BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for A Finding That Its Current Electric Security Plan Passes The Significantly Excessive Earnings Test And More Favorable In The Aggregate Test In R.C. 4928.143(E)	))))))	Case No. 20-680-EL-UNC

REPLY COMMENTS OF HONDA OF AMERICA MFG., INC. AND THE CITY OF DAYTON REGARDING THE APPLICATION OF THE DAYTON POWER & LIGHT COMPANY

I. INTRODUCTION

It is a rarity to achieve widespread unanimity in Commission proceedings, especially where, as here, there is a broad swath of customer classes and diverse interest groups involved. That is why it is particularly telling that every single intervenor filing initial comments in this proceeding objects to the continuation and inclusion of the Retail Stability Charge ("RSC") in ESP I. Despite having diverse (and often divergent) interests, these parties also ***unanimously agree*** that ESP I, in its current iteration, fails the more favorable in the aggregate ("MFA") test.[1] And of those intervenors that discussed the significantly excessive earnings test ("SEET") in their initial comments, all again ***unanimously agree*** that ESP I produces significantly excessive earnings for DP&L.[2] The Commission should take note of this unanimity when rendering a decision in this proceeding, and find that ESP I fails both the MFA test and SEET test under R.C. 4928.143(E).

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[1] The only intervenor that elected not to file initial comments was the University of Dayton ("University"); thus, the legal position of the University in this proceeding is unknown.

[2] Three intervenors filing initial comments (i.e., OHA, IGS and OEG) did not specifically analyze whether ESP I passes the SEET.

DP&L's arguments in support of ESP I contradict the plain language of applicable statutes and contravene well-established Ohio Supreme Court or Commission precedent. Making matters worse, DP&L's claims are based on unproven and misleading assumptions and projections. As DP&L's projections are clearly not a reflection of current operations or likely future spending, they are wholly unreliable for purposes of this proceeding. After considering DP&L's application, supporting testimony, and all initial comments filed in this proceeding, it is evident that DP&L has failed to prove, as it must, that ESP I satisfies both the MFA test and the SEET under R.C. 4928.143(E).

First, DP&L has failed to show that ESP I is more favorable in the aggregate compared to a hypothetical MRO. Unlike a hypothetical MRO, ESP I contains an unreasonable, unlawful, and unnecessary surcharge (i.e., RSC), which was originally approved by the Commission to compensate DP&L for its provider of last resort ("POLR") obligations. DP&L estimates that the RSC will cost customers some $314 million over the four-year forecast period.[3] The hypothetical MRO, on the other hand, would not contain any comparable POLR charge because R.C. 4928.142 does not authorize such a charge, and even if it did, the Commission would never approve a cost recovery mechanism where there is ***literally no evidence*** of any costs to be recovered.

Recognizing as much, DP&L argues that a hypothetical MRO would include a much more substantial financial integrity charge ("FIC"), which would not only offset the significant financial impact of the RSC but would also render the RSC quantifiably preferable to the FIC. But DP&L is mistaken. Both the plain language of the MRO statute (R.C. 4928.142) and well-established precedent from the Ohio Supreme Court and the Commission demonstrate that the

[3] Direct Testimony of R. Jeffrey Malinak (Malinak Testimony), p. 57.

FIC would not be authorized under a hypothetical MRO, and, thus, should not be considered for purposes of the MFA test. Plus, the financial projections (including the assumptions underlying those projections) used by DP&L to justify the FIC are inconsistent, unreliable, and unusable. Altogether, a hypothetical MRO is far more favorable in the aggregate than ESP I; thus, ESP I fails the MFA test under R.C. 4928.143(E).

Second, even if ESP I satisfied the MFA test (which it does not), DP&L has failed to meet its burden of proof to show that ESP I passes the SEET. In order to pass the SEET, DP&L artificially inflates its grid modernization expenses. Despite repeated claims of being under severe financial distress, DP&L's projections assume a fantastical $866.9 million investment in grid modernization over the next few years.[4] But DP&L has not actually committed to making that gigantic investment, and even then, it would still be contingent on the approval of Rider DMR-E, which has already been rejected.[5] Making this investment even more precarious, it is contingent on the results of a stagnant grid modernization proceeding that has failed to result in a stipulation or approval from the Commission or Staff despite being initiated back in 2018. Given that DP&L's grid modernization investment is entirely speculative and unlikely (even DP&L concedes that it may not happen), there is no reason it should be included in DP&L's projections in this docket.

In conclusion, with ESP I failing both the MFA test and the SEET, the Commission should terminate ESP I and impose such conditions, as the Commission deems reasonable and necessary, to accommodate the transition from ESP I to an MRO in accordance with R.C. 4928.143(E). In the alternative, pursuant to R.C. 4928.143(C)(2)(b), the Commission should

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[4] Case No. 18-1875-EL-GRD, Application, p. 5. This calculation shows the total investment over 20 years. The vast majority of those costs are "front loaded" in the first few years of the plan.

[5] *Id*. at 10.

issue an order continuing ESP I, but either removing the RSC entirely or setting the RSC at zero, until the Commission approves a new standard service offer ("SSO") under R.C. 4928.141.

II. ARGUMENT

A. ESP I Fails the MFA Test Because, Unlike a Hypothetical MRO, ESP I Contains a Costly and Unnecessary Rate Stabilization Surcharge.

As explained more fully below, ESP I fails the MFA test because a hypothetical MRO would not contain an unnecessary and unreasonable surcharge (i.e., the RSC) that will cost customers $314 million over the forecast period.[6] In an attempt to nullify the financial impact of the RSC under ESP I, DP&L claims it would be entitled to a much more costly financial integrity charge (or FIC) under a hypothetical MRO. DP&L is mistaken for several reasons.

First, there is no legal or factual support for the creation of DP&L's proposed FIC under a hypothetical MRO. The statutory basis for the FIC (i.e., R.C. 4928.142(D)(4)) does not apply where, as here, 100% of the standard service offer load is supplied by third party competitive bidders, not by the utility.[7] What is more, DP&L has not shouldered its heightened burden of proof (i.e., "clear and convincing" evidence) of "extraordinary" circumstances warranting a financial integrity charge. Finally, even if DP&L provided clear and convincing evidence of an emergency (which it has not), the Commission would never authorize the proposed FIC, as doing so would be against the public interest by precipitating a death spiral and would contravene state policy under R.C. 4928.02 by sanctioning anticompetitive subsidies for an unregulated affiliate. Each of the foregoing arguments is expressed in more detail below.

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[6] Malinak Testimony, p. 57.

[7] DP&L SEC 2019 10-K at 46.

1. *ESP I is $314 million less favorable than a hypothetical MRO over the four year projection period, thereby failing the MFA test.*

ESP I fails the MFA test because unlike a hypothetical MRO, ESP I imposes an unnecessary, unreasonable, and unlawful surcharge for POLR costs/risks that DP&L no longer incurs. As set forth more fully in the Initial Comments of Honda of America Mfg., Inc. ("Honda") and the City of Dayton ("City"), the RSC was approved by the Commission to compensate DP&L for costs incurred to satisfy its POLR obligations.[8] However, DP&L no longer has any POLR costs. DP&L has divested its generation assets, and, thus, cannot use those assets to serve POLR load. DP&L also does not bear any financial risk associated with changes in non-shopping load because those costs are instead borne by SSO auction bidders and by customers.[9]

As there is no legal or factual support for a POLR charge, it comes as no surprise that DP&L's application in this docket, supporting testimony, and initial comments fail to present *any* evidence justifying the continued imposition of such an unnecessary, unlawful, and unreasonable charge. This is particularly problematic because, as DP&L is well aware, a hypothetical MRO would not contain a similar POLR surcharge. No provision of the MRO

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[8] *See, e.g., Ohio Consumers' Counsel v. Pub. Util. Comm. of Ohio*, 114 Ohio St.3d 340, 2007-Ohio-4276, 872 N.E.2d 269, ¶ 4 ("With respect to those customers not taking generation service from DP&L, the rate-stabilization surcharge would act as a mechanism for the recovery of 'provider-of-last-resort' (POLR) costs."); *In the Matter of 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.* ("ESP I"), Second Finding and Order (Dec. 19, 2019), ¶ 40; ESP I, Finding and Order (Aug. 26, 2016), ¶ 5 ("The RSC was authorized to pay DP&L for costs associated with its provider of last resort (POLR) obligations . . ."); *In re the Application of Dayton Power and Light Co. to Establish a Std. Serv. Offer in the Form of an Electric Security Plan,* Case No. 12-426-EL-SSO ("ESP II"), Tr. Vol. V at 1274-75 (DP&L testifying under oath that "the RSC was a POLR charge that was developed based on a 2005 case"); *In the Matter of the Application of The Dayton Power and Light Company for A Finding That Its Current Electric Security Plan Passes The Significantly Excessive Earnings Test And More Favorable In The Aggregate Test In R.C. 4928.143(E)*, Case No. 20-680-EL-UNC ("DP&L SEET/MFA Case"), Direct Testimony of Gustavo Garavaglia M. (Apr. 1, 2020) (Gustavo Testimony), p. 13 ("DP&L's current RSC was established in Case No. 05-276-EL-AIR to compensate DP&L for provider of last resort risks to which DP&L was subject.").

[9] *See* Initial Comments of City and Honda, pp. 5-7.

statute (i.e., R.C. 4928.142) authorizes such a charge (nor does the statute even authorize any nonbypassable charge for any purpose).[10] And even if it did (it does not), DP&L has failed to provide a shred of evidence demonstrating it is entitled to cost recovery for its POLR obligations. As a result, on a quantitative basis, ESP I is $314 million less favorable than a hypothetical MRO over the four year projection period.

2. DP&L's invocation of the Commission's Order in ESP III is of no moment in this proceeding where the legal and factual circumstances have changed.

Recognizing the absence of any comparable POLR-based charge in a hypothetical MRO, DP&L argues that a more costly FIC would be authorized under a hypothetical MRO, thereby rendering ESP I "less expensive" and, thus, more favorable in aggregate than an MRO.[11] In support of that contention, DP&L insists that the Commission has already concluded that a financial integrity charge would, in fact, be approved if DP&L filed an MRO.[12] Specifically, DP&L quotes from and cites to the Commission's Opinion and Order (dated Oct. 20, 2017) in DP&L's ESP III case ("DP&L ESP III Order"),[13] wherein the Commission held, in pertinent part, that ESP III, which contained a financial integrity charge in the form of the Distribution Modernization Rider ("DMR"), was more favorable in the aggregate than a hypothetical MRO.[14] The DP&L ESP III Order, in turn, references and cites to the Commission's Fifth Entry on

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[10] Even if R.C. 4928.142 authorized the imposition of such charges (which it does not), such a charge must bear some relation to actually incurred POLR costs and actual POLR risks, which DP&L has not proved and cannot prove. As the Ohio Supreme Court warned that the "commission must carefully consider what costs it is attributing to POLR obligations." *In re Application of Columbus S. Power Co*., 128 Ohio St. 3d 512, 518, 947 N.E.2d 655, 663-664 (2011).

[11] DP&L Initial Comments, pp. 11-12; Malinak Testimony, pp. 55-57, 80.

[12] Direct Testimony of Gustavo Garavaglia M. (Garavaglia Testimony), pp. 9-11; DP&L Initial Comments, pp. 9-10.

[13] Case No. 16-0395-EL-SSO *et al*. (ESP III).

[14] Garavaglia Testimony, pp. 9-11; DP&L Initial Comments, pp. 9-10; ESP III, Opinion and Order (Oct. 20, 2017), pp. 44-45.

Rehearing in the FirstEnergy ESP IV case,[15] wherein the Commission approved a similar financial integrity charge also called DMR ("FE ESP IV Order").[16] What DP&L's supporting testimony and initial comments neglect to mention, however, is that both the DP&L ESP III Order and the FE ESP IV Order have since been overturned by the Ohio Supreme Court.[17] DP&L's reliance on invalidated Commission orders underscores the precarious nature of its argument.

Nevertheless, even if the legal authority underlying DP&L's argument was still sound (which it is not), DP&L incorrectly assumes that the Commission would apply the same reasoning to a *different* ESP under *different* facts in a *different* proceeding. The DP&L ESP III Order only held that a charge similar to a DMR may be available under a hypothetical MRO based on the facts and circumstances in ESP III, particularly in light of DP&L's financial condition at that time (i.e., some three years ago). Indeed, the DP&L ESP III Order never addresses whether DP&L's existing financial condition in 2020 would warrant the imposition of a FIC in a hypothetical MRO pursuant to R.C. 4928.143(E). Further, there have been material developments impacting DP&L's financial integrity since October 2017. As one intervenor observed, DP&L has since collected some $215 million in financial integrity charges from customers and has enjoyed robust earnings in recent years as a result of the DMR.[18] By way of example, in 2019, DP&L earned $125 million with a return on equity of 27.22%, while in 2018

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[15] Case No. 14-1297-EL-SSO *et al*. (FE ESP IV).

[16] ESP III, Opinion and Order (Oct. 20, 2017), pp. 44-45.

[17] *In re Application of Ohio Edison Co*., 157 Ohio St.3d 73, 2019-Ohio-2401 ¶ 2. Although the Supreme Court did not explicitly overturn the DP&L ESP III Case, it was eventually superseded by the Commission's Supplemental Opinion and Order in ESP III, wherein the Commission eliminated DP&L's DMR in response to the Ohio Supreme Court decision invalidating FirstEnergy's DMR. *See* ESP III, Case No. 16-395-EL-SSO et al., Finding and Order (Dec. 18, 2019), ¶ 9.

[18] Initial Comments of the Office of the Ohio Consumers' Council (OCC), p. 8.

DP&L earned $87 million with a return on equity of 22.35% - both of which exceeded its peer public utilities in Ohio and across the country.[19]

In sum, the factual and legal circumstances giving rise to the DP&L ESP III Order are materially different today. Thus, DP&L's reference to a few statements in a superseded Commission Order that involved a different ESP under different circumstances in a different proceeding cannot possibly prove that the Commission would readily sanction the proposed FIC in a hypothetical MRO as DP&L contends.

3. The statutory basis for authorizing the FIC, as proposed by DP&L, is not applicable under current circumstances, and, thus, should be excluded from any hypothetical MRO in this proceeding.

DP&L points to R.C. 4928.142(D)(4) as the legal basis upon which the Commission would approve the FIC under a hypothetical MRO.[20] DP&L even goes so far as to more sweepingly claim that a utility can seek a financial integrity charge under an MRO if it faces any emergency that threatens its financial integrity at any time.[21] But a closer examination of R.C. 4928.142(D) reveals that DP&L's overly expansive interpretation of R.C. 4928.142(D)(4) is unsupported by the plain language of the statute and ignores the broader context in which it applies.

R.C. 4928.142(D) is a statutory provision that dictates how the Commission should establish SSO prices under an MRO where the utility still owns generation and still directly serves SSO load, which was commonplace in 2008 when the statute was enacted. R.C. 4928.142(D) begins by providing that a certain percentage of SSO load must be subject to competitive bidding (the percentage of which increases over time). The statute then empowers

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[19] *Id*. (citing DP&L FERC Form 1 (2018 and 2019)).

[20] Malinak Testimony, p. 52.

[21] *Id*.

the Commission to make adjustments to the non-competitively-bid portion of the SSO load based on the utility's fuel costs, purchased power costs, and costs of satisfying the supply and demand portfolio requirements (e.g., renewable energy resource and energy efficiency requirements). In other words, R.C. 4928.142(D) is designed to help utilities facilitate the transition away from supplying 100% of the SSO load with its own generation to providing a proportionate blend of both competitively bid generation and utility owned generation.

In light of the foregoing, when R.C. 4928.142(D)(4) authorizes the Commission to "adjust the electric distribution utility's most recent standard service offer price by such just and reasonable amount that the commission determines necessary to address any emergency that threatens the utility's financial integrity . . .", the statute does ***not*** allow the Commission to approve any and all charges under an MRO to insure a utility's financial integrity as a general matter. Those general utility "emergencies" would be governed by R.C. 4909.16. Rather, the MRO statute's plain language merely affords utilities the time to gradually phase in more competitively bid pricing of the SSO load. That obviously does not apply here where 1) DP&L no longer owns generation to serve SSO load, and 2) 100% of SSO load in DP&L's service territory is supplied through competitive bidding.[22]

In short, because DP&L's SSO load is already entirely competitively bid, it is not eligible for this adjustment. As such, there is no basis for the Commission to make any of the adjustments contemplated by R.C. 4928.142(D) under a hypothetical MRO. Despite DP&L's protestations otherwise, the plain language of R.C. 4928.142(D)(4) does not support the creation of a FIC in a hypothetical MRO.

[22] DP&L SEC 2019 10-K at 46.

4. *DP&L has failed to demonstrate the existence of an emergency justifying the imposition of an FIC in a hypothetical MRO, thus a hypothetical MRO would not contain DP&L's proposed FIC.*

a. <u>DP&L is unable to meet the Commission's heightened standard of proof necessary to establish an emergency warranting the imposition of a financial integrity charge in a hypothetical MRO.</u>

Assuming arguendo that R.C. 4928.142(D)(4) authorizes a utility to impose a financial integrity charge in an MRO (which it does not), the statute does not define more specifically what is necessary to show an "emergency." Nevertheless, the Commission has previously found that the factors for what constitutes an "emergency" warranting emergency rate relief under R.C. 4909.16 can provide guidance when examining a hypothetical charge under R.C. 4928.142.[23]

The Commission's emergency rate relief precedent under R.C. 4909.16 requires DP&L to first establish the existence of a financial emergency as a prerequisite to issuing emergency relief.[24] Second, the Commission must examine evidence of such emergency with the "strictest scrutiny."[25] As the Commission has explained: "[a]lthough the applicant must shoulder the burden of proof in every application proceeding before the Commission, this burden takes on an added dimension in the context of an emergency rate case."[26] Third, the Commission requires

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[23] *See* ESP III, Opinion and Order (Oct. 20, 2017), ¶ 90. DP&L agrees that an emergency threatening the utility's financial integrity in Section 4928.142(D)(4) is analogous to an emergency request for rate relief under R.C. 4909.16. *See* ESP II, Case No. 12-426-EL-SSO, Opinion and Order (Sept. 4, 2013), p. 44.

[24] *See, e.*g., *In the Matter of the Application of Akron Thermal, Limited Partnership for an Emergency Increase in Its Rates and Charges for Steam and Hot Water Service, et al.* ("Akron Thermal Case"), Case No. 09- 453-HT-AEM, *et al.*, 2009 Ohio PUC LEXIS 681, Opinion and Order (Sept. 2, 2009), at *13; *In the Matter of the Application of Cobra Pipeline Company, Ltd. for an Emergency Increase in its Rates and Charges* ("Cobra Case"), Case No. 18-569-PL-AEM, Opinion and Order (Sept. 11, 2019), ¶ 141.

[25] *Id*.

[26] *In the Matter of the Application of Ottoville Mutual Telephone Company for Authority to Increase Its Rates and Charges and to Revise Its Tariffs on an Emergency and Temporary Basis Pursuant to 4909.16,* Revised Code ("Ottoville Mutual Case"), Case No. 73-356-Y, 1973 Ohio PUC LEXIS 3, Opinion and Order (Nov. 13, 1973), at *4.

applicants to "clearly and convincingly" demonstrate the presence of extraordinary circumstances that constitute a genuine emergency situation.[27]

Here, DP&L has not shouldered its heightened burden of proof demonstrating the existence of a genuine emergency. Although DP&L summarily claims that it would experience "serious and imminent financial distress" under a hypothetical MRO,[28] DP&L does not provide any proof of an actual emergency (let alone "clear and convincing" proof of "extraordinary" circumstances constituting a genuine emergency). DP&L's claimed "emergency" is essentially the potential for a credit downgrade (thereby increasing borrowing costs) and avoiding "low profitability."[29] But neither constitute a "genuine emergency" consistent with Commission precedent analyzing emergency rate relief requests under R.C. 4909.16.

As an initial matter, DP&L's primary argument to establish that an emergency exists is to rely on the credit downgrade after the DMR was terminated, and to project an additional credit downgrade for DPL Inc. and for DP&L if the RSC is also terminated.[30] But even if DP&L's credit rating is downgraded, without more, this does not establish an "emergency" or "extraordinary circumstances" necessitating emergency relief. It merely suggests that borrowing costs will increase in the short term.[31] What DP&L ignores, and what the Commission must consider, is whether the cost to avoid a credit downgrade (i.e., in the form of the FIC) is commensurate with the expected benefit to DP&L, and, by extension, to customers (i.e., in the

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[27] Akron Thermal Case, Opinion and Order (Sept. 2, 2009), at *13; Cobra Case, Opinion and Order (Sept. 11, 2019), ¶ 141.

[28] Malinak Testimony, p. 50.

[29] *Id*. at 50-51.

[30] Garavaglia Testimony, pp. 10-14.

[31] *See* Initial Comments of City and Honda, pp. 16-17, 23-24.

form of lower borrowing costs).[32] Fortunately, there is actual data to quantify the impact of a change to DP&L's credit rating.[33] After DP&L's credit rating was recently upgraded to investment grade, DP&L refinanced a $425 million first mortgage bond, which resulted in a savings of $2.7 million in interest expense per year.[34] $2.7 million dollars in interest expense savings cannot possibly justify the imposition of hundreds of millions of dollars in financial integrity charges. Without any evidence of something beyond a minor increase in borrowing costs, there is simply no justification for assuming a hefty financial integrity charge on the MRO side of the MFA test.

Concerns over borrowing costs are particularly overstated in this case as evidenced by DP&L's most recent distribution rate case proceeding.[35] In that proceeding, DP&L witness MacKay testified that DP&L's actual embedded cost of debt was 2.72% after the exclusion of the Wright Patterson debt.[36] Mr. MacKay then testified that this debt was distorted by a $445 million short term debt, which had the effect of artificially lowering the cost of debt.[37] To address this alleged distortion, Mr. MacKay assumed that the market rate for refinancing the $445 million short term debt would have been 7.16% (6.6% coupon).[38] Based on that assumption, Mr. MacKay recommended a cost of debt at 5.29%. After objections by several parties, including Honda and the City, the parties ultimately agreed to a Stipulation with a

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[32] *Id*. at 23-24.

[33] *Id*. at 24.

[34] *Id*.; Garavaglia Testimony, p. 13.

[35] Case No. 15-1830-EL-AIR, Opinion and Order dated September 26, 2018.

[36] Direct Testimony of Jeffrey K. MacKay (Nov. 30, 2015), at 9-10.

[37] *Id*.

[38] *Id*. at 13.

hypothetical cost of debt of 4.44%.[39] This 4.44% negotiated hypothetical cost of debt was in excess of the actual cost of debt of 2.72%.

Now, with the benefit of time, it is clear that DP&L was not forced to refinance at a rate of 7.16%. DP&L refinanced the long-term debt at a rate of $425 million in First Mortgage Bonds maturing in 2049 at an interest rate of 3.95% – well below the 7.16% assumed by DP&L in the distribution case.[40] While DP&L did not provide a specific current overall cost of debt, using the highest end of the ranges identified by Mr. Malinak shows that DP&L's current cost of debt is no more than 3.71%.[41] As 3.71% is well under the 4.44% negotiated hypothetical cost of debt included in the distribution rate case Stipulation, DP&L's borrowing costs could increase significantly before DP&L actually begins to experience a related under-recovery.

To further justify the FIC, DP&L ominously claims that if its parent, DPL Inc., defaults on its debt, so too will DP&L per the terms of its debt instruments; accordingly, the Commission would have no choice but to approve the FIC.[42] DP&L is mistaken. A default by DPL Inc. would not, in fact, automatically trigger a default by DP&L. Specifically, DP&L claims that if DPL Inc. defaults on its debt obligations, creditors could effectuate a change in control of DP&L per the terms of the DPL Inc.'s debt instruments, which would, in turn, render DP&L in default under DP&L's debt instruments.[43] But, as more fully explained in Section II(A)(2)(c) of the City and Honda's Initial Comments (which is incorporated herein for reference), R.C. 4905.402(B)

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[39] Case No. 15-1830-EL-AIR, Stipulation dated June 18, 2018.

[40] Malinak Testimony, p. 28.

[41] Malinak Testimony, Exhibit RJM-1 (weighted average of $425 million at 3.95%, $140 million at 2.93%, $17 million at 4.2% - this analysis does not include the $8.1 million in unamortized credits identified by Mr. Malinak).

[42] Garavaglia Testimony, pp. 17-20.

[43] *Id*. at 17.

prohibits a change in control of DP&L absent express Commission approval.[44] Thus, the threat of a potential change in control of DP&L if DPL Inc. defaults on its debt obligations is hollow and belied by Ohio law.[45]

b. DP&L's claimed "emergency" is speculative and contradicted by objective data on DP&L's service reliability and safety.

It is also noteworthy that DP&L's claimed "emergency" has nothing to do with a present inability to provide safe and reliable service. Instead, DP&L posits that an analysis of general utility data reveals a correlation between a utility's credit ratings and system reliability, and that if DP&L is downgraded, service quality would likely be downgraded as well.[46] Putting aside the inherently speculative and academic nature of this assertion, DP&L completely undercuts that argument by admitting, as it must, that all objective indicators show DP&L has regularly satisfied (and continues to satisfy) service quality standards.[47]

Nevertheless, without any actual evidence other than speculative assertions, DP&L portends harm to the safety and reliability of its service should the Commission decline to improve the financial integrity of its unregulated parent. Specifically, DP&L posits that if "DPL Inc. cannot maintain its financial integrity, it will (a) need to minimize capital and operating expenditures at DP&L (that otherwise would be necessary to ensure safe and reliable service) in order to ensure that its own financial obligations can be met"[48] – a stunning but candid admission of DP&L's financial priorities. DP&L's scare tactics aside, all objective indicators reveal that DP&L has provided (and will continue to provide) safe and reliable service – with or without the

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[44] *See* Initial Comments of City and Honda, pp. 17-18; R.C. 4905.402(B).

[45] *See* Initial Comments of City and Honda, pp. 12-22.

[46] Malinak Testimony, pp. 66-78.

[47] *Id*.

[48] Garavaglia Testimony, p. 13.

FIC – as it must under Ohio law irrespective of the profitability of its unregulated parent company.

c. Well-established Commission precedent concerning emergency relief under R.C. 4909.16 compels a finding that DP&L has failed to provide clear and convincing proof of extraordinary circumstances warranting the FIC.

Unable to claim an emergency under any *actual* safety and reliability concerns, DP&L invokes (once again) the financial stress on its unregulated parent company, DPL Inc., to justify the purported "emergency" necessitating the FIC in a hypothetical MRO. In particular, DP&L argues that "DPL would face even greater financial distress" if the Commission failed to authorize a financial integrity charge because DPL Inc. needs to refinance $380 million in debt in 2021 and a credit revolver in 2023.[49] Notably, however, DP&L largely ignores both 1) the origin of this debt (i.e., acquisition debt for which DP&L promised customers would not pay[50]), and 2) DPL Inc. is an unregulated entity that does not provide any service or benefit to DP&L customers. Consistent with Commission precedent analyzed below, neither justification advanced by DP&L provides clear and convincing proof of extraordinary circumstances necessitating emergency relief in the form of the FIC.

When applying the Commission's standards for what constitutes an emergency under R.C. 4909.16, it is clear that DP&L has not come anywhere close to establishing the existence of an emergency – let alone establishing it by "clear and convincing" evidence as is required. For instance, the Commission has previously found an emergency where the utility lost a quarter of

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[49] Malinak Testimony, pp. 8, 26.

[50] *See In the Matter of the Application of The AES Corporation, Dolphin Sub, Inc., DPL Inc. and The Dayton Power and Light Company for Consent and Approval for a Change of Control of The Dayton Power and Light Company*, Case No. 11-3002-EL-MER, Finding and Order (Nov. 22, 2011), p. 9 ("Applicants agree that neither the costs incurred directly related to the negotiation, approval and closing of the merger nor any acquisition premium shall be eligible for inclusion in rates and charges applicable to retail electric service provided by DP&L.").

its revenue, cash flow was expected to be negative, and there was insufficient cash available to meet expenses.[51] DP&L's claimed emergency falls far short of such an extraordinary and dire financial situation. Here, DP&L's "emergency" involves (1) a *potential* credit downgrade (2) that could *potentially* lead to a *minor* increase in borrowing costs[52] and (3) that could *potentially* lead to reduced service quality (despite the objective data showing otherwise). This highly speculative outcome obviously does not rise to a "serious and imminent"[53] financial emergency as DP&L claims. Neither does the financial distress of DP&L's unregulated parent, especially where that financial distress is self-inflicted as explained below.

d. <u>DP&L is not entitled to cost recovery where the cause of the alleged emergency justifying the FIC was its own doing.</u>

Understanding what is *not* an emergency under Commission precedent is equally instructive. In a recent Opinion and Order in Case No. 18-569-PL-AEM ("Cobra Case"), the Commission found that an Ohio utility "failed to meet its burden to clearly and convincingly demonstrate the presence of a genuine emergency situation justifying the extraordinary measure of emergency rate relief."[54] Despite the utility being mired in mounting debt with decreasing revenues and despite directing the Ohio Attorney General to pursue appointment of a receiver for the utility due to concerns about its insolvency, the Commission concluded that emergency rate relief was ***not*** "an appropriate response at this time" largely because the utility's deteriorating financial condition was "its own making."[55] Thus, as part of determining whether an emergency exists warranting the requested relief, the Commission will examine the underlying cause(s) of

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[51] Akron Thermal Case, Opinion and Order (Sept. 2, 2009) at *14.

[52] *See* Initial Comments of the City/Honda, pp. 23-24.

[53] Malinak Testimony, p. 50.

[54] Cobra Case, Case No. 18-569-PL-AEM, Opinion and Order (Sept. 11, 2019), ¶ 151.

[55] *Id.* at ¶¶ 151, 156.

the emergency.[56] Where poor business decisions, burdensome long-term debt obligations, and/or an unsustainable business model caused the emergency, the Commission has denied requests for emergency relief under R.C. 4909.16.[57]

Here, consistent with well-established precedent, the Commission should decline to find an emergency, as the "financial distress" necessitating the claimed "emergency" stems largely from the acquisition of DPL Inc. by AES in 2011. Specifically, AES' acquisition of DPL Inc. (including DP&L) involved taking out $3.5 billion in debt, $1.2 billion of which was placed at DPL Inc.[58] The crushing debt load that DPL Inc. is carrying from that acquisition has resulted in a credit rating downgrade, and since DPL Inc.'s credit rating is inextricably linked with that of DP&L, the acquisition debt continues to adversely impact DP&L.[59] Further, according to DP&L, if DPL Inc. is unable to pay its debts, lenders will raid DP&L's coffers such that DP&L would have insufficient funds to provide safe and reliable service.[60] Hence, the ripple effects of the AES acquisition continue to plague both DPL Inc. and DP&L to the detriment of ratepayers in Ohio. Therefore, in accordance with well-established precedent, the Commission should decline to find an emergency where, as here, non-utility related business decisions created the purported "emergency" necessitating the FIC in a hypothetical MRO. Just as the Commission found in the Cobra Case, DP&L cannot claim it is entitled to cost recovery to address an

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[56] *See, e.g., id.* at ¶¶ 139-158; Akron Thermal Case, Opinion and Order (Sept. 2, 2009), at *45-64.

[57] *Id*.

[58] ESP III, Tr. Vol. I at 30 (April 3, 2017).

[59] *See* Garavaglia Testimony, p. 14.

[60] *Id.* at 21.

emergency entirely of its own making. This is especially true where DP&L assured the Commission that its customers would not pay any AES acquisition costs.[61]

Not only that, DP&L customers have already been forced to pay down a substantial portion of DPL Inc.'s acquisition debt in the form of paying various nonbypassable charges over the years such as the RSC, the Service Stability Rider ("SSR"), and the DMR. Between 2012 and 2019, these nonbypassable charges allowed DP&L to collect some $700 million in revenue from nonbypassable charges paid by its customers.[62] During the same period, DPL Inc.'s debt (exclusive of DP&L's debt) went from approximately $1.7 billion at the end of 2011 to $788.7 million (much of which still relates to the AES acquisition debt) as of the end of 2019.[63] Critically, between 2012 and 2019, DPL Inc. received $791.8 million in dividends from DP&L.[64] Thus, the data strongly suggests that DP&L customers have effectively paid down DPL Inc.'s

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[61] *See In the Matter of the Application of The AES Corporation, Dolphin Sub, Inc., DPL Inc. and The Dayton Power and Light Company for Consent and Approval for a Change of Control of The Dayton Power and Light Company*, Case No. 11-3002-EL-MER, Finding and Order (Nov. 22, 2011), p. 9 ("Applicants agree that neither the costs incurred directly related to the negotiation, approval and closing of the merger nor any acquisition premium shall be eligible for inclusion in rates and charges applicable to retail electric service provided by DP&L.").

[62] DP&L collected roughly $76 million per year from the RSC (approved in ESP I), $110 million per year from the Service Stability Rider (approved in ESP II before being subsequently invalidated by the Supreme Court); $105 million per year from the DMR (approved in ESP III before being subsequently withdrawn due to Supreme Court decision invalidating FirstEnergy's DMR), and now again is collecting some $76 million annually under the RSC. *See 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 (Dec. 28, 2005); *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, Opinion and Order at 5 (June 24, 2009); *In the Matter of the Application of the Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No.12-426-ELSSO, Entry Nunc Pro Tunc at 2 (Sept. 6, 2013); *In the Matter of the Application of the Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No.16-395-ELSSO, Opinion and Order at 6 (Oct. 20, 2017); Case No. 08-1094-EL-SSO, Second Finding and Order at 1 (Dec. 18, 2019).

[63] *See* DP&L 2011 SEC Form 10-K at 35; DP&L SEC Form 10-K at 26.

[64] 2012: $145 million dividend (net income $91.2 million) – DP&L SEC 2014 10-K at 131-132;
2013: $190 million dividend (net income $83.6 million) – DP&L SEC 2014 10-K at 131-132;
2014: $159 million dividend (net income $115 million) – DP&L SEC 2014 10-K at 131-132;
2015: $50 million dividend (net income $106.4 million) – DP&L SEC 2017 10-K at 132;
2016: $70 million dividend (net income negative 772.7 million) – DP&L SEC 2017 10-K at 132;
2017: $39 million dividend (net income $17 million) – DP&L SEC 2017 10-K at 132;
2018: $43.8 million dividend (net income $86.7 million) – DP&L SEC 2019 10-K at 98; and
2019: $95 million dividend (net income $124.9 million) – DP&L SEC 2019 10-K at 98.

debt – debt that largely stems from AES' highly leveraged buyout of DPL Inc. in 2011. Making matters even worse, should the Commission continue to permit DP&L to collect the RSC as DP&L requests, customers will be forced to pay another $314 million over the next four years, bringing the total amount of nonbypassable charges paid by DP&L's customers to over **$1 billion**.[65]

Prior Commission decisions make it abundantly clear that DP&L cannot invoke an "emergency" justifying relief where that emergency was of its own making. Accordingly, the Commission would never approve the FIC in a hypothetical MRO under the circumstances here.

e. Even if the Commission finds that an emergency exists, the FIC is not calculated at the minimum level needed to avert or relieve the emergency and is contrary to the public interest.

Even if the Commission determines an emergency exists (which it should not), the Commission may only grant relief "at the minimum necessary to avert or relieve the emergency."[66] The Commission has explained its longstanding policy to declare an emergency under R.C. 4909.16 "only when extraordinary circumstances are present which indicate that emergency rate relief is the only reasonably, practical mechanism available to prevent injury to the applicant utility's business and to the public interest."[67] Thus, even if the Commission establishes the existence of an emergency, the Commission must still determine whether the relief requested would actually avert or relieve the emergency and that it would be in the public interest. Here, even if the Commission found an emergency warranting the FIC under a hypothetical MRO (which it would not), DP&L has not demonstrated that the proposed FIC

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[65] Malinak Testimony, p. 57.

[66] *Id*.

[67] Ottoville Mutual Case, Opinion and Order (Nov. 13, 1973), at *5.

would actually avert or relieve the emergency, nor has DP&L proven that that the FIC would be in the public interest.

As an initial matter, DP&L failed to provide a specific minimum level necessary to avert or relieve the purported emergency. Instead, DP&L just calculated the lower bound of the FIC as the amount of revenue "to make ESP I and the hypothetical MRO equivalent on a cash inflow basis . . . ."[68] DP&L never even attempted to show how this amount of funds from customers (which DP&L has claimed is confidential) is in any way related to an "emergency" it is facing. For example, if DP&L showed an "emergency" that could be averted for $1 million, then the amount of the emergency charge should be $1 million, and only for only such time until DP&L could return for another rate case (i.e., to avert the emergency in the short-term). Here, it is insufficient for DP&L to invoke a potential credit downgrade as its "genuine emergency" and then claim its "financial integrity" would benefit from a charge in an imprecise amount. As DP&L's FIC has no relationship to the alleged "emergency", DP&L has failed to meet its high burden.

Furthermore, it is important to note that any "financial integrity charge" authorized by R.C. 4928.142(D)(4) would be bypassable, as the statute explicitly provides that "the commission may adjust the electric distribution utility's most recent standard service offer price by such just and reasonable amount that the commission determines necessary to address any emergency that threatens the utility's financial integrity charge . . . ."[69] Accordingly, a bypassable financial integrity charge authorized under R.C. 4928.142(D)(4) would incent remaining SSO customers to shop, which, in turn, would further increase the financial integrity

[68] Malinak Testimony, p. 53.

[69] R.C. 4928.142(D)(4).

charge on an ever decreasing pool of SSO customers (i.e., a phenomenon termed a "death spiral"). In a prior emergency rate case under R.C. 4909.16, the Commission held that even if the utility satisfied its heightened burden establishing the existence of an emergency, the Commission would still decline to issue emergency relief if doing so could result in a death spiral.[70] The same concern applies here: to wit, if the Commission authorized the FIC in a hypothetical MRO, the burden of paying the FIC increases on a smaller and smaller base on non-shopping customers. Under this scenario, the Commission would never authorize the imposition of the FIC as doing so would facilitate a death spiral and be contrary to the public interest.

f. <u>If DP&L was actually suffering an "emergency" as alleged, the proper mechanism would be to file an application for emergency rate relief under R.C. 4909.16 or file a traditional rate case under R.C. 4909.18.</u>

If DP&L actually had a legitimate emergency, the proper mechanism would be to file for emergency rate relief under R.C. 4909.16 or to file a new distribution rate case pursuant to R.C. 4909.18. Instead, DP&L invokes an inapplicable provision in the MRO statute (R.C. 4928.142(D)(4)), citing a potential or theoretical "emergency" as means to justify the imposition of the FIC. In reality, the Commission would never sanction such an unlawful charge as part of an MRO under the circumstances; rather, the Commission would instruct DP&L to pursue emergency rate relief under 4909.16 or file a new distribution rate case pursuant to R.C. 4909.18. Accordingly, even if there was an actual emergency warranting relief to avert an imminent emergency of extraordinary circumstance (which there is not), DP&L has other lawful, available remedies under R.C. 4909.16 or R.C. 4909.18.[71]

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[70] Akron Thermal Case, Opinion and Order (Sept. 2, 2009), at *63.

[71] Both options under R.C. 4909.15 and 4909.18 would be available under either an ESP or an MRO; accordingly, neither impact the results of the MFA test.

g. <u>As a matter of state policy, the Commission must decline to approve the FIC as part of a hypothetical MRO in this proceeding as doing so would establish an ill-advised and dangerous precedent of utilities obtaining noncompetitive subsidies for their unregulated affiliates.</u>

Further, were the Commission to approve the FIC as part of a hypothetical MRO under the circumstances presented here, the Commission would be setting a dangerous and unsound precedent that contravenes state policy. R.C. 4928.02 sets forth the policy of the state, which concerns, among other things, ensuring and protecting competition by avoiding anticompetitive subsidies. Here, approving the FIC to pay down the debt of an unregulated parent company would give the Commission's imprimatur to anticompetitive subsidies of unregulated companies operating in a highly competitive market – a clear violation of state policy enshrined in R.C. 4928.02.

The debt instruments that would be paid off by the FIC are primarily those of DPL Inc., the unregulated parent of DP&L.[72] The business decision to execute those debt instruments was made by DPL Inc., not DP&L; accordingly, it is DPL Inc. alone that should suffer the financial consequences of those decisions. Yet the FIC operates to effectively insulate DPL Inc. from the adverse financial consequences of past business decisions over which the Commission has no regulatory oversight. It is unfair and unwise to demand Ohio ratepayers subsidize the financial losses of an unregulated parent company, especially where, as here, the consequences of failing to do so would be a minor increase in borrowing costs. It goes without saying that had the reverse been true (i.e., had DPL Inc. reaped the rewards of its business decisions) there is no way DP&L (or DPL Inc.) would share those benefits with Ohio ratepayers.

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[72] Garavaglia Testimony, pp. 17-20.

Neither should the Commission cower to DP&L's vacant threats of potential safety and reliability service issues in the future if DP&L does not receive the emergency bailout for its unregulated parent. Should the Commission fail to stand its ground, it can expect many other utilities to follow DP&L's lead. And like DP&L, utilities would not even need to demonstrate an actual, existing emergency; instead, utilities would only need to invoke some speculative and minor "emergency" to extract hundreds of millions of dollars in anticompetitive subsidies for unregulated affiliates. As a matter of state policy, the Commission must decline to sanction such a dangerous and ill-advised precedent.

h. <u>For the sake of the public interest, the Commission would never approve an unnecessarily costly FIC during an unprecedented health and economic crisis not seen in over a century</u>.

Finally, it is clearly against the public interest to impose a costly FIC on non-shopping customers during an unprecedented health and economic crisis caused by a global pandemic not seen in over a century. Although DP&L decries the impact of COVID-19 on its bottom line, DP&L completely ignores the impact of its proposals on businesses and residents.[73] With record unemployment, with some 32% of residents in the City living in poverty, and with the median household income of only $31,000 (in 2018 dollars) in the City, it is unlikely the Commission would sanction the imposition of a costly "emergency" surcharge (particularly one that could precipitate a death spiral as described above).[74] This is especially true when considering how much DP&L customers have already been forced to contribute in the form of nonbypassable

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[73] As one example, the Ohio Hospital Association outlined how, unlike DP&L, hospitals, businesses, and residential customers "do not have the luxury of regulatory mechanisms that allow them to defer certain unexpected costs for future recovery or obtain approval of non-bypassable riders to obtain recovery from captured customers." Initial Comments of the Ohio Hospital Association, p. 2.

[74] United States Census Bureau, Quick Facts (July 1, 2019), available at https://www.census.gov/quickfacts/daytoncityohio (last accessed July 10, 2020).

charges (some $700 million and counting) and considering the self-inflicted cause of the purported emergency claimed by DP&L (i.e., the highly leveraged acquisition of DPL Inc.).

In sum, even if the Commission found DP&L established by clear and convincing evidence an emergency warranting a financial integrity charge in a hypothetical MRO (which it should not), the Commission would never approve the FIC under such extraordinary circumstances, as doing so would clearly contravene the public interest.

B. DP&L Has Failed to Prove that Significantly Excessive Earnings Will Not Occur Because DP&L Included Grid Modernization Costs It Has Not Actually Incurred and that, If Removed, Would Produce Significantly Excessive Earnings for DP&L.

1. The inclusion of $866.9 million in grid modernization investment must be removed from the SEET calculation as such expenditures are entirely speculative, theoretical, and unreliable.

DP&L's SEET projections are unreliable because DP&L grossly inflates its capital expenditures. In particular, DP&L tacks on substantial grid modernization expenditures worth $866.9 million that are conditional and speculative (as even DP&L concedes). But DP&L's actions speak louder than its words. While DP&L's projections assume it will make substantial grid modernization expenditures over the next few years, there is no indication that DP&L will actually follow through on its lofty projections.

For example, DP&L has yet to file a grid modernization plan under the current ESP, yet it claims it intends to invest some $866 million in grid modernization. DP&L's grid modernization case (i.e., Case No. 18- 1875-EL-GRD), which has been pending since 2018, was filed under ESP III and was conditioned on the extension of DMR-E, which has since been withdrawn.[75] In addition, there has been no substantive activity in Case No. 18-1875-EL-GRD for almost a

[75] Case No. 18-1875-EL-GRD, Application (Dec. 21, 2018), p. 10.

year.[76] To date, no Staff Report or stipulation has been filed.[77] In fact, the most recent substantive activity in the docket concerned briefing on a motion to dismiss filed by the Environmental Law & Policy Center back on September 19, 2019.[78] DP&L assumes, without more, that such expenditures will, in fact, be made. In reality, DP&L has not provided a shred evidence that these grid modernization expenditures will actually be made any time soon.

Given the foregoing, DP&L's assumed grid modernization expenditures should not be included in any projections used in this proceeding, as they are entirely self-serving, speculative, unlikely, and unreliable. When such improper expenditures are removed (as they should be), it is obvious that DP&L has received significantly excessive earnings under ESP I.

2. Upon removing speculative grid modernization expenditures, DP&L's modified projections reveal significantly excessive earnings.

It is DP&L's burden to establish that its returns under ESP I shall not exceed those of publicly traded companies, including utilities, that face comparable business and financial risk.[79] However, as mentioned above and as more thoroughly described in Section II(B)(2) of the City and Honda's Initial Comments (which is incorporated herein by reference), all of DP&L's projections improperly assume significant investment in grid modernization projects in both ESP and MRO scenarios.[80]

Critically, DP&L has not made any such investments, but instead merely presumes it would have the financial capacity to do so (notwithstanding its purported "serious and imminent

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[76] *See* docket for Case No. 18-1875-EL-GRD.

[77] *Id*.

[78] *Id*.

[79] R.C. 4928.143(E).

[80] *See* Initial Comments of City and Honda, pp. 27-28.

financial distress").[81] Although it is not possible to accurately revise DP&L's projections to eliminate the improper assumptions embedded in them, the Commission can examine other financial information provided by DP&L to elucidate DP&L's actual financial position without assuming speculative grid modernization expenses and equity investments.[82] When doing so, there are obvious flow through impacts to certain variables that demonstrate significantly excessive earnings as set forth in greater detail in Section II(B) of City and Honda's Initial Comments.[83]

3. *DP&L is not entitled to an adjustment of 100 basis points.*

DP&L witness Malinak contends that the SEET threshold for DP&L should be 15.6%, but considering the "higher-than-usual operational risks" that DP&L faces, DP&L witness Garavaglia adjusts the SEET threshold by 100 basis points to 16.6%.[84] The Commission must reject DP&L's adjustment of 100 basis points.[85] First, DP&L has not proven that its "higher-than-usual operational risks" are any different than those faced by its peer group. DP&L cites its aging infrastructure and lack of certain riders such as the DMR, but neither differentiate DP&L from its peer group.[86] Indeed, the entire purpose of selecting a peer group is to eliminate the need for such adjustments between companies.

DP&L also cites the challenges of negotiating a distressed financial landscape amidst the existing public health crisis.[87] But, again, that is not a distinguishing factor, as all utilities are

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[81] Malinak Testimony, p. 50.

[82] *See* Initial Comments of City and Honda, pp. 27-28.

[83] *Id*.

[84] Malinak Testimony, pp. 15, 85; Garavaglia Testimony, p. 3-8.

[85] Garavaglia Testimony, p. 3.

[86] *Id*., pp. 7-8

[87] *Id*.

experiencing similar problems related to COVID-19. Recognizing as much, DP&L claims that being on the edge of financial distress compounds the problem, thereby rendering DP&L different from its peers.[88] But any financial distress DP&L experiences as a result of the current public health crisis is already accounted for by comparing it to companies with similar business and similar financial risks operating in the same environment.

Pursuant to R.C. 4928.143(E), "[t]he burden of proof for demonstrating that significantly excessive earnings will not occur shall be on the electric distribution utility." Here, DP&L has not satisfied its burden. Instead, DP&L seeks to establish a profit threshold of 16.6% under unprecedented economic circumstances (instead of 12% as used in the two previous ESPs), and then grossly inflates its projected grid modernization expenditures over the forecasted period notwithstanding its conspicuous failure to provide any actual evidence of or firm commitment to investing $866.9 million in grid modernization. Accordingly, the Commission should find that ESP I fails the SEET.

III. CONCLUSION

WHEREFORE, Honda and the City respectfully request that the Commission find that ESP I is not more favorable in the aggregate than a hypothetical MRO and that ESP I has produced significantly excessive earnings for DP&L in violation of R.C. 4928.143(E). Further, the Commission should terminate ESP I and impose such conditions, as the Commission deems reasonable and necessary, to accommodate the transition from ESP I to an MRO in accordance with R.C. 4928.143(E), or, in the alternative, the Commission should issue an order pursuant to R.C. 4928.143(C)(2)(b) continuing ESP I, but either removing the RSC entirely or setting the RSC at zero, until the Commission approves a new SSO.

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[88] *Id.*

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CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 16^{TH} day of July, 2020. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/*s/ Mark T. Keaney*
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