "rate stabilization charge" ("RSC").

The rate stabilization charge that DP&L seeks to resurrect was paid by customers starting on January 1, 2007.⁸ The charge was originally described (in 2003) as relating to increased costs of production, physical security, and cybersecurity for power plants owned by DP&L and its affiliates.⁹ The PUCO, in Case No. 05-276-EL-AIR, adopted a rate plan for DP&L (agreed to by stipulation¹⁰) which included a provision that customers pay the rate stabilization charge through December 31, 2010. Annually, customers were to pay \$76 million under the charge.¹¹ The RSC was described in the stipulation (which the PUCO adopted) as a charge to compensate DP&L for providing stabilized rates for customers and Provider of Last Resort Service.¹²

In a later case, Case No. 08-1094-EL-SSO, parties stipulated to extend DP&L's rate plan through December 31, 2012 and continue the RSC as a non-bypassable charge to customers through December 31, 2012.¹³ The PUCO approved that stipulation¹⁴ and

⁷ See *In the Matter of the Application of the Dayton Power & Light Company for Approval of its Market Rate Offer*, Case No. 12-426-EL-SSO et al., Supreme Court mandate (July 19, 2016).

⁸ *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*, Case No. 05-276-EL-AIR, Opinion and Order (December 28, 2005) (adopting Stipulation with rate stabilization charge).

⁹ *In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for The Dayton Power and Light Company*, Case No. 02-2779-EL-ATA, Stipulation at 13-14, ¶IX E (May 28, 2003).

¹⁰ OCC was not a signatory party to the stipulation and opposed the stipulation.

¹¹ *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*, Case No. 05-276-EL-AIR, Opinion and Order at 11 (December 28, 2005).

¹² *Id.*, Stipulation and Recommendation at 5 ¶C (November 3, 2005).

¹³ *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 08-1094-EL-SSO, Stipulation and Recommendation at 4 (February 24, 2009).

¹⁴ *Id.*, Opinion and Order (June 24, 2009).

for two more years customers paid \$76 million a year under the RSC charge. In total, DP&L customers paid \$456 million to DP&L for the RSC charge through 2012.

In 2012 when DP&L filed its application for a market rate offer, it sought to continue its RSC charge but decided to change the name to an "electric service stability charge" ("ESSC"). In its application it noted that the ESSC charge would "equal the rate formerly charged as the rate stabilization charge."¹⁵ DP&L described the rate as compensating the company "for maintaining electric service stability for the Company and its customers."¹⁶ Later that year, DP&L withdrew its application for a market rate offer, and filed an ESP with a "service stability rider" ("SSR") to "ensure the Company's financial integrity."¹⁷ That proposed service stability charge was no different than the two charges before it – the ESSC charge and the RSC charge. However, the service stability charge sought to collect even more money from customers – this time \$137.5 million per year throughout the electric security plan term.¹⁸ The service stability charge was the very charge the Ohio Supreme Court struck down as an unlawful transition charge.¹⁹

The RSC charge DP&L seeks to reinstate is nothing more than a transition charge designed to subsidize DP&L and its power plants. The RSC was arbitrarily set at 11% of

¹⁵ *In the Matter of the Application of the Dayton Power & Light Company for Approval of its Market Rate Offer*, Case No. 12-426-EL-SSO et al., Application at 9 (March 30, 2012).

¹⁶ *Id.*

¹⁷ *Id.* at 7. At the same time it proposed to withdraw the smaller RSC charge.

¹⁸ *In the Matter of the Application of the Dayton Power & Light Company for Approval of its Market Rate Offer*, Case No. 12-426-EL-SSO et al., Opinion and Order at 25, citing to Confidential Testimony of C. L. Jackson at 11-13.

¹⁹ *In re: Application of Dayton Power & Light Co.*, Slip. Op. No. 2016-Ohio-3490, S.Ct. Case No. 2014-1505 (June 20, 2016).

DP&L's generation rate.²⁰ That 11% RSC equated to \$76 million in revenues that consumers paid.²¹ Under the law (R.C. 4928.38, 4928.39 and 4928.40) following the market development period, DP&L is supposed to be "fully on its own in the competitive market." The market development period ended for DP&L in 2005.

The law prohibits the PUCO from approving the collection of transition revenues or "equivalent revenues" from DP&L customers after 2005. The recent Supreme Court of Ohio precedent²² affirmed this principle when it struck down both AEP Ohio's and DP&L's stability charges.²³ The RSC charge gave DP&L transition revenues or equivalent revenues that were used to subsidize generation owned by it and its affiliates. Like DP&L's SSR that the Court just struck down, the RSC charge is an unlawful transition charge. The PUCO should revisit its earlier ruling approving the RSC, given the Court's recent rulings.²⁴ The Court's rulings justify a change in the prior PUCO decision approving an RSC. The PUCO should reject DP&L's RSC tariff in this respect.

- C. If the PUCO grants DP&L's Motion to Withdraw (which it should not do), the PUCO should protect consumers and reject DP&L's plan to charge customers a monthly Rate Stabilization Charge since it is a financial integrity charge, violating Ohio law.**

²⁰ *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*, Case No. 05-276-EL-AIR, Direct Testimony of Ms. Seger Lawson at 4 (November 10, 2005).

²¹ *Id.*, Opinion and Order at 11 (December 28, 2005).

²² *In re: Application of Dayton Power & Light Co.*, Slip. Op. No. 2016-Ohio-3490, S.Ct. Case No. 2014-1505 (June 20, 2016); *In re: Application of Columbus S. Power Co.*, Slip Op. No. 2016-Ohio-1608.

²³ *Id.*

²⁴ *See In re: Application of Ohio Power Co.*, 144 Ohio St.3d 1, 2015-Ohio-2056, ¶16, 17 (citations omitted) (affirming that the PUCO can modify earlier Orders so long as the PUCO explains the change and the new regulatory course is permissible).

As the foregoing history demonstrates, DP&L's rationale for various charges – the RSC charge, the ESSC charge, and the SSR charge – has been described by it differently. But the function of the charges has always been the same – charge consumers more. Most recently, in a burst of candor, DP&L acknowledged that the most recent iteration of the charge was for “financial integrity.”²⁵ So in addition to being an unlawful transition charge, as just described, the RSC charge is also an unlawful financial integrity charge.

In finding that Rider DMR is unlawful, the PUCO specifically explained that a line of cases from the Supreme Court of Ohio demonstrates that non-bypassable riders, established to promote the financial integrity of electric distribution utilities, are unlawful.²⁶ As part of the evolution of DP&L's RSC charge – from RSC charge, to ESSC charge, to SSR charge – DP&L itself admitted that the charge is for “financial integrity.”²⁷ In light of the intervening precedent from when the PUCO first approved the RSC charge – the same intervening precedent specifically acknowledged by the PUCO in its Supplemental Opinion and Order – “financial integrity” charges are unlawful. The PUCO should reject DP&L's RSC tariff.

D. If the PUCO allows the RSC charge (it should not), the PUCO should protect consumers and set the RSC at zero because DP&L is not providing POLR service to consumers.

Even if the PUCO were to conclude that the RSC charge is not a transition charge or a financial integrity charge, but a POLR charge, it should be set at zero. In concept, a

²⁵ See supra, note 18.

²⁶ See *In the Matter of the Application of the Dayton Power & Light Company for Approval of its Electric Security Plan*, Case No. 16-0395-EL-SSO et al., Supplemental Opinion and Order at 45.

²⁷ See supra, note 18.

POLR charge recognizes that customers are permitted to obtain electric generation service from marketers and then later return to the utility for that service.²⁸ The POLR charge compensates the utility for risks of standing ready to provide a standard service offer to returning customers. The Supreme Court of Ohio has cautioned the PUCO before that it “should carefully consider what costs it is attributing as costs incurred as part of an electric-distribution utility’s POLR obligations.”²⁹ And the Court has overturned the PUCO’s approval of POLR charges, after finding that there was not sufficient evidence to support them.³⁰

The PUCO itself has ruled that POLR charges must be justified either on a cost basis or a non-cost basis before a utility can be compensated for being the POLR and carrying the risks associated with being the POLR.³¹ The PUCO has further defined those risks to exclude migration risk (the risk of customers leaving), but include risks associated with standing ready to accept returning customers.³²

And yet despite the Court’s admonitions, and the PUCO precedent, the PUCO approved DP&L’s rate stabilization charge as a POLR charge.³³ It did so by fiat – proclaiming that the rate stability charge that DP&L sought to reinstate from its prior

²⁸ R.C. 4928.14 (“The failure of a supplier to provide retail electric generation service to customers within the certified territory of an electric distribution utility shall result in the supplier’s customers, after reasonable notice, defaulting to the utility’s standard service offer under sections 4928.141, 4928.142, and 4928.143 of the Revised Code until the customer chooses an alternative supplier.”).

²⁹ *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 114 Ohio St.3d 340, 346 (2007).

³⁰ *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512 (2011).

³¹ *In re the Ohio Power Company*, Pub. Util. Comm. No. 08-917-EL-SSO, Opinion and Order at 40 (March 18, 2009).

³² *In re the Ohio Power Company*, Pub. Util. Comm. No. 08-917-EL-SSO, Order on Remand at 32 (October 3, 2011).

³³ *In re The Dayton Power and Light Co.*, Case No. 12-426-EL-SSO, et al. (ESP II Case), Finding and Order (August 26, 2016).

electric security plan “is a non-bypassable POLR charge to allow DP&L to fulfill its POLR obligations.”³⁴ It would appear that the PUCO pursued this tactic to defend the claim that the stability charge collected transition costs or equivalent revenues from customers. For if the charge is truly a POLR charge, it may be allowed as part of an electric security plan (R.C. 4928.143(B)(2)(d)), unlike a transition charge. The PUCO, however, was wrong.

The PUCO erred in allowing DP&L to charge customers for POLR service that it would not provide during the nine months (or more) that the charges were collected from customers.³⁵ Unfortunately, prior to that error being challenged and overturned by the Court, the PUCO approved a new ESP, which rendered the blended ESP moot. That error should not be compounded here, where DP&L is *still* not providing POLR service. And the PUCO failed to require DP&L to substantiate its claim for POLR, consistent with the PUCO and Court precedent.³⁶

1. DP&L is not providing POLR service, so it is unreasonable for it to charge customers for the service.

Under DP&L’s first electric security plan, DP&L *was* providing its customers POLR service. It offered a standard service offer, based on rates equal to its then-existing generation rates, with certain modifications for fuel costs.³⁷ Its PUCO-approved tariffs

³⁴ *Id.*

³⁵ *See id.*

³⁶ *In the Matter of Ohio Power Co.*, Pub. Util. Comm. No. 08-917-EL-SSO, Opinion and Order at 40 (March 18, 2009); *In re Columbus S. Power*, 128 Ohio St.3d 512 (2011).

³⁷ *In re the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case No. 08-1094-EL-SSO et al., Entry at 3 (March 22, 2017).

explained that the rider was “intended to compensate DP&L for providing stabilized rates for customers and Provider of Last Resort Service.”³⁸

But under DP&L’s second electric security plan, the PUCO approved significant changes that dramatically decreased and eventually eliminated DP&L’s POLR obligations.³⁹ Under DP&L’s second electric security plan, POLR obligations were shifted to the marketers who bid in competitive auctions to supply standard service. Since January 1, 2014, DP&L has procured power for standard service through various rounds of competitive auctions. Under the competitive auctions, winning suppliers (marketers) have contracted to supply the standard service offer through May 31, 2021.⁴⁰ Those winning bids have set the standard service offer rate charged to customers. The standard service offer rate no longer has any relationship to DP&L’s plants or its generation rate.

There is no dispute that DP&L does not provide POLR service for customers. DP&L acknowledges this even in its Notice of Filing Proposed Tariffs. It states that it “will honor existing contracts with winning competitive bid suppliers through the end of their term (May 2021) and maintain current PJM obligations for all suppliers.”⁴¹ “This[,]” according to DP&L, “will maintain the integrity of the competitive bid process and allow non-shopping customers to continue to benefit from market-based rates.”⁴²

³⁸ *Id.*, Revised tariff sheets for PUCO Electric Tariff No. 17 with an effective date of June 30, 2009 filed by D. Seger-Lawson on behalf of The Dayton Power and Light Company at G25 (June 29, 2009).

³⁹ *In re Application of DP&L for Approval of its Security Plan*, Pub. Util. Comm. No. 12-426-EL-SSO *et al.*, Opinion and Order at 15-17 (September 4, 2013).

⁴⁰ See Notice of Filing Proposed Tariffs at 2.

⁴¹ See *id.*

⁴² See *id.*

When it approved the RSC charge as a POLR charge in DP&L's first electric security plan, the PUCO tried to justify the charge to customers by claiming "DP&L retains its obligation, over the long term, to serve as provider of last resort."⁴³ That rationale has no merit, especially now. As just explained, even DP&L acknowledges that its standard service offer is supplied via contracts through 2021. So, the successful auction bidders (marketers) will again provide POLR service. DP&L will not be providing POLR service for customers "in the long-term" through May 2021. Any claim that DP&L has long-term obligations for POLR would only be true, at the soonest, starting in June 2021, if at all. Further, if and when DP&L is required to provide POLR services, it can file an application to charge consumers through the RSC charge (if it can meet the legal requirements for implementing such a charge) at that time.⁴⁴

2. There is no evidentiary support for allowing DP&L to charge customers for POLR.

R.C. 4903.09 requires the PUCO to set forth "findings of fact and written opinions setting forth the reason prompting the decisions arrived at, based upon said findings of fact." When the PUCO does not set forth detailed findings, it fails to comply with the requirements of this section and its order is unlawful.⁴⁵ In DP&L's first electric security plan case, there was no evidence supporting a POLR charge.

DP&L's rate stabilization surcharge has not been justified, with evidence, as a POLR charge. At no stage during any of the prior proceedings, and at no time in DP&L's recent filing, did DP&L produce any cost-based evidence related to POLR costs.

⁴³ See Case No. 08-1094-EL-SSO et al., Finding and Order at 9 (August 26, 2016).

⁴⁴ It bears repeating here that we believe that the RSC charge should be set at zero. So, if and when DP&L assumes POLR obligations, it can try to make the necessary showing to populate the RSC.

⁴⁵ *Ideal Transportation Co. v. Pub. Util. Comm.*, 42 Ohio St.2d 195 (1975).

Obviously, DP&L could not provide evidence on the costs incurred for POLR because it is not providing POLR service, as the PUCO found.⁴⁶ Instead the winning bidders in the SSO auctions are providing that service, which presumably is built into the standard service rate.

And while POLR charges do not necessarily have to reflect cost, if a POLR charge is non-cost based, it must be shown to be reasonable.⁴⁷ DP&L's POLR charge, established in 2005, was arbitrarily set at 11% of DP&L's January 2004 generation rates. Back in 2005 when DP&L was providing generation service, it may have seemed reasonable to charge customers for DP&L's POLR service, and at a rate tied to DP&L's generation service.

But in 2019, with DP&L no longer providing generation service to customers, there is no support for charging customers for POLR service, based on an assumed calculation tied to a percentage of DP&L's 2004 generation rates. Yet DP&L request that the PUCO do just that and approve a charge other than zero for the RSC. There has *never* been sufficient and probative evidence that supports charging customers for POLR service that is not being provided by DP&L to its customers.

The PUCO should, consistent with R.C. 4903.09, reject DP&L's RSC charge tariff as filed. It should set the RSC charge at zero.

E. Tariffs for riders that were part of DP&L's third electric security plan should be rejected to protect consumers.

⁴⁶ *Id.*

⁴⁷ *In re the Ohio Power Company*, Pub. Util. Comm. No. 08-917-EL-SSO, Order on Remand at 22.

Under certain circumstances (not present here), a utility may withdraw its electric security plan application under R.C. 4928.143(C)(2)(a). When a utility does so, it withdraws the application in its entirety, “thereby terminating it.” The statute, however, does not allow a utility to keep the parts of its new electric security plan that it likes and revert to the parts of an old electric security plan that it also likes, cobbling together a hybrid or blended plan to the utility’s advantage. But that is exactly what DP&L is trying to do here.

R.C. 4928.143(C)(2)(b) provides that if a utility terminates its ESP application the “[C]ommission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility’s most recent standard service offer, along with any expected increases or decreases in fuel costs.” By statute, the Commission is limited to authorizing a return to the EDU’s most recent ESP together with necessary fuel-cost adjustments. Where a statute is unambiguous, it must be enforced according to its terms. Applying that interpretive principle, the Commission should conclude that its powers under R.C. 4928.143(C)(2)(b) were limited to authorizing DP&L to implement its ESP I after withdrawal, not some blend of its ESP I, its ESP II, and now its ESP III. Through its filing, DP&L cherry-picks charges from its third electric security plan (which it is asking to withdraw) and asks the PUCO to authorize them as part of its effort to return to its first electric security plan. But the law requires complete withdrawal and termination of the current electric security plan application. It does *not* permit a utility, as DP&L is attempting to do here, to pick and choose charges from different electric security plans to cobble together an entirely different plan.

Although DP&L proposes returning to its first electric security plan, it also proposes keeping charges from its third electric security plan – the Storm Rider, Uncollectible Rider, Regulatory Compliance Rider, Decoupling Rider, and Distribution Investment Rider.⁴⁸ *None of these charges were in DP&L's first electric security plan that DP&L is proposing to go back to.*⁴⁹ If they were removed from DP&L's tariffs (which they should be), a typical residential consumer would save an additional \$5.51 per month.⁵⁰ By allowing DP&L to return to its ESP I while retaining certain aspects of the competitive bidding process which were approved under ESP II and other riders contained in ESP III, the PUCO would exceed its powers conferred by R.C. 4928.143(C)(2)(b).

DP&L's attempts to fall back on an old and inapplicable ESP are not a new tactic, but they are improper as ever: On June 20, 2016, the Supreme Court of Ohio issued an opinion reversing the PUCO's decision approving rider SSR as included in ESP II. *In re Application of Dayton Power & Light Co.*, 147 Ohio St.3d 166, 2016-Ohio-3490 (2016). In response to the Court's decision, and before any action was taken by the PUCO in either the ESP I or ESP II Cases, DP&L filed a motion in the ESP II Case to withdraw its ESP II Application and to "implement rates that are consistent with the rates that were in effect before the PUCO's September 4, 2013 Opinion and Order."⁵¹ This came after DP&L collected approximately \$285 million from customers under ESP II for nearly thirty-one months. DP&L contemporaneously filed a similar motion in the ESP I Case requesting

⁴⁸ See Tariffs attached to DP&L's Notice of Filing Proposed Tariffs (November 25, 2019).

⁴⁹ See Notice of Filing Proposed Tariffs.

⁵⁰ Storm Rider (\$1.01) + Regulatory Compliance Rider (\$.45) + Decoupling Rider (\$1.30) + Distribution Investment Rider (\$2.75). *See id.*

⁵¹ See ESP II Case, Motion of DP&L to Implement Previously Authorized Rates.

approval to implement the same “2013 Rates.”⁵² Just when those actions were appealed to the Supreme Court of Ohio, DP&L received approval for ESP III, rendering the validity of the blended ESP I/II “moot.” While DP&L previously successfully avoided legal limitations of blending ESPs by implementing a new ESP, the attempt cannot be successful this time around.

This time, interested stakeholders have taken a course deliberately intended to avoid reverting to ESP I or to some blended plan: they entered into a Stipulation that prevents any of the signatories, including DP&L, from doing so without a full hearing on the matter. DP&L has freely entered into the stipulation, which provides that “the [PUCO] will convene an evidentiary hearing to afford that Signatory Party the opportunity to contest the Stipulation” if that party wishes to withdraw from the case.⁵³ As such, DP&L may not adopt some prior ESP on its own accord, because it has agreed not to do so by stipulation.

Cherry-picking of charges to suit DP&L’s purposes (charging customers more) and allowing DP&L to adopt a blended ESP does not comply with 4928.143(C)(2) and is improper. Nonetheless, at a minimum, DP&L’s proposed tariffs for the Storm Rider, Uncollectible Rider, Regulatory Compliance Rider, Decoupling Rider, and Distribution Investment Rider should be rejected as the riders were not in DP&L’s first electric security plan that DP&L is proposing to go back to.

⁵² See ESP I Case, Motion of DP&L to Implement Previously Authorized Rates at 1 (July 27, 2016).

⁵³ See Settlement at 38-39.

III. CONCLUSION

DP&L's tariffs should be rejected in their entirety. At the very least, the PUCO should reject the tariff for the RSC charge as an unlawful charge. It is an unlawful transition charge and it is an unlawful financial integrity charge. If the tariff is approved, it should be set at zero because DP&L is not providing POLR services to consumers. Moreover, even if DP&L is authorized to revert back to its ESP I, DP&L's proposed tariffs for the Storm Rider, Uncollectible Rider, Regulatory Compliance Rider, Decoupling Rider, and Distribution Investment Rider must be rejected as they were not part of DP&L's first electric security plan.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Corrected Motion To Reject DP&L's Proposed Tariffs To Increase Consumer Rates was electronically served via electric transmission on the persons stated below this 12th day of December 2019.

/s/ Kimberly W. Bojko

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The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: Motion Corrected Motion to Reject DP&L's Proposed Tariffs to Increase Consumer Rates electronically filed by Mrs. Kimberly W. Bojko on behalf of Ohio Manufacturers' Association