ORIGINAL

IN THE SUPREME COURT OF OHIO

The Kroger Co., et al.,	:	Case No. 2013-0521
Appellants,	:	Appeal from the Public Utilities Commission of Ohio
v.	:	
The Public Utilities Commission of Ohio,	:	Public Utilities Commission of Ohio Case No. 11-346-EL-SSO, Case No. 11-348-EL-SSO,
Appellee,	:	Case No. 11-349-EL-AAM, Case No. 11-350-EL-AAM, , *In the*
and	:	*Matter of the Application of Columbus Southern Power Company and Ohio*
Ohio Power Company,	:	*Power Company for Authority to Establish a Standard Service Offer*
Cross-Appellant.	:	*Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan, et al.*

APPENDIX TO THE MERIT BRIEF OF *AMICUS CURIAE* THE DAYTON POWER AND LIGHT COMPANY IN SUPPORT OF APPELLEE THE PUBLIC UTILITIES COMMISSION OF OHIO

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Appendix to the Merit Brief of *Amicus Curiae* The Dayton Power and Light Company in Support of Appellee The Public Utilities Commission of Ohio has been served via electronic mail upon the following counsel of record, this 21st day of October, 2013:

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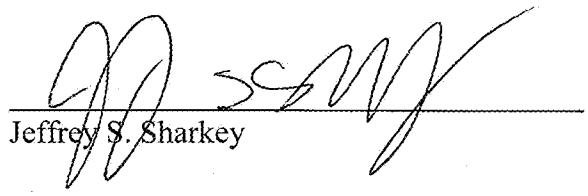

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BEFORE

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 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

OPINION AND ORDER

The Commission, considering the above-entitled applications, and the record in these proceedings, hereby issues its opinion and order in these matters.

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OPINION:

I. HISTORY OF THE PROCEEDING

A. MRO Application

On March 30, 2012, The Dayton Power and Light Company (DP&L or Company) filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code. The application was for approval of a market rate offer (MRO) in accordance with Section 4928.142, Revised Code. As filed, the MRO would have commenced on January 1, 2013, at the scheduled end of DP&L's existing electric security plan (ESP). On September 7, 2012, DP&L filed a notice of withdrawal of its MRO application.

B. ESP Application

On October 5, 2012, DP&L filed a second application for an SSO pursuant to Section 4928.141, Revised Code. This second application was for approval of an ESP in accordance with Section 4928.143, Revised Code. As filed, the ESP would have commenced on January 1, 2013.

C. Revised ESP Application

On December 12, 2012, DP&L filed a revised application for an SSO pursuant to Section 4928.141, Revised Code. The revised application was for approval of a revised ESP in accordance with Section 4928.143, Revised Code. DP&L's revised ESP application was filed to correct errors discovered in the initial ESP application. The errors included revenues/load expense errors, a fuel rider rate error, a property tax error, and a competitive bidding process (CBP) auction price error. The revised ESP application is the proposed ESP application presently before the Commission and addressed by this Order.

D. Summary of the Hearings

1. Local Public Hearings

Two local public hearings were held in order to allow DP&L customers the opportunity to express their opinions regarding the issues raised within the application. The first local public hearing was held in Dayton, Ohio, on January 29, 2013, at 1:00 p.m. At the first local public hearing, four witnesses offered testimony on DP&L's ESP

application. The second local public hearing was held in Dayton, Ohio, on January 29, 2013, at 6:00 p.m. At the second local public hearing, two witnesses offered testimony on DP&L's ESP application. In addition to the public testimony, numerous letters were filed in the docket regarding DP&L's proposed application.

At the local public hearings and in the letters filed in the docket, numerous witnesses testified in support of DP&L and its application. Specifically, many witnesses praised DP&L's community partnerships, charitable contributions to community groups and non-profit organizations, and promotion of economic development in the region. However, numerous witnesses also testified in opposition to DP&L's ESP application. Specifically, many witnesses disputed DP&L's need to raise rates during a time of economic hardship, its need to raise rates in lieu of downsizing or cutting back in other areas, and the impact that a rate increase would have on electric reliability.

2. Evidentiary Hearing

The following parties were granted intervention in the proceedings: Industrial Energy Users-Ohio (IEU-Ohio), OMA Energy Group (OMA), Honda of America Manufacturing, Inc. (Honda), Duke Energy Retail, Duke Energy Commercial Asset Management, Duke Energy Ohio, Inc. (collectively, Duke), FirstEnergy Solutions Corp. (FES), AEP Retail Energy Partners, LLC, (AEP Retail), Ohio Energy Group (OEG), the Ohio Hospital Association (OHA), the Kroger Company (Kroger), Ohio Partners for Affordable Energy (OPAE), EnerNOC, Inc., the Ohio Consumers' Counsel (OCC), Interstate Gas Supply, Inc. (IGS), the City of Dayton (City of Dayton), Retail Energy Supply Association (RESA), the Ohio Environmental Council (OEC), Wal-Mart Stores East, LP, Sam's East, Inc. (collectively, Wal-Mart), Direct Energy Services, LLC, Direct Energy Business, LLC, Edgemont Neighborhood Coalition, Border Energy Electric Services, Inc., Exelon Generation Company, LLC, Exelon Energy Company, Inc., Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc. (collectively, Constellation), Ohio Power Company, SolarVision, LLC (SolarVision), Council of Smaller Enterprises, Border Energy Electric Services, Inc., Federal Executive Agencies (FEA), and People Working Cooperatively, Inc.

The evidentiary hearing for DP&L's proposed ESP application commenced on March 18, 2013. At the hearing, 11 witnesses offered testimony on behalf of DP&L, 10 witnesses offered testimony on behalf of Staff, and 23 witnesses offered testimony on behalf of various intervenors to the case. In addition, DP&L offered three witnesses on rebuttal. The evidentiary hearing concluded on April 3, 2013. Initial briefs and reply briefs were filed on May 20, 2013, and June 5, 2013, respectively.

E. Procedural Matters

1. IEU-Ohio Motion to Take Administrative Notice or to Reopen the Proceeding or to Supplement the Record

On May 20, 2013, IEU-Ohio filed a motion to take administrative notice or to reopen the proceeding or to supplement the record. IEU-Ohio filed a memorandum in support with an exhibit that IEU-Ohio contends should be admitted into the record. The exhibit contained excerpted pages from a May 9, 2013, AES Corporation (AES) investor day presentation. IEU-Ohio believes that the investor day presentation is relevant to DP&L's financial integrity, specifically with regards to the service stability rider (SSR) and switching tracker (ST), as well as to DP&L's ability to refinance long-term debt. IEU-Ohio contends that the investor day presentation has been made public on the AES website and it contains information that AES has held out to the investment community as being reliable. Furthermore, at the time of hearing, the information contained in the investor day presentation was not available and could not have, with reasonable diligence, been presented during the hearing.

On May 28, 2013, DP&L filed a memorandum in opposition to IEU-Ohio's motion. DP&L asserts that the investor day presentation should not be admitted into the record because it was not timely prepared or discovered. DP&L claims that in other Commission proceedings, the Commission has ruled that it would be improper to take administrative notice or otherwise consider information offered late in a proceeding and that in every case there is, at some point, a reasonable cut-off for the Commission to confine its analysis to the data that is already reflected in the record. *In Re Ohio Power Company*, Case No. 10-501-EL-FOR, Opinion and Order (January 9, 2013) at 27-29.

The Commission notes that the Supreme Court of Ohio has held that there is neither an absolute right for nor a prohibition against the Commission's taking administrative notice of facts outside the record in a case. Instead, each case should be resolved on its facts. The Court further held that the Commission may take administrative notice of facts if the complaining parties have had an opportunity to prepare and respond to the evidence and they are not prejudiced by its introduction. *Canton Storage and Transfer Co v. Pub. Util. Comm.*, 72 Ohio St.3d 8, 647 N.E.2d 136 (1995). IEU-Ohio's motion to take administrative notice would have the Commission review information that was not presented at hearing and has not been admitted into the record. No witness has sponsored the exhibit and no party has had an opportunity to cross-examine a sponsoring witness. DP&L's only opportunity to prepare and respond to the evidence was through its memorandum in opposition to IEU-Ohio's motion. Furthermore, the Court's decision indicates that the Commission has the discretion to determine whether to take administrative notice of facts outside the record. In this instance, the Commission finds that IEU-Ohio's motion should be denied.

2. Requests for Review of Procedural Rulings

a. IEU-Ohio Motions to Strike

IEU-Ohio asserts that motions to strike the testimonies of witnesses Chambers and Mahmud should have been granted. IEU-Ohio contends that its motion to strike the testimony of witness Chambers should have been granted because witness Chambers created financial projections based upon a spreadsheet titled "CLJ Second Revised Exhibits with DETAIL - incremental switching." The financial projections based upon the spreadsheet were admitted at hearing as Exhibits WJC-3 and WJC-5. IEU-Ohio moved to strike the exhibits and any portion of witness Chambers' testimony that relied on those exhibits (Tr. Vol. II at 423-427). At hearing, the attorney examiners initially took IEU-Ohio's motion to strike under advisement and subsequently denied IEU-Ohio's motion (Tr. Vol. III at 593). IEU-Ohio later moved to strike the testimony of witness Mahmud for relying on WJC-3. At hearing, the attorney examiner also denied that motion to strike. (Tr. Vol. IV at 1037-1038). IEU-Ohio claims that the attorney examiners' rulings were in error based upon Ohio Rule of Evidence 703. Ohio Rule of Evidence 703 requires that facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by the expert or admitted in evidence at the hearing. IEU-Ohio argues that witness Chambers used a spreadsheet that contained the facts or data that he relied upon, but that in this case the spreadsheet was neither perceived by witness Chambers nor admitted into evidence at the hearing. The spreadsheet was actually created by witness Jackson, but IEU-Ohio asserts that DP&L failed to sponsor or move the facts or data contained in the spreadsheet into evidence during his testimony. Next, IEU-Ohio avers that the spreadsheet is hearsay because it is an out-of-court statement made by witness Jackson being offered by witness Chambers for the truth of the matter asserted. Finally, IEU-Ohio contends that expert testimony must be based upon reliable scientific, technical, or other specialized information, and the spreadsheet is not reliable. In total, the motions to strike made by IEU-Ohio include DP&L Ex. 4A, WJC-3, and WJC-5.

DP&L claims that IEU-Ohio's motions to strike were properly denied. First, DP&L indicates that Ohio Rule of Evidence 103(A) states that error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected. DP&L avers that IEU-Ohio failed to indicate or demonstrate that a substantial right has been affected. Furthermore, DP&L contends that IEU-Ohio was granted the opportunity to recall the witness and IEU-Ohio failed to avail itself of the opportunity to further question the witness. Second, DP&L asserts that IEU-Ohio failed to appropriately apply Ohio Rule of Evidence 703. Ohio Rule of Evidence 703 states that the facts or data in the case upon which the expert bases an opinion or inference may be those perceived by the expert or admitted in evidence at the hearing. DP&L posits that

IEU-Ohio made the improper argument that DP&L witness Chambers did not perceive the information because he did not create or verify the information. According to DP&L, a witness may perceive information without creating or verifying it. Third, DP&L contends that sufficient discovery was offered and taken in this case, and that it would be unduly burdensome for all supporting data to be filed with the Commission. DP&L claims that, in a Commission proceeding of this scope, a reasonable line must be drawn between sufficient discovery and undue burden, and the attorney examiners drew a reasonable line. Fourth, DP&L notes that Ohio Rules of Evidence do not apply in Commission proceedings. *Greater Cleveland Welfare Rights Organization, Inc. v. Pub. Util. Comm'n*, 2 Ohio St.3d 62, 68, 442 N.E.2d 1288(1982).

The Commission affirms the attorney examiners' ruling denying IEU-Ohio's motions to strike. The Commission first notes that while it is not strictly bound by the Ohio Rules of Evidence, the Commission seeks to maintain consistency with the Ohio Rules of Evidence to the extent practicable. *Greater Cleveland*, 2 Ohio St.3d 62, 68, 442 N.E.2d 1288 (1982). In this instance, we believe the attorney examiners' ruling was consistent with the Ohio Rules of Evidence and Commission practice. In this case, DP&L witness Jackson created a spreadsheet using underlying data, titled the spreadsheet "CLJ Second Revised Exhibits with DETAIL – incremental switching," and then referenced the spreadsheet in his testimony. Other witnesses then used the same data for the purposes of using the data as a constant to compare with their own calculations and projections.

The Commission notes that, in this proceeding, parties had a full and fair opportunity to conduct discovery of all facts relied upon by the witnesses who presented testimony at the hearing, and the spreadsheet at issue was disclosed in discovery (Tr. Vol. III at 592-593). Further, the witnesses disclosed the data in their pre-filed testimony and provided notice that they had used it. In addition, in order to avoid any prejudice to any party adversely affected by the ruling, the attorney examiners provided parties the opportunity to recall DP&L witness Jackson and cross-examine him on the contents of the spreadsheet (Tr. Vol. III at 593). No party availed itself of the opportunity to recall the witness to conduct further cross-examination regarding the spreadsheet and data.

b. IEU-Ohio's Motions to Compel

IEU-Ohio also seeks review of the attorney examiners' ruling denying the motions to compel made at hearing. IEU-Ohio argues that the attorney examiners should have granted the motions to compel DP&L to disclose information regarding DP&L's ability to increase its revenue through increases in distribution or transmission rates. IEU-Ohio contends that the attorney examiners improperly ruled that DP&L's responsive studies regarding its ability to increase its revenue were protected by the attorney-client privilege

and work-product doctrine. Furthermore, IEU-Ohio claims that the attorney examiners also improperly ruled that DP&L's claim of privilege had not been voluntarily waived.

DP&L asserts that the analysis of DP&L's ability to increase its revenue through increases in distribution or transmission rates was conducted at the request of legal counsel and was provided to counsel so that it could provide legal advice to DP&L regarding the potential filing of distribution and transmission rate cases. DP&L believes that this makes the requested information privileged. DP&L further contends that it did not waive the privilege by providing a witness to testify on the same subject matter. DP&L argues that providing testimony on the same subject matter is not the same as voluntarily disclosing the confidential or privileged communications. Furthermore, the analyses of distribution and transmission rates were prepared in anticipation of litigation, specifically in anticipation of yet to be filed distribution and transmission rate cases. DP&L avers that this makes the analyses protected under the work product doctrine.

The Commission affirms the attorney examiners' rulings denying IEU-Ohio's motions to compel. We find that DP&L's analyses contained information protected by the attorney-client privilege and the work-product doctrine. The attorney examiners also properly ruled that DP&L had not voluntarily waived privilege and confidentiality by providing witness testimony on distribution and transmission rates. To waive privilege or confidentiality, the witness would have to do more than reveal the existence of the analyses and testify on the same subject matter. The attorney client privilege is a statutory privilege and can only be waived if the client expressly consents or voluntarily testifies to the communications. *Jackson v. Greger*, 110 Ohio St. 3d 488, 2006-Ohio-4968, 854 N.E.2d 487. In this case, the witness testified on the same subject matter but did not expressly consent or voluntarily testify to the communications at issue. Further, the communications are protected under the work-product doctrine. Discovery of documents prepared in anticipation of litigation will be compelled for disclosure only upon a showing of good cause. Good cause requires a demonstration of need for the materials, which means a showing that the materials or information they contain are relevant or otherwise unavailable. Civ. R. 26(B)(3); *Jackson v. Greger*, 2006-Ohio-4968, 854 N.E.2d 487. IEU-Ohio failed to demonstrate good cause for discovery of the documents. The Commission finds that the attorney examiners properly denied IEU-Ohio's motion to compel. The information in this case is protected by the attorney-client privilege and the work-product doctrine.

II. DISCUSSION

A. Applicable Law

Chapter 4928, Revised Code, provides an integrated system of regulation in which specific provisions are designed to advance state policies of ensuring access to adequate, reliable, and reasonably priced electric service in the context of significant economic and environmental challenges. In reviewing DP&L's application, the Commission is cognizant of the challenges facing Ohioans and the electric industry and will be guided by the policies of the state as established by the General Assembly in Section 4928.02, Revised Code, as amended by Amended Substitute Senate Bill 221 (SB 221).

Section 4928.02, Revised Code, states that it is the policy of the state, *inter alia*, to:

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

(2) Ensure the availability of unbundled and comparable retail electric service.

(3) Ensure diversity of electric supplies and suppliers.

(4) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management (DSM), time-differentiated pricing, and implementation of advanced metering infrastructure (AMI).

(5) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems in order to promote both effective customer choice and the development of performance standards and targets for service quality.

(6) Ensure effective retail competition by avoiding anticompetitive subsidies.

(7) Ensure retail consumers protection against unreasonable sales practices, market deficiencies, and market power.

(8) Provide a means of giving incentives to technologies that can adapt to potential environmental mandates.

(9) Encourage implementation of distributed generation across customer classes by reviewing and updating rules governing issues such as interconnection, standby charges, and net metering.

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

In addition, SB 221 enacted Section 4928.141, Revised Code, which provides that effective January 1, 2009, electric utilities must provide consumers with an SSO consisting of either a market rate offer (MRO) or an ESP. The SSO is to serve as the electric utility's default service.

Section 4928.143, Revised Code, sets out the requirements for an ESP. Pursuant to Section 4928.143(B), Revised Code, an ESP must include provisions relating to the supply and pricing of generation service. The ESP, according to Section 4928.143(B)(2), Revised Code, may also provide for the automatic recovery of certain costs, a reasonable allowance for certain construction work in progress, an unavoidable surcharge for the cost of certain new generation facilities, charges relating to certain subjects that have the effect of stabilizing or providing certainty regarding retail electric service, automatic increases or decreases of components of the SSO price, provisions to allow securitization of any phase-in of the SSO price, provisions relating to transmission-related costs, provisions related to distribution service, and provisions regarding economic development.

The statute provides that the Commission is required to approve, or modify and approve the ESP, if the ESP, including its pricing and all other terms and conditions, including deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code.

B. Analysis of the Application

DP&L proposes a five year ESP with a blending plan that annually increases the percentage of competitively acquired rates being incorporated into its SSO rates. DP&L also proposes six new rates to implement the ESP blending plan. First, DP&L proposes a new competitive bid (CB) rate that it will charge customers for the portion of the SSO load that is procured through the auction process. Second, DP&L proposes a Competitive Bid True-Up (CBT) Rider that will true-up the actual costs of energy, capacity, and market-based Transmission Cost Recovery Rider (TCRR) costs with the revenues collected from customers for those costs. Third, DP&L proposes a

non-bypassable service stability rider (SSR) for DP&L to be able to provide stable and reliable electric service. Fourth, DP&L proposes a reconciliation rider (RR) to recover costs of conducting a competitive bidding process (CBP), the costs of implementing competitive retail enhancements, and any remaining over or under-collection in the true up trackers remaining at the end of the blending period. Fifth, DP&L proposes a switching tracker (ST) that would defer for later recovery from customers the difference between the level of switching experienced as of August 30, 2012, and the actual level of switching during the ESP term. Sixth, DP&L proposes an Alternative Energy Rider - Nonbypassable (AER-N) as a placeholder to recover costs DP&L has incurred from building and operating the Yankee Solar Generating Facility (Yankee). (DP&L Ex. 9 at 9-11.)

DP&L proposes four changes to rates to implement the ESP blending plan. First, DP&L proposes to split the TCRR into bypassable and nonbypassable rates. Second, DP&L proposes to merge the Environmental Investment Rider (EIR) into base generation rates. Third, DP&L proposes to phase-out the maximum charge provisions contained in DP&L's current generation tariffs. Fourth, DP&L proposes to move from its current fuel methodology to a system average cost methodology. (DP&L Ex. 9 at 10.)

1. ESP Term, Competitive Bid Process, and Master Supply Agreement

DP&L proposes a five year ESP term, with annual blending percentages of 10 percent, 40 percent, 70 percent, and 100 percent, respectively. DP&L contends that it needs the five year ESP term to maintain its financial integrity and that a five year ESP term will mitigate DP&L's need for an increased SSR amount. (DP&L Ex. 8 at 2-3; DP&L Ex. 9 at 9; DP&L Ex. 1 at 10.) DP&L witness Jackson indicated that the five year ESP term is critical for DP&L to have the necessary cash flows needed to separate its generation assets by December 31, 2017 (DP&L Ex. 16 at 7). DP&L chose Charles River Associates (CRA) to conduct the CBP auction due to CRA's experience with the Commission in administering and conducting structured procurement auctions for other Ohio utilities (DP&L Ex. 9 at 18).

DP&L argues that its ESP term should be authorized and that a more rapid move to market-based rates should be denied. DP&L contends that Section 4928.143, Revised Code, does not provide for the authorization of the implementation of competitive bidding, and especially not at rates more rapid than DP&L proposes. DP&L then notes that the Commission is bound by statute and has only the jurisdiction given to it. *Columbus S. Power Co. v. Pub. Utils. Comm'n*, 67 Ohio St. 3d 535, 537, 620 N.E.2d 835 (1993)(per curiam). DP&L asserts that it could lose significant revenue if it were to move to market-based rates more rapidly or immediately implement 100 percent competitive bidding. Furthermore, DP&L witness Jackson testified that DP&L may not be capable of providing safe and reliable service if it were to implement 100 percent competitive

bidding immediately. DP&L claims that it could not immediately implement 100 percent competitive bidding because it would have to structurally separate, and structural separation is precluded by a trust indenture and a first and refunding mortgage on DP&L's long-term debt (DP&L Ex. 16A at 2-5; Tr. Vol. I at 149-150; Tr. Vol. III at 694-695). DP&L witness Jackson testified DP&L's first and refunding mortgage creates a lien on all of the assets (transmission, distribution, and generation) of DP&L for the purposes of securing approximately $884 million of secured bonds. DP&L witness Jackson then stated that divestment could not take place until the first and refunding mortgage is either defeased or amended. Defeasement would require the secured bonds be called, and the earliest they could be called is September 1, 2016. As for amending the bonds, DP&L witness Jackson indicated that the bonds could be amended to release the generation assets but it would require existing bondholders to willingly consent to release of the generation assets from the mortgage. DP&L witness Jackson indicated that both scenarios present significant financial risk to DP&L. (DP&L Ex. 16 at 2-5.) DP&L points out that intervenors conceded that they did no analysis of whether DP&L could structurally separate and divest its generation assets. (Tr. Vol. VII at 1637-1639; Tr. Vol. IX at 2400-2401.)

DP&L also claims that the load from reasonable arrangement customers and special contract customers should be excluded from the CBP. First, DP&L contends that the reasonable arrangements and special contracts have been approved by the Commission and the contracts may not even permit DP&L to include the load in the CBP. Second, DP&L witness Seger-Lawson claimed that customers served through a reasonable arrangement or special contract are not actually SSO customers because they are being served pursuant to the reasonable arrangement or special contract. DP&L contends that this makes their load ineligible for the CBP. (Tr. Vol. V at 1414-1415, 1418-1419.)

FES, OCC, Duke Energy Retail, and Constellation assert that DP&L should make a more rapid transition to market rates to take advantage of historically low market prices. FES, OCC, and Duke Energy Retail posit that DP&L's ESP should immediately be 100 percent competitively bid to take full advantage of low market prices. FES witness Noewer stated that there is no reason that DP&L could not immediately implement a fully market-based SSO. She also stated that if, in the first year of the ESP plan, the Commission approves a CBP for 100 percent of DP&L's load, it would create significant value for DP&L's customers and allow them to take full advantage of the current low market prices. (FES Ex. 17 at 6-7, 10-11.) However, Constellation witness Fein recommended that DP&L should move to 100 percent competitive bidding beginning in June of 2015. Constellation contends that the ESP blending percentages be 35 percent, 85 percent, and 100 percent, respectively. (Constellation Ex. 1 at 10.)

To facilitate the immediate move to 100 percent competitive bidding, intervenors argue that DP&L should immediately structurally separate. Constellation witness Fein opined that DP&L has offered no valid justification for delaying the transition to fully competitive market rates (Constellation Ex. 1 at 10). Likewise, FES witness Noewer alleged that DP&L has not provided a compelling reason why its generation assets could not be transferred out of the EDU before DP&L's proposed date of December 31, 2017. FES witness Noewer then recommended that DP&L should be required to structurally separate as soon as possible. (FES Ex. 17 at 9-10.) FES and intervenors contend that this would eliminate DP&L's financial integrity problems because DP&L's distribution and transmission businesses could provide stable and reliable distribution and transmission service while earning a reasonable regulated rate of return.

FES claims that extending the ESP term only permits DP&L to collect an SSR and other charges for the purpose of supporting its competitive generation business. FES witness Noewer alleged that, by ordering DP&L to structurally separate, the Commission would eliminate any financial integrity problems affecting the regulated distribution and transmission businesses. Thus, FES contends that structural separation would eliminate the need to collect the SSR and other charges. (FES Ex. 14 at 32.)

FES and Constellation assert that DP&L should not be permitted to bid into its own auction until it completes structural separation. FES witness Noewer recommended that, if DP&L's ESP is not rejected by the Commission, the ESP should be modified to prohibit DP&L and its related entities from bidding into Ohio SSO auctions until corporate separation has taken place and DP&L is not receiving any generation-related charges. (FES Ex. 17 at 5.) Furthermore, FES witness Lesser testified that if DP&L is allowed to bid into the auctions it could have the effect of reducing participation in the auction and raising the ultimate price paid by SSO customers. (FES Ex. 14 at 80.) Constellation witness Fein recommended that neither DP&L nor any of its affiliates should be eligible to participate in the CBP until DP&L achieves full structural separation. (Const. Ex. 1 at 6.)

FES and Constellation aver that DP&L's reasonable arrangements and special contracts should be included in the CBP. FES witness Noewer noted that the difference between the SSO price and the reasonable arrangement price is covered by customers; therefore decreasing the difference between the two prices would ease the burden on customers. Moreover, FES witness Noewer claimed that including the load in the CBP makes the auction product more attractive to potential bidders and benefits all customers. (FES Ex. 17 at 13-14.) Constellation witness Fein opined that including special contract and reasonable arrangement load in the CBP auction would send a market signal that the days of special contracts are over in Ohio. Constellation also proffered that excluding the load would isolate that portion of the load from the reduction in energy prices anticipated by the CBP, which would miss the opportunity to

lower the economic development rider costs paid by all customers. (FES Ex. 17 at 13-14; Const. Ex. 1 at 13.)

Constellation recommends on brief that DP&L should be required to use a Master Supply Agreement (MSA) that is consistent with or improves upon the ones adopted for other Ohio utilities. Specifically, Constellation argues that Network Integration Transmission Service (NITS) charges should be excluded from the auction product, independent credit requirements should be removed, a weekly settlement process should be implemented, and any compulsory notional quantity language should be eliminated. Constellation witness Fein testified that DP&L should be required to revise its MSA in order to make it more consistent with industry-standard agreements for wholesale supply, and to provide greater clarity with respect to its terms (Constellation Ex. 1 at 20-22, 23-30).

Staff recommends that the Commission approve a three year ESP term. Staff witness Choueiki testified that a three year ESP term is beneficial because the quality of information for years four and five of a five year ESP is insufficient to warrant committing ratepayer dollars to DP&L for those years (Staff Ex. 10 at 5). Staff witness Choueiki further stated that a three year ESP term is beneficial because market rates are volatile, projections of capital expenditures are unreliable, projections of shopping are unreliable, and the future financial integrity of the Company is unpredictable (Staff Ex. 10 at 9). A three-year ESP also provides a faster transition to market than either an MRO or DP&L's proposed ESP.

The Commission finds that DP&L's ESP should be approved for a term beginning January 1, 2014, and terminating December 31, 2016. We agree with the parties that CBP-based prices should be implemented during this ESP. We find that the annual blending percentages of the CBP auction rate shall be 10 percent for the period January 1, 2014, to December 31, 2014; 40 percent for the period January 1, 2015, to December 31, 2015; and 70 percent for the period January 1, 2016, to December 31, 2016. The Commission finds that this schedule for DP&L to implement full CBP procurement will move DP&L rates to market while granting DP&L sufficient time to refinance its long term debt to facilitate the divestment of the Company's generation assets. The Commission notes that DP&L witness Jackson demonstrated that DP&L could not divest its generation assets before September 1, 2016. DP&L witness Jackson testified that defeasement and release of the first and refunding mortgage would be the only two options to divest sooner than September 1, 2016 (DP&L Ex. 16 at 2-4). Both defeasement and release of the first and refunding mortgage present significant financial risk to DP&L. DP&L witness Jackson indicated that, even if DP&L could defease or amend its first and refunding mortgage, DP&L would have to maintain or refinance all $884 million of indebtedness at the regulated business, call a portion of this indebtedness and repay it with cash, or call a portion of the indebtedness and refinance it with proceeds raised by the new unregulated

business (DP&L Ex. 16 at 4). However, the Commission also believes that DP&L has failed to demonstrate that it necessarily cannot divest its generation assets sooner than December 31, 2017. Therefore, the ESP term will end on December 31, 2016, and the Commission expects DP&L to file a generation divestment plan that divests all of its generation assets by that date. We also note that the ESP term to implement full CBP procurement proceeds more quickly than provided by Section 4928.142(D), Revised Code.

Accordingly, the Commission directs that, by November 1, 2013, DP&L should conduct an auction for 10 tranches of a 36 month product commencing January 1, 2014. By November 1, 2014, DP&L should conduct an auction for 30 tranches of a 24 month product commencing January 1, 2015. By November 1, 2015, DP&L should conduct an auction for 30 tranches of a 12 month product commencing January 1, 2016. DP&L shall file its application for a subsequent SSO, pursuant to Section 4928.141, Revised Code, by March 1, 2016. If a subsequent SSO is not authorized by the Commission by November 1, 2016, DP&L shall procure, through the CBP auction process, 100 tranches of a full-requirements product for a term that is not less than quarterly or more than annually to be deliverable on January 1, 2017, until a subsequent SSO is authorized.

The Commission finds that DP&L's CBP and MSA should be approved, and that the first auction for the CBP will be conducted by CRA. Consistent with our treatment of other utilities, affiliates and subsidiaries of DP&L shall be permitted to participate and compete in the CBP auctions in the same fair and nondiscriminatory manner as all other participants. DP&L shall not give any competitive advantage to an affiliate or subsidiary participating in the CBP auctions. However, DP&L itself shall not participate in the CBP auctions, as we are persuaded by FES witness Lesser that this may chill participation in the CBP auctions (FES Ex. 14 at 80).

CRA will select the winning bidder(s), but the Commission may reject the results within 48 hours of the auction conclusion based upon a recommendation from the independent auction manager or the Commission's consultant that the auction violated the CBP rules. The Commission will not establish a starting price or opening bid price cap. As with other electric utilities' CBP, the Commission finds a load cap should apply to each auction, with no one supplier being able to bid upon or be awarded more than 80 percent of the tranches in any one auction. Further, the CBP and the blending percentages will cover DP&L's entire customer load; no customer load should be excluded from the CBP, regardless of whether the customer's load is being served pursuant to a reasonable arrangement or special contract. The Commission believes that including DP&L's entire customer load in the CBP will promote full development of competitive rates and encourage participation in the auction. Finally, the Commission notes that we reserve the right to modify and alter the load cap or any other feature of the CBP process for future auctions as the Commission deems necessary based upon our

continuing review of the CBP process, including the reports on the auction provided to the Commission by the independent auction manager, the Commission's consultant, DP&L, and Staff.

2. Service Stability Rider

DP&L proposes an SSR pursuant to Section 4928.143(B)(2)(d), Revised Code, which would be assessed on all DP&L customers for the purpose of stabilizing and providing certainty regarding retail electric service by maintaining DP&L's financial integrity. DP&L claims that its return on equity (ROE) is declining and that its declining ROE, as well as the corresponding threats to DP&L's financial integrity and ability to provide safe and reliable service, is being driven principally by three factors: increased switching, declining wholesale prices, and declining capacity prices (DP&L Ex. 1A at 13, Tr. Vol. I at 135-136). DP&L witness Chambers testified that, due to these factors, the Company would not be able to maintain its financial integrity without the SSR (DP&L Ex. 4A at 45-47). DP&L avers that its financial integrity is compromised, and if it becomes further compromised the generation, transmission, and distribution functions of DP&L will not be capable of providing stable, safe, and reliable retail electric service. Numerous DP&L witnesses stated that the proposed SSR amount is the minimum that DP&L would need to provide stable, safe, and reliable service. (DP&L Ex. 16A at 7-8; DP&L Ex. 12 at 23; DP&L Ex. 4A at 54.)

A. Compliance with Section 4928.143(B)(2)(d), Revised Code.

DP&L posits that, for a charge to be lawful under Section 4928.143(B)(2)(d), Revised Code, it must satisfy three criteria: it must be a term, condition, or charge; it must relate to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals or future recovery of deferrals; and it must have the effect of stabilizing or providing certainty regarding retail electric service. DP&L avers that the SSR is a charge that relates to default service and bypassability and has the effect of stabilizing or providing certainty regarding retail electric service (DP&L Ex. 4A at 53, DP&L Ex. 9 at 8-10, DP&L Ex. 12 at 23, DP&L Ex. 16A at 8). First, DP&L alleges that it is essentially undisputed that the SSR is a term, condition, or charge (DP&L Ex. 12 at 23; Tr. Vol. VI at 1463; Tr. Vol. VIII at 2053-2054; Tr. Vol. X at 2600). Second, DP&L claims that the SSR is related to default service and bypassability. DP&L notes on brief that the SSR is substantially similar to AEP's Rate Stabilization Rider (RSR) approved by the Commission, which was found to relate to default service and bypassability. *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 11-346-EL-SSO (*AEP ESP II Case*) Entry on Rehearing (October 3, 2012) at 15. Further, DP&L contends that the SSR is related to bypassability because it is a nonbypassable charge. Thus, DP&L claims that the second statutory criterion has been

satisfied. Third, DP&L contends that the SSR has the effect of stabilizing or providing certainty regarding retail electric service. DP&L asserts that the SSR would provide the same benefits as AEP's RSR because it would permit DP&L to freeze non-fuel generation rate increases, it would permit DP&L to conduct auctions to set its SSO rate, and it would permit DP&L to have fixed SSO rates (DP&L Ex. 9 at 8-10; DP&L Ex. 13). Further, DP&L contends that it needs the SSR so that it can continue to provide safe and reliable service (DP&L Ex. 16A at 8; DP&L Ex. 12 at 23; DP&L Ex. 4A at 53). DP&L avers that a charge for DP&L to be able to provide stable, safe, and reliable service necessarily has the effect of stabilizing and providing certainty regarding retail electric service. Without the SSR, DP&L claims that it would not be capable of providing stable, safe, and reliable service (DP&L Ex. 4 at 54).

IEU-Ohio, OHA, OEG, OCC, and others claim on brief that the SSR is not permitted under Section 4928.143(B)(2)(d), Revised Code. OCC witness Rose testified, and numerous intervenors contend, that the SSR fails to satisfy Section 4928.143(B)(2)(d), Revised Code (OCC Ex. 21 at 12-13). Intervenors believe that DP&L has failed to meet its burden of demonstrating that the SSR is a term, condition, or charge, related to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service. Intervenors contend that the SSR does not relate to default service because default service is a provider of last resort (POLR) service. OCC argues on brief that the SSR does not relate to bypassability because, though bypassability is not defined, a reasonable interpretation of bypassability would be costs incurred as a result of customer switching. Intervenors then posit that the SSR provides neither certainty nor stability regarding retail electric service. Intervenors contend that, since DP&L's transmission and distribution businesses receive adequate revenues, and generation is available on the wholesale market, an SSR to support DP&L's competitive retail generation business fails to provide certainty or stability regarding retail electric service.

FES, IEU-Ohio, Honda, and OEG claim that DP&L failed to meet its burden of demonstrating that it would not be able to provide stable, safe, and reliable service without the SSR. The premise of intervenors' argument is that the SSR would support DP&L's competitive generation assets, yet those competitive generation assets are not necessary for DP&L to maintain reliable distribution and transmission service. Intervenors contend that DP&L could maintain reliable distribution and transmission service without the SSR because if DP&L's generation assets are divested, DP&L's distribution and transmission businesses receive adequate revenue to ensure reliable service. Intervenors point out that DP&L witness Jackson testified that he believed that DP&L's transmission and distribution businesses would received adequate revenue to ensure reliable service (Tr. Vol. I at 241-242). Therefore, intervenors argue that DP&L's

generation assets could be divested, and DP&L would be a regulated distribution and transmission utility capable of providing stable, safe, and reliable distribution and transmission service. Further, intervenors contend on brief that DP&L should file a distribution rate case to determine if the distribution business really is earning sufficient revenue. OCC points out that DP&L witness Malinak even testified that the filing of a distribution or transmission rate case could be a way to enhance DP&L's ability to continue offering safe and reliable service (Tr. Vol. XI at 2804). Furthermore, OCC witness Duann claimed that the generation side of DP&L's business is what is causing DP&L's financial integrity problems, therefore if the SSR is necessary to maintain DP&L's financial integrity then it must be a generation-related charge (OCC Ex. 28 at 28; Tr. Vol. I at 240-241; Tr. Vol. XI at 2804). Divesting the generation from DP&L would negate the need for a generation-related charge and allow DP&L the distribution and transmission utility to provide stable, safe, and reliable service. Therefore, intervenors believe that the SSR should be denied by the Commission because DP&L failed to demonstrate that it is necessary for DP&L to provide stable, safe, and reliable service. (FES Ex. 14A at 16-17, OCC Ex. 28A at 29, OEG Ex. 1 at 9.)

FES, IEU-Ohio, OCC, FEA, Kroger, OEG, OHA, and Wal-Mart claim that the SSR is a generation-related charge, the granting of which would be anticompetitive. According to FES witness Lesser, DP&L's generation assets have been competitive for over a decade (FES Ex. 14 at 32; see also, Tr. Vol. III at 709). If DP&L's transmission and distribution businesses receive adequate revenues, as indicated by DP&L witness Malinak, intervenors claim the SSR revenues must be for the purpose of supporting DP&L's generation business (Tr. Vol. I at 240-241; Tr. Vol. XI at 2804). OEG witness Kollen explained that DP&L's projected financial health could be transformed and improved simply by transferring its generation assets to an affiliate or selling them to a third party (OEG Ex. 1 at 11). Not only would divestiture allow DP&L to provide stable, safe, and reliable service, but without divestiture DP&L would need an anticompetitive SSR to remain financially viable. Intervenors contend that granting the SSR to support DP&L's competitive generation assets would be anti-competitive because it would support DP&L's competitive generation business over other competitive generation providers operating in DP&L's service territory (Tr. Vol. II at 479-480, 528-532). Furthermore, supporting DP&L's generation business would be at the expense of all customers since the SSR would be a nonbypassable charge. This presents the problem of shopping customers paying for both their own competitive generation service as well as for DP&L's competitive generation assets through the SSR. IEU-Ohio witness Murray equated the SSR to an unlawful subsidy of DP&L's competitive generation assets (IEU-Ohio Ex. 2 at 22).

IEU-Ohio, IGS, Kroger, and OCC contend that the SSR is an unlawful and unreasonable transition charge. DP&L was permitted to collect transition charges during its market development period (MDP), but the MDP ended in 2005. Intervenors claim

that the SSR is a transition charge because it is designed to provide DP&L with generation-related revenue that it would otherwise lose as a result of customers shopping to obtain better retail generation supply prices. IEU-Ohio witness Murray indicated that during the market development period (MDP), EDUs were provided an opportunity to protect themselves in the event that they judged the revenue from unbundled generation prices to be above the revenue that could be obtained from providing generation services in the competitive market. The EDU could then file with the Commission for transition revenue, which was the difference between the unbundled default supply generation prices and prices for generation services in the market. (IEU-Ohio Ex. 2 at 25-26). While the SSR does not carry the title of a transition charge, intervenors assert that it has the effect of a transition charge because it would deny customers the benefits of shopping in the competitive retail electric services market (IEU-Ohio Ex. 2A at 24-27; IEU-Ohio Ex. 3A at 16-26; OCC Ex. 21 at 6-12; IGS Ex. 1 at 3-6).

Intervenors also note that DP&L was permitted to collect transition revenues in its electric transition plan (ETP) proceeding. *In re Dayton Power and Light Company*, Case Nos. 99-1687-EL-ETP, et. al. (*DP&L ETP Case*). IEU-Ohio witness Hess estimated that DP&L recovered approximately $441 million in transition revenues through default generation supply service and the nonbypassable consumer transition charge (CTC) (IEU-Ohio Ex. 3 at 22). Furthermore, DP&L was permitted to recover revenues for generation-related regulatory assets that were transition costs. These revenues were recovered through a regulatory transition charge (RTC). Both the CTC and RTC ended on December 31, 2003. According to IEU-Ohio witness Hess, DP&L's market development period, the period after which it would not be permitted to collect further transition revenues, was supposed to end on December 31, 2003 (IEU-Ohio Ex. 3 at 23). However, the MDP was extended until December 31, 2005, pursuant to *In re Dayton Power and Light Company*, Case No. 02-2779-EL-ATA, et. al., (*DP&L RSP I Case*), Opinion and Order (September 2, 2003) at 13. Intervenors conclude that, since the SSR is a transition charge and the MDP for collection of transition charges has ended, the SSR should be denied. (IEU-Ohio Ex. 2A at 24-27, IEU-Ohio Ex. 3A at 16-26, OCC Ex. 21 at 6-12, IGS Ex. 1 at 3-6.)

Staff agrees that the SSR is permitted under Section 4928.143(B)(2)(d), Revised Code, and is substantially similar to charges previously approved by the Commission. Staff contends on brief that maintaining DP&L's financial integrity means more than simply avoiding a cash flow emergency or bankruptcy; maintaining a utility's financial integrity is necessary to ensure that the utility is able to function in a normal way, serving its obligations and maintaining its normal operations. Staff notes that it is up to the Commission to determine if DP&L's financial integrity is threatened but indicates that DP&L would have financial losses in several years without an SSR (Tr. Vol. I at 221-222). Staff witness Choueiki noted that the Commission has granted similar charges to other

utilities based upon Section 4928.143(B)(2)(d), Revised Code (Staff Ex. 10 at 11). *AEP ESP II Case; In Re Duke Energy Ohio,* Case No. 11-3549-EL-SSO.

The Commission finds that the SSR meets the criteria of Section 4928.143(B)(2)(d), Revised Code, as it is a charge related to default service and bypassability that has the effect of stabilizing and providing certainty regarding retail electric service. Pursuant to Section 4928.143(B)(2)(d), Revised Code, an ESP may include terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals or future recovery of deferrals that would have the effect of stabilizing or providing certainty regarding retail electric service. The Commission first notes that it is essentially undisputed that the SSR is a term, condition, or charge; therefore, the first criterion of Section 4928.143(B)(2)(d), Revised Code, is satisfied.

The Commission finds that the SSR is related to default service. The SSR is a nonbypassable stability charge for the purpose of maintaining DP&L's financial integrity so that it may continue to provide default service. DP&L is required under Section 4928.141, Revised Code, to provide an SSO for customers in its service territory. The SSO is the default service provided by the electric utility and may be provided through either an ESP or an MRO. In fact, even if DP&L were to propose an MRO, DP&L would still need to maintain its generation assets for some time because it would be required to blend the MRO with its previous SSO rate over five years or such other period of time as determined by the Commission, pursuant to Sections 4928.142(D) and 4928.142(E), Revised Code. Therefore, we find that Section 4928.143(B)(2)(d), Revised Code, authorizes a financial integrity charge to the extent that such charge is necessary to ensure stability and certainty for the provision of SSO service.

Moreover, Section 4928.142(B)(2)(D), Revised Code, authorizes electric utilities to include in an ESP terms related to bypassability of charges to the extent that such terms have the effect of stabilizing or providing certainty regarding retail electric service. The Commission finds that based upon the record of this proceeding, the SSR should be nonbypassable. Both shopping and non-shopping customers benefit from the existence of the standard service offer, which is available even if market conditions become unfavorable for retail shopping customers over the term of the ESP. Thus, the Commission believes that the second criterion of Section 4928.143(B)(2)(d), Revised Code, is satisfied.

Finally, the Commission believes that the SSR would have the effect of stabilizing or providing certainty regarding retail electric service. We agree with DP&L that if its financial integrity becomes further compromised, it may not be able to provide stable or certain retail electric service (DP&L Ex. 16A at 7-8, DP&L Ex. 12 at 23, DP&L Ex. 4A at

54). Although generation, transmission, and distribution rates have been unbundled, DP&L is not a structurally separated utility; thus, the financial losses in the generation, transmission, or distribution business of DP&L are financial losses for the entire utility. Therefore, if one of the businesses suffers financial losses, it may impact the entire utility, adversely affecting its ability to provide stable, reliable, or safe retail electric service. The Commission finds that the SSR will provide stable revenue to DP&L for the purpose of maintaining its financial integrity.

The Commission further finds that the SSR is not a transition charge and the Commission's authorization of the SSR is not the equivalent of authorizing transition revenue. We reject the claim that the SSR allows for the collection of inappropriate transition revenues or stranded costs that should have been collected prior to December 2010, pursuant to Amended Substitute Senate Bill 3, as DP&L does not claim its ETP failed to provide sufficient revenues. Further, we note that DP&L continues to be responsible for offering SSO service to its customers and has demonstrated that the SSR is the minimum amount necessary to maintain its financial integrity to provide such service. Moreover, our holding today is consistent with our decision in the *AEP ESP II Case,* in which we determined that AEP-Ohio's proposed RSR did not allow for the collection of inappropriate transition revenues or stranded costs. *AEP ESP II Case,* Opinion and Order (August 8, 2012) at 32.

B. SSR Amount

DP&L asserts that the SSR amount should be sufficient for DP&L to achieve an ROE within a reasonable range of 7 to 11 percent. DP&L witness Chambers testified that based on market information, his analysis leads him to believe that a range of 7.7 percent to 10.4 percent is a reasonable ROE for DP&L to be able to function effectively and maintain its financial integrity (DP&L Ex. 4 at 2). He also noted that intervenors and Staff applied an adjusted capital structure of 50 percent debt to 50 percent equity when presenting their ROE forecasts and SSR proposals (Staff Ex. 1A at 3-5, Tr. Vol. IV at 915-916, 935, 1026). However, DP&L witness Chambers claimed that DP&L's actual capital structure is 40 percent debt to 60 percent equity and explains that the projected ROE target is different depending on the capital structure used to calculate the projection (DP&L Ex. 4A at 30). DP&L witness Malinak testified that the SSR should be set to target an ROE no lower than seven percent under an adjusted capital structure and explained that an ROE target of seven percent would be sufficient to maintain DP&L's financial integrity (DP&L Ex. 14A at 23-24).

FES, IEU-Ohio, OCC, FEA, Honda, and OEG contend that the SSR should be denied because DP&L should undertake operations and maintenance (O&M) savings and capital expenditure reductions before collecting stability revenues to maintain DP&L's financial integrity. FES witness Lesser claimed that DP&L's financial integrity

concerns are overstated because it has not included O&M savings and capital expenditure reductions in its calculations (FES Ex. 14 at 33-34; Tr. Vol. I at 256). He then concluded that these O&M savings and capital expenditure reductions would provide savings to DP&L to mitigate its financial integrity concerns and decrease the need for substantial stability revenues, if not eliminate the need for stability revenues altogether. Furthermore, intervenors claim on brief that DP&L has already identified numerous O&M savings and capital expenditure reductions, yet DP&L has failed to implement them, failed to identify a single project that it would be unable to complete, and failed to identify a single negative outcome for customers associated with the reductions. Intervenors recommend that, if an SSR is authorized, it should be reduced by the amount of O&M savings and capital expenditure reductions that DP&L can undertake. Intervenors argue that O&M savings and capital expenditure reductions should be implemented before a charge is imposed upon customers to maintain DP&L's financial integrity. Intervenors claim that DP&L's financial integrity might not even be compromised once it implements O&M savings and capital expenditure reductions, thus negating the need to impose financial integrity charges at all. (FES Ex. 14A at 17-22, FEA Ex. 1 at 7, OCC Ex. 28A at 41, OEG Ex. 1 at 10, IEU-Ohio Ex. 1A at 18-19.)

DP&L responds that O&M savings and capital expenditure reductions should not be considered when setting the SSR. DP&L witness Jackson claimed that O&M savings and capital expenditure reductions are in addition to the SSR, not in place of it, so that it can earn a reasonable ROE (DP&L Ex. 16A at 10; DP&L Ex. 16A at CLJ-7; Tr. Vol. I at 256-257). He, as well as DP&L witness Herrington, noted that potential O&M savings have not been approved by DP&L's board of directors for the full term of the ESP (DP&L Ex. 16A at 9; Tr. Vol. IV at 1118). DP&L witnesses Jackson and Herrington alleged that, even if the O&M savings and capital expenditure reductions were approved and implemented, implementing them could present substantial risks to the Company and its ability to provide stable, safe, and reliable service (DP&L Ex. 16A at 9-10; Tr. Vol. IV at 1113-1114, 1176-1177). These risks include lowering DP&L's O&M expenses below DP&L's historic averages and impairment of DP&L's operations through reduced maintenance expenditures (DP&L Ex. 16A at 9-10; Tr. Vol. IV at 1176-1177). DP&L witness Jackson testified that some of the potential O&M savings measures are generation-related and that, if implemented, the operational performance of the Company's generation fleet would deteriorate, resulting in lower wholesale revenue and gross margin attributable to those plants, potential PJM RPM capacity penalties, and higher future O&M costs due to unforeseen and unplanned outages. He further testified that the SSR does not guarantee that DP&L will earn a given ROE; therefore, if the SSR alone is insufficient to meet DP&L's ROE target, O&M savings could then be implemented to meet the ROE target. (DP&L Ex. 16 at 7, 10.) Further, DP&L witness Malinak claimed that capital expenditure reductions would have little impact on DP&L's earnings or ROE, so the consequences of O&M savings and capital expenditure reductions would outweigh any benefit (DP&L Ex. 14A at 27-28).

OEG and Honda recommend that, if the SSR is authorized, the revenue requirement should be limited to no more than DP&L's present $73 million annual rate stabilization charge (RSC). OEG witness Kollen alleged that there are numerous flaws with DP&L's application, but reducing the SSR to the amount of the RSC would reduce the risk that DP&L will over-recover costs from customers through the SSR in violation of Section 4928.02(A), Revised Code. Further, OEG witness Kollen opined that the SSR should be allocated using a one coincident peak (1CP) demand allocation method that reflects the underlying demand-related character of the SSR charges. This allocation method would align SSR revenues with the cost responsibility of the appropriate customer class (OEG Ex. 1 at 7-8). Furthermore, OEG witness Kollen recommended that the SSR should be recovered through a kilowatt (kW) demand charge (OEG Ex. 1 at 3-5, 20-21).

OCC asserts that, if an SSR is authorized, the collection of the SSR should not start until the blending with auction-based rates begins. OCC witness Duann recommended that collection of the SSR start once blending with the auction based rates begins, which would match potential savings to DP&L's customers with the costs, in the form of the SSR, of accelerating the blending of auction based rates (OCC Ex. 28 at 44). However, OCC witness Duann then claimed that the ESP should immediately move to a 100 percent market rate (OCC Ex. 28 at 45).

OCC avers that, if an SSR is authorized, DP&L should be prohibited from paying dividends. OCC witness Duann recommended that DP&L should not be permitted to pay dividends to its parent companies without Commission approval while it collects the SSR (OCC Ex. 28 at 48). OCC claims on brief that prohibiting DP&L from paying dividends would not be a taking and that, even if it were a taking, constitutional issues are not within the jurisdiction of the Commission. OCC asserts that the Supreme Court of Ohio has clearly indicated that the Commission can prohibit a utility from paying dividends where the utility lacks sufficient surplus for paying dividends. *Ohio Central Tel. Corp. v. Pub. Util. Comm.*, 127 Ohio St. 556 (1934). OCC contends that DP&L's argument that it needs an SSR to maintain its financial integrity, and even to avoid a financial emergency, sufficiently demonstrates that it lacks sufficient surplus for paying dividends. OCC concludes that prohibiting DP&L from paying dividends while it collects the SSR is essential to protecting DP&L's customers and shareholders (Tr. Vol. X at 2551-2552).

Staff witness Choueiki recommended that DP&L's ESP should be a three year term, because projections for capacity, energy, and capital expenditures in years four and five of DP&L's proposed ESP are inherently unreliable (Staff Ex. 10 at 4-5). Staff witness Mahmud recommended that, if the Commission adopts a three year ESP and approves an SSR, the SSR should fall within a range of $133 million to $151 million per year (Staff

Ex. 1 at 4). Staff witness Mahmud recommended an SSR of $133 million to arrive at DP&L's proposed average ROE, or an SSR of $151 million to arrive at an ROE in the reasonable range of 7 to 11 percent. For both recommendations, Staff witness Mahmud adjusted DP&L's debt to equity ratio to 50 percent debt and 50 percent equity (Staff Ex. 1 at 5). However, Staff concedes that compared to the proposed ESP, DP&L would receive about $100 million less under Staff's proposal (Tr. Vol. VII at 1908). Staff believes that this $100 million deficiency would be offset by Staff's switching projections, which Staff contends are more reliable and indicate less lost revenue from switching.

The Commission finds that DP&L may collect the SSR in the amount of $110 million for each of the years 2014 and 2015. We note that DP&L proposed an SSR in the amount of $137.5 million per year over the term of the ESP (DP&L Ex. 1A at 11-13). However, taking into consideration potential O&M savings for years 2014 through 2016, the Commission finds that the SSR should be established at $110 million per year (Tr. Vol. I at 189). The Commission finds that this is the minimum amount necessary to ensure the Company's financial integrity and provide the Company with the opportunity to achieve a reasonable ROE during the ESP. The Commission did not offset the proposed SSR by potential capital expenditure reductions because, based upon the record, we are not persuaded that the potential capital expenditure reductions have as significant an impact on the Company's ROE as the potential O&M savings (Tr. I at 257-258; DP&L Ex. 14A at 27-28). Further, we believe that DP&L should retain the ability to impact its ROE through additional measures such as capital expenditure reductions.

We agree with OCC that the increase in the SSR from the amount of the RSC in the previous ESP to $110 million annually should not be imposed until the blending of market rates begins, since current lower-priced market rates will offset the SSR increase. Therefore, we have established January 1, 2014, as the effective date of the ESP. However, DP&L may continue to collect the RSC, prorated monthly, over the remaining months of 2013. Once the blending of market rates begins, DP&L should establish rates to collect the SSR amount of $110 million per year for the years 2014 and 2015.

The Commission finds that authorizing an SSR to achieve an ROE target of 7 to 11 percent is reasonable. We previously found in the *AEP ESP II Case* that an ROE target range of 7 to 11 percent is in a range of reasonableness. *AEP ESP II Case*, Opinion and Order (August 8, 2012) at 33. However, we note that an ROE target outside of the 7 to 11 percent range is not *per se* unreasonable. The test is one of reasonableness, based upon the facts of the case and the law and policy of the state of Ohio. Furthermore, it is an ROE target and not an exact determination of the ROE that the utility will recover. In this case, there are a number of factors that impact projections regarding DP&L's financial position. These factors stem from the significant length of time since DP&L's last distribution rate case and the potential ability to seek an increase in distribution rates, the ability of DP&L to reduce its O&M costs and capital expenditures without

sacrificing service stability and reliability, the unpredictability of future switching rates, and the unpredictability of future energy and capacity markets. We find that the record of this proceeding demonstrates that, when the approved SSR, O&M savings, capital expenditure reductions, adjusted capital structure, and the potential for a future distribution rate case are considered, DP&L will have a reasonable opportunity to achieve an actual ROE in the 7 to 11 percent range.

Moreover, to ensure that DP&L does not reap disproportionate benefits from the ESP as a result of the approved SSR, the Commission finds that a significantly excessive earnings test (SEET) threshold of 12 percent should be established. The record of this case demonstrates that an ROE of 12 percent would be above the high end of the range of reasonableness (DP&L Ex. 4 at 2). Moreover, a SEET threshold of 12 percent is consistent with our holding in the *AEP ESP II Case*. *AEP ESP II Case*, Opinion and Order (August 8, 2012) at 37. Furthermore, the SSR is being authorized to maintain DP&L's financial integrity; therefore, we find that all SSR revenues should remain with DP&L, and not be transferred to any of DP&L's current or future affiliates through dividends or any other means.

Further, the Commission is not persuaded by DP&L's testimony that the SSR is properly collected through a flat customer charge. We find that the Staff's proposed rate design, which would minimize rate impacts upon customers, should be adopted (Staff Ex. 8 at 14). However, we agree with OEG that the SSR revenues should be allocated using a 1CP demand allocation method that reflects the underlying character of the SSR charges (OEG Ex. 1 at 7-8). Therefore, we will adopt the rate design recommended by Staff and the class allocation methodology recommended by OEG of a 1 CP demand allocation method.

Finally, the Commission is persuaded by the testimony at the hearing that the reliability of financial projections significantly declines over time (Staff Ex. 10 at 4-5). Thus, we will authorize the SSR only until December 31, 2015. However, we also find that DP&L should have the opportunity to seek relief if its financial integrity remains compromised beyond 2015. Therefore, DP&L may file, in a separate proceeding, for an extension of the SSR through October 31, 2016, subject to certain conditions as discussed below.

3. SSR Extension

The Commission, through this ESP, authorizes DP&L to create an SSR Extension rider (SSR-E) and initially set the rider to zero. At least 275 days prior to the termination of the SSR on December 31, 2015, DP&L may seek approval of an increase in the SSR-E in an amount not to exceed $92 million for the year 2016. The SSR-E will expire on its own terms on October 31, 2016.

If DP&L seeks to implement the SSR-E, DP&L must show that the SSR-E is also necessary to maintain the financial integrity of the Company, and that the amount requested is the necessary amount to maintain DP&L's financial integrity, not to exceed $92 million for the first 10 months of the year 2016. When considering whether the SSR-E is necessary to maintain the financial integrity of the Company, the Commission will consider any dividends paid to parent companies, as well as all other relevant financial information, including O&M savings undertaken and any capital expenditure reductions made by DP&L.

We note that Staff and other intervenors contend that there is insufficient information available to commit ratepayer dollars to DP&L for years four and five of a five year ESP (Staff Ex. 10 at 5, 6). The Commission finds that the SSR-E mechanism provides an opportunity for DP&L to provide more reliable data on its financial integrity by fulfilling the Commission's conditions for authorization of the SSR-E. The SSR-E conditions will ensure that customer charges are being assessed based upon current and reliable information, that stability charges will continue to have the effect of stabilizing or providing certainty regarding retail electric service, and that the financial integrity of DP&L will be maintained without granting DP&L significantly excessive earnings. The SSR-E proceeding will ensure stability and certainty regarding retail electric service because it will provide more clear and reliable data for the later months of the ESP, which should alleviate concerns raised by intervenors and Staff.

Further, the Commission agrees with intervenors' arguments that DP&L should exhaust its opportunities for rate relief in order to ensure its financial integrity. Therefore, as a condition of implementing the SSR-E, DP&L must file an application for a distribution rate case, in accordance with Section 4909.18, Revised Code, no later than July 1, 2014. Pursuant to the Commission's determination in *In re Aligning Electric Distribution Utility Rate Structure with Ohio's Public Policies,* Case No. 10-3126-EL-UNC, Finding and Order (August 21, 2013) at 20, DP&L is encouraged to utilize the straight-fixed variable (SFV) rate design or SFV principles in its distribution rate case. The Commission will then consider the impact of any adjustment in rates resulting from the distribution rate case in determining the amount of the SSR-E. The Commission believes that conducting a distribution rate case before authorizing the SSR-E will provide the Commission and parties with the increased certainty necessary to evaluate whether DP&L's financial integrity is at risk and whether the SSR-E is necessary.

Moreover, as an additional condition of implementing the SSR-E, DP&L must file, by December 31, 2013, an application to divest its generation assets. Such plan must propose that divestment be completed by December 31, 2016. We note that DP&L has already committed to filing an application by December 31, 2013, to divest its generation assets. Furthermore, DP&L has argued in this case that the earliest it could divest its

generation assets is September 1, 2016, due to DP&L's first and refunding mortgage (DP&L Ex. 16 at 2-4). Thus, the Commission believes that it is reasonable for DP&L to divest its generation assets no later than December 31, 2016.

Additionally, for the Commission to authorize the SSR-E, DP&L must also file an application to modernize its electric distribution infrastructure through implementation of a smart grid plan and advanced metering infrastructure (AMI). Section 4928.02(D), Revised Code, states that it is the policy of the state of Ohio to encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, and implementation of AMI. To promote the policy of the state of Ohio and further enhance the competitive retail electric service market in this state, the Commission finds that DP&L should file an application by July 1, 2014, for implementation and deployment of smart grid technology and advanced metering infrastructure, as well as other cost-effective initiatives or programs that DP&L reasonably believes would promote the policy of the state of Ohio to further enhance the competitive retail market.

As the final condition for the Commission to authorize the SSR-E, DP&L must establish and begin implementation of a plan to modernize its billing system. Constellation witness Fein and FES witness Noewer both testified to barriers to competition resulting from DP&L's billing system (Constellation Ex. 1 at 49-54; FES Ex. 17 at 19-26). The Commission believes the testimony indicates that DP&L's billing system needs to be modernized to facilitate competition in this state. At a minimum, the billing system modernization should include rate-ready billing, percentage off price-to-compare (PTC) pricing and the ability to support AMI. To begin implementation of its billing system modernization, DP&L should file with the Commission a billing system modernization plan approved by Staff by December 31, 2014, that includes, at a minimum, the above improvements to DP&L's billing system.

4. Switching Tracker (ST)

DP&L proposes a switching tracker (ST) account that would defer for later recovery, from all customers, the difference between the level of switching experienced as of August 30, 2012, and the actual level of switching (DP&L Ex. 1 at 11, 12; DP&L Ex. 9 at 16-17). DP&L witnesses Jackson and Seger-Lawson explained that the costs subject to DP&L's ST would equal the difference between the blended SSO rate and the CB rate in effect, which would then be calculated as dollars per megawatt-hour (MWh) and multiplied by the quantity of additional switched load in MWh and will be the amount that will be included in the ST regulatory asset account for the month (DP&L Ex. 1 at 11-13; DP&L Ex. 9 at 17). DP&L's arguments in support of the ST are similar, and often identical, to its arguments in support of the SSR. DP&L witness Jackson testified that DP&L's ROE is declining and that its declining ROE, as well as the corresponding threats

to its financial integrity and ability to provide safe and reliable service, are being driven principally by three factors: increased switching, declining wholesale prices, and declining capacity prices (DP&L Ex. 1A at 13; Tr. Vol. I at 135-136). The ST would mitigate the effects of increased switching on DP&L's financial integrity and ability to provide safe and reliable service. DP&L calculates the level of switching experienced as of August 30, 2012, as 62 percent of retail load. Therefore, DP&L proposes to be compensated for any switching over 62 percent of retail load. The proposed switching tracker would begin at the start of the ESP and continue until DP&L procures 100 percent of its supply needs through the CBP. (DP&L Ex. 1 at 11.) DP&L contends that the two significant benefits of the ST are that it would eliminate the need for the Commission to attempt to forecast switching and it would avoid the over or under recovery resulting from actual switching not matching projected switching.

DP&L's justification for the ST falls primarily under Section 4928.143(B)(2)(d), Revised Code. Numerous DP&L witnesses claim that the ST is a charge that relates to default service and has the effect of stabilizing or providing certainty regarding retail electric service (DP&L Ex. 4A at 53, DP&L Ex. 9 at 8-10, DP&L Ex. 12 at 23, DP&L Ex. 16A at 8). First, DP&L indicates that it is undisputed that the ST is a term, condition, or charge (DP&L Ex. 12 at 23, Tr. Vol. VIII at 2053-2054, Tr. Vol. X at 2600). Second, DP&L claims that the ST is related to default service. Third, DP&L asserts that the ST has the effect of stabilizing or providing certainty regarding retail electric service. DP&L then contends that the ST should be approved so that DP&L's ROE target will be in the reasonable range of 7 to 11 percent.

Numerous intervenors including OCC, Wal-Mart, Kroger, Constellation, IEU-Ohio, FES, IGS, RESA, and OEG, argue that the ST should be denied by the Commission (IEU-Ohio Ex. 3 at 5, 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). Principal among the arguments against the ST is that it is anti-competitive. Intervenors posit that the ST is anticompetitive because it would capture the entire economic benefit of shopping for customers through a nonbypassable charge. The more SSO customers that switch to a competitive retail electric service provider, the more all customers will be required to pay. This would discourage further switching and inhibit further development of Ohio's competitive retail electric services market. Intervenors also assert on brief that the ST would violate the policies of the state of Ohio set forth in Section 4928.02, Revised Code. Intervenor also argue that it is an unlawful transition charge, that it is simply unjust and unreasonable, that it could lead to double recovery, and that DP&L failed to meet its burden of proving the legal basis or the financial need for the ST. RESA also points out that the ST serves the same purpose as the SSR of maintaining DP&L's financial integrity and that DP&L is unaware of any other EDU with a switching tracker like the one proposed by DP&L (Tr. Vol. I at 252).

Staff contends that the Commission should deny the ST because it is an anticompetitive charge. Staff witness Choueiki testified that insulating DP&L from further switching through the ST would violate the policies of Section 4928.02, Revised Code, and would be anti-competitive (Staff Ex. 10 at 9). Further, Staff witness Choueiki noted that DPL Energy Resources (DPLER), which is DP&L's unregulated generation affiliate, is a significant CRES provider in DP&L's service area. He believes that a request for relief by DP&L for lost retail sales to its unregulated affiliate is an unreasonable request (Staff Ex. 10 at 10). Furthermore, Staff notes on brief that authorizing an ST, which would be adjusted based upon the level of switching, would make the quantitative analysis inherently difficult to conduct.

The Commission finds that the ST should be denied because it violates the policies of the state of Ohio, is anticompetitive, and would discourage further development of Ohio's retail electric services market. Further, the Commission finds that the Company has not demonstrated that the ST, which would be incrementally increased when customers leave the SSO, is related to default service under Section 4928.143(B)(2)(d), Revised Code. One of the principal aspects of a market is the opportunity for consumers to shop for a diversity of products offered by a multitude of suppliers. When a customer purchases a product from a new supplier, the previous supplier will necessarily lose that customer's representative market share. DP&L's proposed ST would provide DP&L a stream of revenue to directly compensate it for market share lost when a customer switches to a competitive retail electric service provider. The Commission believes that this makes the proposed ST anticompetitive because it may discourage customers from shopping for a retail electric supplier. Furthermore, the Commission notes that, since DP&L's financial integrity is supported through the SSR, and potentially the SSR-E, the ST would serve no purpose other than to provide DP&L with additional revenues in proportion to declines in the number of customers of DP&L's generation business. As discussed above, the Commission believes that revenues from the SSR, capital expenditure reductions, O&M savings, a distribution rate case, and potentially an SSR-E, are sufficient to maintain DP&L's financial integrity, without an additional ST to insulate DP&L from market risk.

5. Alternative Energy Rider

DP&L proposes that the AER continue in its current form but be trued-up on a quarterly basis (DP&L Ex. 7 at 3). By moving to a quarterly true-up, DP&L intends to better align the AER costs with the customers that cause the costs to be incurred. The AER, like other riders, would be trued-up on quarters, with new rates effective March 1, June 1, September 1, and December 1. DP&L further proposes to establish an AER rate at which DP&L would be deemed to have met the statutory three percent threshold pursuant to Section 4928.64(C)(3), Revised Code. DP&L proposes that when the AER meets or exceeds $0.0012813 per kWh, DP&L will be deemed to have met the three

percent cost threshold and will not need to continue to meet future renewable targets. (DP&L Ex. 7 at 3-4.)

Solarvision claims on brief that the Commission should deny the three percent threshold. Solarvision asserts that establishing a specific dollar per kilowatt hour (kWh) threshold that will remain fixed throughout the ESP period, regardless of the annual renewable portfolio standard or kWh sales, violates Section 4928.64(C)(3), Revised Code. The renewable portfolio standard requirements in Section 4928.64, Revised Code, increase annually. Solarvision believes that a three percent threshold that does not vary or fluctuate based upon the increasing renewable portfolio standard requirements is inconsistent with Section 4928.64, Revised Code.

Staff and OCC assert that the three percent threshold issue is not ripe for Commission decision in this case. Staff notes that the three percent threshold was an issue in the case of *In re Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company,* Case No. 11-5201-EL-RDR (*FirstEnergy AER Case*). Furthermore, the three percent threshold may be reviewed in the case of the Commission's pending rulemaking on this issue. *In the Matter of the Commission's Review of its Rules for the Alternative Energy Portfolio Standard Contained in Chapter 4901:1-40 of the Ohio Administrative Code,* Case No. 13-652-EL-ORD (*AEPS Rules Case*). Staff claims on brief that the *AEPS Rules Case* would be the proper context to review the threshold. Staff then avers that if the Commission addresses the three percent threshold in this proceeding, it is not reasonable as proposed by DP&L. Staff contends that the threshold is not reasonable because it is based on an estimate of the first auction and then never fluctuates or adjusts for future auctions, despite the fact that the renewable portfolio standard requirements adjust annually. Therefore, Staff and OCC argue that the three percent threshold should be denied.

The Commission finds that the AER should be trued-up on a quarterly basis but DP&L's proposal for the three percent cost threshold should be denied. The Commission has addressed the proper methodology for determining the three percent cost threshold in the *FirstEnergy AER Case*. *FirstEnergy AER Case*, Opinion and Order (August 7, 2013) at 30-34. DP&L is directed to comply with the methodology set forth in the *FirstEnergy AER Case* using the blended rate for each year rather than auction-based rate only. Therefore, the Commission finds that DP&L's proposal for the three percent cost threshold should be denied.

6. Alternative Energy Rider-Nonbypassable (AER-N)

DP&L proposes an Alternative Energy Rider–Nonbypassable (AER-N) to recover the costs of DP&L's Yankee Solar Generating Facility (Yankee). DP&L witness Seger-Lawson testified that the AER-N is permitted pursuant to Section 4928.143(B)(2)(c),

Revised Code, because it satisfies the four criteria for a nonbypassable surcharge for the life of an electric generating facility that is owned or operated by the EDU (DP&L Ex. 9 at 15-16). She claimed that Yankee is owned and operated by a utility, that it was sourced through a competitive bidding process, that it was used and useful after January 1, 2009, and that it was found by the Commission to be needed as a result of the resource planning process (DP&L Ex. 9 at 15, Tr. Vol. V at 1311). DP&L witness Seger-Lawson then argued that the AER-N is essentially identical to AEP's Generation Resource Rider (GRR), which was approved by the Commission in the *AEP ESP II Case*. DP&L proposes that the AER-N initially be set at zero, and then DP&L be permitted to file supporting evidence for the appropriate amount in a subsequent case (DP&L Ex. 9 at 16, Tr. Vol. V at 1316).

FES and IEU-Ohio contend on brief that the AER-N violates Section 4928.143(C)(1), Revised Code. FES and IEU-Ohio allege that Section 4928.143(C)(1), Revised Code, requires that if the Commission approves an application that contains a surcharge, the Commission shall ensure that the benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge. FES avers that since DP&L wouldn't provide CRES providers a pro rata share of the renewable resources based upon their share of the load, shopping customers would get no benefit from the AER-N (Tr. Vol. V at 1340). Intervenors assert the AER-N should be denied because it would be a nonbypassable charge imposed on customers who are already paying their own retail electric service provider for renewable resources.

IEU-Ohio, Solarvision, and RESA argue that the AER-N violates Sections 4928.64(E) and 4928.143(B), Revised Code. Section 4928.143(B), Revised Code, states that the Commission cannot approve a provision of an ESP that is contrary to Section 4928.64(E), Revised Code. Section 4928.64(E), Revised Code, states that all costs incurred by an EDU in complying with the renewable energy requirements of that section must be bypassable by any consumer that has switched to a CRES provider. DP&L witness Seger-Lawson indicated it was DP&L's intent moving forward to use any renewable energy credits generated from Yankee to comply with the renewable energy requirements of Section 4928.64, Revised Code (Tr. Vol. IX at 2305). IEU-Ohio and Solarvision posit that the nonbypassability of the AER-N makes it unlawful because it would compensate DP&L for Yankee, which was constructed for the purpose of complying with the renewable energy requirements. Furthermore, IEU-Ohio contends the AER-N violates Section 4928.143(B)(2)(c), Revised Code, because the need for the facility was not demonstrated in the ESP proceeding, the facility has not been sourced through a competitive bid process, and the energy and capacity would not be dedicated to the customers paying the AER-N (Tr. Vol. V at 1323-1325; Tr. Vol. V at 1340). Furthermore, RESA witness Bennett claimed that the intent of the nonbypassable renewable rider is for the recovery of new construction costs once the statutory requirements for need and competitive procurement are met, not for retroactive recovery

of construction costs. RESA witness Bennett pointed out that AEP's Turning Point Solar Facility would have been new construction, whereas Yankee has already been constructed. (RESA Ex. 6 at 12, 13; Tr. Vol. IX at 2483.)

FES, IEU-Ohio, and RESA make the assertion on brief that the Commission should deny the AER-N because DP&L did not provide the necessary information to the Commission for establishment of the AER-N. FES and IEU-Ohio argue that DP&L failed to satisfy, in this proceeding, the requirements of Rule 4901:5-5-06(B), O.A.C., because DP&L provided very little data regarding its proposal or the associated costs. Intervenors believe that without this information, the Commission does not have the opportunity to weigh the costs and benefits of Yankee. FES and IEU-Ohio contend that the AER-N should be denied because DP&L has not provided sufficient information for the Commission to review the facility and has improperly avoided substantive review of the proposed AER-N.

The Commission finds that the AER-N should be denied. Section 4928.143(C)(1), Revised Code, requires the Commission to ensure that the benefits derived from a charge are made available to those that bear the charge. In this instance, DP&L has not made a detailed proposal to ensure that all customers in its service territory equally benefit in the benefits derived from the Yankee facility. Instead, the Commission is concerned that all customers could pay for the costs of Yankee, despite only DP&L SSO customers receiving the benefit of the solar renewable energy credits (S-RECs) produced by the facility. Competitive retail electric service providers compete directly with DP&L's generation related service, including in the S-REC market, and are not permitted to recover their capital expenditures when building generation facilities (Tr. Vol. VIII at 21-5, Tr. Vol. IX at 2295). Competitive retail electric service providers are required to supply S-RECs for their customers; under the AER-N, as proposed, shopping customers could end up subsidizing the S-RECs supplied to SSO customers.

Furthermore, the AER-N would permit Yankee, which is a generation asset, to remain with the regulated distribution and transmission company instead of divesting with the rest of DP&L's generation assets. DP&L has committed to filing a generation asset divestiture plan before December 31, 2013. The Commission believes that Yankee should be included in DP&L's generation asset divestiture plan and divest with the rest of DP&L's generation assets. Approving the AER-N would add the cost of Yankee to the rate base for the extended future, instead of requiring DP&L, and the subsequent generation asset owner, to recover the costs of the facility through the competitive generation market and sales of S-RECs. Notwithstanding whether the AER-N satisfies Section 4928.143(B)(2)(c), Revised Code, the Commission finds that it would be inconsistent with DP&L's plan to divest its generation assets for Yankee to remain with the transmission and distribution utility.

The Commission notes that nothing in this finding prohibits DP&L from recovering the cost of past renewable energy resources used to serve its SSO customers. DP&L is directed to consult with Staff to determine an appropriate methodology to recover through the AER the cost of past renewable energy resources used to serve its SSO customers.

7. Reconciliation Rider (RR)

DP&L proposes a nonbypassable reconciliation rider (RR) that would include the costs of administering the CBP, the costs of competitive retail enhancements, and any deferred balance associated with particular riders (DP&L Ex. 10 at 8). DP&L contends that the CBP benefits all customers and it is therefore appropriate to recover the costs of the CBP through a nonbypassable rider. DP&L then asserts that to the extent the Commission approves competitive retail enhancements and concludes that the associated costs should be recoverable from customers in a nonbypassable rider, the costs should be included in the RR. DP&L witness Seger-Lawson proposed that DP&L recover through the RR any deferred balance that exceeds 10 percent of the base amount of riders FUEL, RPM, AER, and CBT (DP&L Ex. 10 at 8-11). DP&L believes that recovery of the deferred balance amounts is necessary to prevent the potentially catastrophic situation of having too few remaining SSO customers to cover the costs of a very large deferral balance (DP&L Ex. 12 at 7, 8, Tr. Vol. V at 1432-1433, Tr. Vol. IX at 2242-2244).

IEU-Ohio argues that the RR is not approvable as a nonbypassable rider and would provide DP&L with an anticompetitive subsidy. IEU-Ohio avers on brief that the RR cannot be authorized pursuant to Section 4928.143(B)(2)(d), Revised Code, because that section does not authorize the Commission to create a nonbypassable rider. Furthermore, IEU-Ohio asserts that even if the RR could be approved under Section 4928.143(B)(2)(d), Revised Code, it does not have the effect of making the physical supply of retail electric service more stable or certain. IEU-Ohio avers that the RR actually has the effect of making retail electric service more unstable and uncertain because the revenue requirement for the rider is unknown and the magnitude of the CBP auction administration costs is unknown. Furthermore, IEU-Ohio notes that DP&L failed to identify the rate impacts to customers that authorization of the RR would have.

FES, FEA, and RESA claim that SSO customers should pay for all costs of competitive bidding. FES witness Lesser testified that the costs of competitive bidding should be recovered on a bypassable basis because the principle of cost causation requires that SSO customers pay the CBP administrative costs necessary to procure power for SSO customers. FES witness Lesser then explained that the CBP is undertaken for SSO customers, not customers who take service from CRES providers, therefore, under the principle of cost causation, the charges should be recovered on a bypassable

basis. (FES Ex. 14 at 60). FES, FEA, and RESA believe that the competitive bidding costs in the RR should apply only to SSO customers.

FES, FEA, IGS, and RESA also contend that DP&L's proposal to collect the deferral balances above 10 percent on certain riders through the RR should be denied. FES witness Lesser opposed DP&L's proposal to collect deferral balances above 10 percent associated with the FUEL Rider, the RPM Rider, the TCRR-B Rider, the AER, and the CBT Rider. He indicated that the deferral balances are currently recovered on a bypassable basis and that allowing DP&L to collect deferral balances above 10 percent on a nonbypassable basis incentivizes DP&L to allow its deferral balances to exceed 10 percent. (FES Ex. 14 at 59-60). FES witness Lesser then went on to add that permitting DP&L to recover the deferral balances violates the principle of cost causation, that it would not stabilize rates, and that recovery of the deferred costs should continue on a bypassable basis (FES Ex. 14 at 60). IGS witness White noted that CRES suppliers also face migration risk, yet CRES suppliers are not able to recover the costs of customers migrating (IGS Ex. 1 at 8).

Staff supports recovery of the costs that DP&L has indicated, yet disagrees on the manner of recovery. Specifically, Staff witness Donlon testified that CBP auction costs should be bypassable, that the costs of competitive retail enhancements should be attributed based upon relative burden and recovered through a nonbypassable rider, and the deferred balance amounts should be recoverable through a bypassable charge (Staff Ex. 7 at 5, 7-9). Staff then recommends on brief that the Company be permitted to petition the Commission to true-up any over or under recovery of bypassable riders at the end of the ESP term. Staff also notes that the Commission should be free to determine at the end of the ESP term how to best permit recovery of deferred costs without imposing them on the potentially few remaining SSO customers.

The Commission finds that the RR should be divided into an RR Nonbypassable (RR-N) and RR Bypassable (RR-B). The RR-B should recover the bypassable components of DP&L's proposed RR, and the CBP auction costs, CBP consultant fees, Commission consultant fees, audit costs, supplier default costs, and carrying costs. The RR-N should recover any deferred balance that exceeds 10 percent of the base amount of riders FUEL, RPM, AER, and CBT, as proposed by DP&L. However, DP&L must file an application with the Commission, in a separate proceeding, seeking specific approval to defer for future recovery any amounts exceeding the 10 percent threshold for each individual riders. The TCRR-B deferral balance and the competitive retail enhancements shall be excluded from the RR-B and the RR-N. The Commission will address the TCRR below while the costs of the competitive retail enhancements should be deferred for recovery in DP&L's next distribution rate case.

8. Transmission Cost Recovery Rider (TCRR)

IEU-Ohio, Wal-Mart, and FEA contend that DP&L's proposed non-bypassable transmission cost recovery rider (TCRR-N) is unlawful and unreasonable. IEU-Ohio witness Murray testified that DP&L's proposal to bifurcate the TCRR into bypassable and non-bypassable components could cause shopping customers to be billed multiple times for transmission service (IEU-Ohio Ex. 2 at 37-38; Tr. Vol. V at 1356-1357). IEU-Ohio claims that double billing could occur because shopping customers are already paying their CRES provider for the non-market-based transmission service, which DP&L would be charging to shopping customers through the TCRR-N. Further, IEU-Ohio argues that a TCRR under-recovery balance exists, but it only exists because of DP&L's failure to accurately forecast its load and transmission costs (Tr. Vol. IX at 2208; Tr. Vol. IX at 2343).

Constellation supports DP&L's proposal to separate the TCRR into a market-based bypassable rider and a non-market-based non-bypassable rider. Constellation witness Fein testified that he supports the proposal to separate the TCRR and makes recommendations that he believes would add greater clarity to the specific non-market-based charges that would be recovered under the TCRR-N (Constellation Ex. 1 at 12).

DP&L claims that customers are not actually at risk of paying the same cost twice, and that its proposal more accurately reflects how transmission costs should be billed to customers. DP&L witness Hale testified that DP&L proposes to separate the cost components of the TCRR into market-based and non-market-based subsets and to recover the costs separately. She testified that the new TCRR-N would recover NITS, regional transmission expansion planning (RTEP), and other non-market-based FERC/RTO charges. (DP&L Ex. 11 at 3.) DP&L points out on brief that intervenors made no showing as to whether CRES providers would remove the TCRR charges from customer bills and failed to demonstrate that the impact on a customer being double billed would be a material amount.

The Commission finds that the TCRR should be removed from the RR and should be bifurcated by market-based and nonmarket-based elements, as proposed by DP&L, effective January 1, 2014. The Commission is persuaded that bifurcating the TCRR more accurately reflects how transmission costs are billed to customers. Further, to the extent necessary, DP&L should file with the Commission a proposal at the end of the ESP term for appropriate collection of any uncollected TCRR balance, including whether the uncollected TCRR balance should be collected through a bypassable or nonbypassable TCRR true-up rider.

9. Competitive Retail Enhancements

DP&L proposes to implement six competitive retail enhancements to improve the interaction of CRES providers with DP&L to ensure a smoother customer choice process. The six competitive retail enhancements proposed by DP&L are to eliminate the minimum stay and return-to-firm provisions in the generation tariffs, to implement a web-based portal for CRES providers to obtain DP&L customer information in more usable and manageable fashion, to implement an auto-cancel feature to DP&L's bill-ready billing function, to remove the enrollment verification that requires a CRES provider to have the first two digits of the customer name on the account as well as the correct account number, to support historical interval usage data (HIU) data requests via Electronic Data Interchange (EDI), and to provide CRES providers a standardized sync list on a monthly basis. DP&L estimates that these enhancements will require DP&L to incur approximately $2.5 million in capital improvements to its systems. DP&L claims that neither the Company nor its shareholders benefit from these system enhancements. (DP&L Ex. 9 at 13-15.)

DP&L contends that multiple parties have proposed additional competitive retail enhancements but no party is willing to pay for those enhancements (Tr. Vol. IX at 2191, 2310-2311, 2440-2441, 2445-2447, Tr. Vol. X at 2654). Furthermore, DP&L asserts on brief that additional competitive retail enhancements would violate rate-making principles, would provide no benefit to DP&L, would not be completed in a timely manner for lack of incentive, and would not be economical for DP&L. Finally, DP&L contends that there is no Commission rule requiring DP&L to implement the additional competitive retail enhancements and that insufficient evidence was presented at hearing to determine if the benefit of any additional competitive retail enhancement would surpass the cost.

IGS, RESA, and Constellation posit that a purchase of receivables (POR) program should be offered by DP&L as a competitive retail enhancement. A POR program is a competitive retail enhancement that requires a utility to purchase the accounts receivable of the competitive suppliers and shifts the burden of responsibility for collecting accounts to the utility. RESA witness Bennett testified that adoption of a POR program advances Ohio policy by promoting the efficient provision of service, by eliminating the application of needless cost-of-service and credit-standard distinctions to different customers, by increasing the availability of reasonably priced electric retail service, by promoting diversity of electricity supply and suppliers, by increasing consumer options and market access, by encouraging market access for CRES suppliers, by recognizing flexible regulatory treatment, and by providing other benefits to customers. (RESA Ex. 6 at 11). IGS witness White argued that a POR program would be more efficient and economical for DP&L's customers, regardless of whether they receive generation service from DP&L or a CRES supplier. Further, he contended that the costs associated with the systems, labor, and information-technology resources to manage all aspects of the billing

and collections process are being paid for by all customers through distribution rates. (IGS Ex. 1 at 9-10.) RESA witness Bennett added that a POR program would completely eliminate the complexity of payment allocation, the ambiguity over special arrangements, and the obscurity of information both from the customer and the CRES provider (RESA Ex. 6 at 12).

RESA also requests other competitive retail enhancements, including a web-based electronic system, choice-eligible customer lists, standard EDI interfaces, customer-specific information, alteration of certain EDI processes, addition of other EDI 876 HU standards, changes to billing options and charges, and other competitive retail enhancements. (RESA Ex. 6 at 5-9.) Furthermore, RESA notes on brief that cost-recovery of competitive retail enhancements should remain consistent with Commission precedent.

Constellation asserts on brief that greater access to data should be granted to CRES providers and that a web-based, electronic portal with key customer usage and account data be developed that allows CRES providers access, via a supplier website, to the data and information in a format that can be automatically scraped. Furthermore, Constellation also recommends the Commission direct DP&L to implement a standard, non-recourse POR program, notify CRES providers before a drop occurs, provide legacy account numbers, provide regular electronic mail notifications of tariff supplements, modifications, or changes when filed with the Commission, and conduct semi-annual or quarterly meetings with CRES providers to discuss proposed tariff changes, business practices, or other information.

FES contends that, despite competitive retail enhancements, other barriers to retail competition exist in DP&L's distribution service territory. FES witness Noewer stated that some of these barriers include issues regarding customer metering, billing, enrollment, switching fees, and eligibility file. FES witness Noewer testified that eliminating these barriers would enhance the competitive retail environment in DP&L's distribution service territory. (FES Ex. 17 at 19-22.)

The Commission finds that DP&L's proposed competitive retail enhancements should be adopted. The record indicates that the competitive retail enhancements proposed by DP&L would promote further development of the competitive retail electric service market in DP&L's distribution service territory (DP&L Ex. 10 at 8, OCC Ex. 18 at 5-6). RESA has identified certain EDI processes, EDI 876 HU Standards, and standard EDI interfaces that have been implemented by the other Ohio public utilities (RESA Ex. 6 at 7). If an EDI process, standard, or interface, as well as any other competitive retail enhancement, has been adopted by every other EDU in Ohio, then DP&L shall also implement that EDI process, standard, interface, or competitive retail enhancement. The Commission believes that requiring DP&L to adopt competitive retail enhancements,

which have been adopted by every one of the other Ohio EDUs, will eliminate barriers and facilitate competition in DP&L's service territory. The Commission notes that these competitive enhancements should be implemented as soon as practicable and may not be delayed until DP&L files the billing system modernization plan discussed above. DP&L may seek recovery of the costs of implementation of the competitive retail enhancements in its next distribution rate case.

The Commission also notes that it has initiated *In re The Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI, for CRES providers and EDUs to discuss proposed tariff changes, business practices, and other information for development of Ohio's competitive retail electric services market. Since POR programs have not been universally adopted by Ohio EDUs, we believe that the issue of whether POR programs should be ordered to be implemented is better addressed in Case No. 12-3151-EL-COI. Further, the Ohio EDI Working Group meets on a monthly basis for the purpose of developing EDI transaction standards and procedures to develop Ohio's retail electric services market. The competitive retail enhancements adopted in this ESP, in conjunction with the initiatives taken by the Commission, will spur development of the competitive retail electric services market in DP&L's distribution service territory. Furthermore, FES witness Noewer identified constraints to the development of the competitive retail electric market in DP&L's service territory regarding customer metering, billing, enrollment, switching fees, and eligibility file (FES Ex. 17 at 19-22). The Commission finds that these constraints are related to the distribution function of DP&L; therefore, these issues should be raised in DP&L's next distribution rate case.

10. Maximum Charge Phase-out Provision

DP&L proposes to phase out the maximum charge provision by increasing the maximum charge by 10 percent every quarter of the blending period. DP&L indicates that its maximum charge is contained in the secondary and primary rates and works to limit the rate per kWh charged to customers that have a poor load factor. Customers with poor load factors are those that have high demand and low energy consumption. DP&L witness Parke testified that it is appropriate to eliminate the maximum charge provision because the customers who benefit from the maximum charge provision do not pay their fair share of costs. Furthermore, he argued that a maximum charge provision is inconsistent with competitive markets. (DP&L Ex. 7 at 8-10).

OCC posits on brief that it supports DP&L's maximum charge phase-out proposal. OCC contends that it is unjust, unreasonable, and unduly discriminatory for the maximum charge provision to continue. Furthermore, OCC argues that no evidence was presented that phasing out the maximum charge provision would provide any harm to customers. OCC claims that the maximum charge phase-out provision should be adopted because there is neither a cost justification for continuing the maximum charge

provision nor any evidence that the rate without the maximum charge provision would harm any customers. OCC presented no testimony addressing the cost justification or rate impacts of the maximum charge provision.

Staff asserts that the maximum charge phase-out provision should be either denied outright or modified so that the maximum charge increases by 2.5 percent per quarter over the term of the ESP. Staff witness Turkenton noted that the maximum charge provision appears to apply to customers that have load factors of around 12 percent and below. She then noted that outright elimination of the maximum charge provision could lead to an up to 65 percent increase in the average secondary customer's bill. Staff witness Turkenton then recommended that, if the Commission were to phase out the maximum charge, it should be phased out by 2.5 percent per quarter instead of the 10 percent per quarter proposed by DP&L. (Staff Ex. 8 at 14). Staff notes on brief that it is concerned about the risks involved with eliminating the maximum charge provision, including the unpredictable consequences. Staff believes that the maximum charge provision should be reevaluated at the end of the ESP term when more information may be available regarding who bears the cost of the maximum charge.

The Commission finds that DP&L's proposed maximum charge phase-out provision should be denied and that the maximum charge should be increased only by 2.5 percent per year over the term of the ESP. The first 2.5 percent increase to the charge should take place on January 1, 2014, and then on January 1 for each remaining year of the ESP. The Commission believes that raising it 2.5 percent per year, which is equivalent to just over one half of one percent per quarter, will minimize rate impacts. The Commission notes that the maximum charge increase will be an increase to the charge and should apply to all new riders.

11. FUEL Rider

DP&L proposes to change its FUEL rider from a least cost methodology to a system average cost methodology. DP&L witness Hoekstra indicated that DP&L proposes to use a system average cost method to set its fuel rate, which would determine DP&L's total fuel cost and total generation sales for the period (DP&L Ex. 3 at 5-6). The witness noted that DP&L would then determine its average fuel costs and use that average to establish the fuel rider to be charged to SSO customers. DP&L contends on brief that the Commission should conclude that the system average cost methodology is the appropriate methodology because DP&L has no obligation to allocate its least cost fuel to SSO customers, DP&L would not be able to recover all of its fuel costs under a least cost stacking methodology, and the least cost stacking methodology may have negative impacts on DP&L's financial integrity.

OCC, FES, and Staff contend that DP&L should continue to use a least cost stacking methodology. Staff witness Gallina and OCC witness Slone testified that under the least cost stacking methodology, the fuel rider would be lower than under a system average cost methodology because the least cost fuel would be allocated to retail customers (Tr. Vol. VI at 1576; Tr. Vol. VIII at 2120). Staff witness Gallina testified that the least cost approach is currently being used by DP&L. He then testified that DP&L should continue to use the least cost methodology except that load from DPL Energy Resources (DPLER) should be excluded. Furthermore, both OCC and Staff assert on brief that the system average cost methodology would unfairly subsidize DP&L's affiliate DPLER and violates Section 4928.02(H), Revised Code. OCC witness Slone explained that for purposes of calculating the fuel rider, the retail load is made of existing DP&L SSO customer load and DPLER customer load. However, he contended that the fuel rider rate is only charged to SSO customers, whereas DPLER does not pay the fuel rider rate. He then noted that under DP&L's current stacking methodology, the costs associated with providing electricity to the wholesale market are currently treated as DP&L's highest costs to generate electricity, and are not calculated in the existing fuel rider. (OCC Ex. 24 at 6). Staff and OCC claim that the system average cost methodology should be denied because it would reduce DP&L's cost to generate electricity that would be sold into the wholesale market, which would grant DP&L and its affiliates a competitive advantage in the wholesale market at the expense of SSO customers.

The Commission finds that DP&L's proposed system average cost methodology should be denied. DP&L should utilize the least cost stacking methodology and should exclude DPLER load. The Commission agrees with Staff witness Gallina and OCC witness Slone that authorizing the system average cost methodology, as proposed in the ESP, could drive up costs on SSO customers to grant DP&L and its affiliates a competitive advantage in the wholesale market (Staff Ex. 5 at 3; OCC Ex. 24 at 6-8).

12. Storm Damage Recovery Rider

Staff proposes a storm damage recovery rider to be used by DP&L on a going-forward basis to defer O&M costs associated with destructive or major storms over an annual baseline (Staff Ex. 6 at 5). Staff witness Lipthratt testified that a baseline should be set at $4 million and the rider should be used to collect those amounts of major storm O&M costs that exceed the baseline, or to refund the difference between the amount expensed for major storm O&M restoration and the baseline, if the annual expense is less than the baseline (Staff Ex. 6 at 5). He claimed that the $4 million baseline is appropriate because from 2002 to 2011, the 10 year average of service restoration O&M expenses associated with major events was $3,977,641. Furthermore, the three year average of service restoration O&M expenses from 2009 to 2011 was $3,704,352. Staff witness Lipthratt believed that based upon the 10 year average and the three year average, a $4 million baseline would be appropriate. (Staff Ex. 6 at 6). Staff also claims that

$4 million baseline is consistent with other utilities' storm recover rider baselines, with AEP having a baseline of $5 million and Duke having a baseline of $4.4 million.

DP&L argues that DP&L's O&M expenses for 2005, 2008, and 2011, were outliers and that the storm rider baseline should be set at $1.1 million. DP&L witness Seger-Lawson then asserted that setting the baseline at $4 million would not be consistent with AEP or Duke because their O&M expenses were significantly higher than DP&L's (DP&L Ex. 12 at 19, 20). She then testified that adjusting DP&L's baseline based upon a ratio comparing the Company's total O&M expenses with that of AEP and Duke would give baselines of $1.46 million and $1.09 million, respectively.

The Commission finds that Staff's proposed storm damage recovery rider in this case should be denied. On December 21, 2012, DP&L filed an application in *In re The Dayton Power and Light Company*, Case No. 12-3062-EL-RDR (*DP&L Storm Damage Case*), seeking authority to recover storm O&M expenses for all major event storms in 2011 and 2012, as well as certain 2008 storm O&M expenses. DP&L also sought recovery of the related capital revenue requirements for Hurricane Ike in 2008 and major storms in 2011 and 2012. Finally, DP&L requested authority to implement a storm cost recovery rider to recover all costs associated with major storms going forward and to defer O&M costs until they are recovered through the rider. The Commission finds that the storm damage recovery rider and Staff's proposed baseline would be better addressed in the *DP&L Storm Damage Case*.

13. Economic Development Fund (EDF)

City of Dayton claims that a declining economic climate exists in DP&L's service territory and that DP&L's economic development initiatives should continue to offset the impact of increasing rates. The economic hardships faced by the communities in DP&L's service territory include declining population, declining employment, declining tax revenues, and increasing poverty. Dayton asserts that the decline in DP&L's service territory have significantly increased the need to create and maintain economic development initiatives (Dayton Ex. 1 at 3-6).

The Commission notes that Section 4928.143(B)(2)(i), Revised Code, specifically authorizes the inclusion of economic development programs in ESPs, and we will modify the ESP to include an economic development program. The Commission finds that DP&L should implement an Economic Development Fund (EDF), to be funded by shareholders at a minimum of $2 million per year, or not less than $6 million dollars for the years 2014, 2015, and 2016. Any EDF funds that are not allocated during a given year shall remain in the EDF and carry over to be allocated in subsequent years. This economic development funding is consistent with our treatment of other Ohio electric utilities and shall not be recoverable from customers. *AEP ESP II Case*, Opinion and

Order (August 8, 2012) at 67. The EDF funds should be allocated for the purpose of creating private sector economic development resources to attract new investment and improve job growth in Ohio. DP&L shall collaborate with Staff to determine the proper manner of allocation of the EDF funds to best accomplish their stated purpose. DP&L and Staff should collaborate to ensure that all EDF funds pursuant to this Opinion and Order are allocated by December 31, 2016. Furthermore, the EDF funding is in addition to and exclusive of DP&L's prior unrecoverable funding commitments. The Commission believes that, given the financial integrity charge approved by the Commission in this case, it is appropriate for DP&L to support economic development in its service territory and to continue the positive contributions to ensuring the vitality of the Dayton region.

III. IS THE PROPOSED ESP MORE FAVORABLE IN THE AGGREGATE AS COMPARED TO THE RESULTS THAT WOULD OTHERWISE APPLY UNDER SECTION 4928.142, REVISED CODE.

A. Arguments of the Parties

DP&L contends that the ESP, as proposed, including its pricing and all other terms and conditions, is more favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO. DP&L witness Malinak testified that in conducting the statutory price test (quantitative analysis), the Commission should consider other provisions that are quantifiable, as well as consider the non-quantifiable aspects of the ESP. In evaluating all of these criteria, he concludes that the proposed ESP, in the aggregate, is more favorable than the results that would otherwise apply under an MRO by approximately $112 million. (DP&L Ex. 5 at 3-15, DP&L Ex. 14A at 4-140).

In conducting the quantitative analysis, DP&L includes the SSR and the ST in both the ESP and the hypothetical MRO. DP&L believes that the SSR and ST would be permitted under an MRO pursuant to Section 4928.142(D)(4), Revised Code. This section states 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 or to ensure that the resulting revenue available to the utility for providing the SSO is not so inadequate as to result, directly or indirectly, in a taking of property without compensation pursuant to Section 19 of Article I, Ohio Constitution. Pursuant to this section, DP&L contends that the Commission must make two determinations; what is DP&L's most recent standard service offer that is subject to adjustment, and whether it is necessary to adjust those charges either to address an emergency that threatens DP&L's financial integrity or ensure the resulting revenue available to DP&L for providing the SSO to avoid a taking of property without compensation.

First, DP&L asserts that its most recent standard service offer is its existing ESP, including its bypassable generation charges and its non-bypassable RSC. On December 28, 2005, the Commission issued an Opinion and Order approving a stipulation that extended DP&L's existing rate stabilization plan through December 31, 2010. The Commission's Opinion and Order adopting the stipulation also extended and modified DP&L's rate stabilization surcharge (RSS).[1] *In re Dayton Power and Light Company,* Case No. 05-276-EL-AIR (*RSP II Case*), Opinion and Order (December 28, 2005) at 3, 16. On October 10, 2008, DP&L filed its first application for an ESP and, pursuant to Section 4928.143(D), Revised Code, the application for an ESP incorporated the terms of the 2005 stipulation. On June 24, 2009, the Commission issued an Opinion and Order adopting a stipulation for the ESP (Co. Ex. 102) and extending the ESP for two years, through December 31, 2012. *In re Dayton Power and Light Company,* Case Nos. 08-1094-EL-AIR et al. (*ESP I Case*), Opinion and Order (June 24, 2009, at 4, 13). The Opinion and Order adopting the stipulation continued the RSC with the ESP. On December 12, 2012, the Commission issued an entry holding that DP&L's RSC is a provision, term, or condition of the ESP. Therefore, DP&L believes that, if it had filed an MRO application, then the Commission could have modified DP&L's RSC to preserve DP&L's financial integrity or to prevent a taking. This, DP&L contends, would make DP&L's most recent SSO its existing ESP, including the RSC.

Next, DP&L claims that it would be entitled to an SSR or ST to preserve its financial integrity or to prevent a taking in a hypothetical MRO. DP&L indicates that there are not any decisions from the Supreme Court of Ohio or the Commission that interpret Section 4928.142(D)(4), Revised Code, regarding an emergency that threatens the utility's financial integrity. However, DP&L contends that an emergency threatening the utility's financial integrity in Section 4928.142(D)(4), Revised Code, is analogous to Section 4909.16, Revised Code, which allows the Commission to increase a utility's rates when it is necessary to prevent injury to the business or interests of the public utility in case of an emergency. The Supreme Court of Ohio has held that an emergency exists if the utility would be unable to pay its operating expenses, dividends on preferred stock and debt obligations absent an emergency rate case. Furthermore, the Supreme Court of Ohio held that rates set under the emergency rate statute should be sufficient to yield a reasonable return. *City of Cambridge v. Pub. Util. Comm.*, 159 Ohio St. 88, 92-94, 111 N.E.2d 1 (1953). DP&L posits that without an SSR or an ST in an MRO, it would suffer from significant financial distress, would experience substantial difficulties paying its bills, and would not be able to earn a reasonable ROE. For these reasons, DP&L contends that the Commission should find that the SSR and ST would be approved under a hypothetical MRO.

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[1] The modified RSS was redesignated the RSC in the *RSP II Case*. *Ohio Consumers Counsel v. Pub. Util. Comm.*, 114 Ohio St.3d 340, 2007 Ohio-4276, ¶ 25; *ESP I Case*, Opinion and Order (June 24, 2009) at 5, footnote 2).

Furthermore, DP&L avers on brief that the Commission should conclude that a taking would occur under a hypothetical MRO without an SSR and an ST, and therefore the charges would be permissible under Section 4928.142(D)(4), Revised Code. In making this argument, DP&L posits that, without a reasonable ROE, a taking without just compensation would occur under well established Supreme Court of Ohio and United States Supreme Court precedent.

Intervenors including FES, OCC, and IEU-Ohio claim on brief that the SSR and ST should not be included with the MRO when conducting the quantitative analysis. Intervenors contend that when conducting the test, the ESP should not be compared to a hypothetical MRO but to market prices. Therefore, they aver that any new ESP charges should not be included on the MRO side of the test. Intervenors contend that the goal of the ESP and MRO statutes is to ensure that customers have the benefit of market pricing or better. Intervenors assert that the SSR is substantially identical to AEP's RSR, which was approved in the *AEP ESP II Case*, and Duke's ESSC, which was approved in *In re Duke Energy Ohio, Inc.*, Case No. 11-3549-EL-SSO (*Duke ESP Case*). In both cases, the Commission considered the financial stability charges solely as a cost of the proposed ESP. Intervenors contend that the SSR and ST do not fall within any of the categories of costs that the Commission is authorized to adjust to an EDU's legacy SSO generation price.

FES further claims on brief that Section 4928.142(D)(4), Revised Code, applies only to a first-time MRO applicant. DP&L filed an application for an MRO on March 30, 2012, and the application was later withdrawn. Therefore, FES speculates that DP&L is not a first-time MRO applicant and that Section 4928.142(D)(4), Revised Code, does not apply to it. Furthermore, FES argues that adjustments under Section 4928.142(D)(4), Revised Code, are to the most recent SSO price. According to FES, this means that the adjustment would be to the base generation price, not a new nonbypassable charge.

FES then avers on brief that, if an emergency charge is authorized under Section 4928.152(D)(4), Revised Code, the utility should be held to the same burden of proof required for emergency rate relief pursuant to Section 4909.16, Revised Code. Thus, FES believes that DP&L failed to demonstrate what the emergency is, the precise amount necessary to relieve the emergency, the length of time for which the rate adjustment is needed, and that the SSR and ST are the minimum level necessary to avert or relieve the emergency. FES also argued that the ESP should end on December 31, 2017; that the blending percentages in Section 4928.142(D), Revised Code, no longer apply; that switching was not taken into consideration because the ST was on both sides of the test; and that the ST should not be included on the MRO side of the test.

OCC notes on brief that Section 4928.143(C)(1), Revised Code, sets forth the standard of review for an ESP and claims that there is no standard of review for the financial integrity of the utility. OCC contends that financial integrity is only reviewable under Section 4928.142(D)(4), Revised Code. Therefore, the financial integrity charges may only be considered in an MRO and not in an ESP.

FES and OCC asserts that the quantitative analysis should be conducted for the period starting from the issuance of this Order. Intervenors aver that consistent with the Commission's finding in the *AEP ESP II Case*, the Commission cannot compare prices during a time period that has elapsed prior to the issuance of the Order. *AEP ESP II Case*, Opinion and Order (August 8, 2012) at 74. Furthermore, intervenors believe that December 31, 2017, should be used as the ending point for the test.

Staff contends on brief that the ST should be rejected; therefore it should not be included in the quantitative analysis. Staff claims that including an ST in an ESP would be problematic because the adjustable nature of the ST would make it remarkably difficult to establish what it would cost if authorized. Without knowing the cost of the ST, it would be difficult to calculate whether the ESP is more favorable in the aggregate than an MRO. Staff then asserts that the SSR is permissible in an ESP and should be considered on the ESP side of the quantitative analysis. Staff recognizes that the MRO statute contains a provision for the approval of a charge in an emergency and posits that maintaining financial integrity in an emergency is a much higher standard than demonstrating that a charge has the effect of stabilizing or providing certainty regarding retail electric service. However, Staff takes no position on whether the SSR meets that higher standard and belongs on the MRO side of the quantitative analysis. Staff avers that for the ESP to pass the quantitative analysis, the Commission must reduce the SSR rate calculated by the Staff, conclude that the Staff-projected market rates are too high, and consider other qualitative benefits of the ESP.

Numerous intervenors conducted their own quantitative analyses of the ESP. Staff calculated that in a three year ESP, if the RSC of $73 million is included on the MRO side of the quantitative analysis, ratepayers would pay approximately $25 million more in an ESP over an expected MRO. Staff's analysis uses Staff's projected market rates and blending percentages for the term of the ESP (Staff Ex. 8 at 6-10, Attachment TST-1a). IEU-Ohio uses a similar calculation as Staff by including the RSC of $73 million on the MRO side of the quantitative analysis, but used a term of five years with blending percentages of 10 percent, 40 percent, 70 percent, 100 percent, and 100 percent, respectively. IEU-Ohio's calculations indicate that the ESP would be less favorable than an MRO by approximately $204 million. FES and OCC also conducted quantitative analyses and found the ESP to be less favorable than the expected MRO. When conducting the quantitative analyses, intervenors generally found that the ESP will be less favorable than an MRO. No intervenor conducted a quantitative analysis adopting

DP&L's position that a charge should be included in the MRO pursuant to Section 4928.142(D)(4), Revised Code, but several witnesses acknowledged that, if the SSR and ST were included under both an ESP and the expected MRO, then DP&L's ESP would likely pass the quantitative analysis (Tr. Vol. VII at 1813-1817, Tr. Vol. VIII at 2090-2092, Tr. Vol. V at 1238, IEU Ex. 2A at KMM-17). Furthermore, intervenors generally did not conduct a qualitative analysis, to coincide with their quantitative analysis because they did not believe that any non-quantifiable benefits exist in a qualitative analysis.

However, DP&L contends that a qualitative analysis should be conducted because there are both non-quantifiable costs of an MRO and non-quantifiable benefits of the ESP. DP&L claims on brief that there would be substantial non-quantifiable costs under a hypothetical MRO without the SSR or ST because DP&L would not able to provide safe and reliable distribution, transmission, and generation service. DP&L argues that the lesser revenue it would receive under an MRO without the SSR and ST as compared to the proposed ESP would require drastic cuts to O&M expenses, thus creating a substantial non-quantifiable cost of less reliable service. DP&L also believes that there are significant non-quantifiable benefits of the ESP. DP&L notes that its proposed ESP accelerates the move to 100 percent competitive bidding over an MRO. Specifically, DP&L indicates that its proposal would lead to 100 percent competitively bid market pricing in four years, whereas DP&L contends that under an MRO it would take five years after a Commission decision approving an MRO to get to 100 percent competitively bid market pricing. Including the non-quantifiable benefits, DP&L witness Malinak claimed that DP&L's proposed ESP, in the aggregate, will result in customers paying approximately $120 million less under DP&L's proposed ESP than under the results that would otherwise apply (DP&L Ex. 5 at 13-14, Ex. RJM-1, Tr. Vol. VIII at 2080-2081). DP&L witness Malinak explained on rebuttal that, in his opinion, a proper consideration of the non-quantifiable costs and benefits would lead to the ESP being more favorable than the expected results that would otherwise apply under an MRO (DP&L Ex. 16 at 9). DP&L contends that the non-quantifiable benefit of more rapidly transitioning to 100 percent competitive bidding exceeds any quantifiable benefit that a hypothetical MRO might have over the ESP. Thus, DP&L believes that the favorable aspects of the ESP pursuant to the qualitative analysis are greater than any potential deficiency in the quantitative analysis. DP&L believes that the ESP, as modified, is more favorable in the aggregate than the results that would otherwise apply.

FES asserts on brief that non-quantifiable costs of an MRO should not be considered because any financial distress is related to DP&L's generation assets, DP&L has failed to meet the statutory requirements for emergency rate relief, DP&L's financial integrity claims are incorrectly calculated, and DP&L overstates the impact to customers associated with financial integrity issues.

FES and RESA argue that the non-quantifiable benefits of the ESP are minimal and do not justify the ESP over an MRO, whereas IEU-Ohio goes further and argues that the non-quantifiable benefits are nonexistent. FES, RESA, and IEU-Ohio claim that any benefit of a faster move to market-based rates is negated by the corresponding nonbypassable charges, specifically the ST. IEU-Ohio avers that there are no non-quantifiable benefits of the ESP over an MRO because the ST offsets any non-quantifiable benefit of a faster move to market based rates. FES then contends that charging above market charges to customers would slow business development and job growth, which also negates any benefit of a faster move to market-based rates. Similarly, IEU-Ohio witness Murray surmises that the ESP fails to provide a more favorable business climate because he believes that it will result in higher electricity prices to the vast majority of customers in DP&L's service territory (IEU-Ohio Ex. 2 at 36). Staff posits that it is up to the Commission whether the non-quantifiable benefits of the ESP counterbalance the quantifiable costs of the ESP.

FES and IEU-Ohio believe that the competitive retail enhancements are not a non-quantifiable benefit because they will be paid for with a nonbypassable charge. They note on brief that the competitive retail enhancements represent receipt for services paid and therefore are not a non-quantifiable benefit of the ESP. They go on to add that the competitive retail enhancements should be implemented despite the ESP proceeding (FES Ex. 17 at 7).

B. Commission Conclusion

Pursuant to Section 4928.143(C)(1), Revised Code, the Commission must determine whether DP&L has sustained its burden of proof of demonstrating that the proposed ESP, as modified by the Commission, including its pricing, and other terms and conditions, is more favorable in the aggregate as compared to results that would otherwise apply under Section 4928.142, Revised Code. As a preliminary matter, we believe that the term "statutory price test" may have been misinterpreted by parties in this proceeding as a separate test applied prior to determining whether, in the aggregate, an ESP is more favorable as compared to results that would otherwise apply under Section 4928.142, Revised Code. Instead, we must ensure that our analysis looks at the entire modified ESP as a total package, which includes a quantitative and a qualitative analysis. The Supreme Court of Ohio has held that Section 4928.143(C)(1), Revised Code, does not bind the Commission to a strict price comparison, but rather, instructs the Commission to consider other terms and conditions, as there is only one statutory test that looks at an entire ESP in the aggregate. *In re Columbus S. Power Co.*, 128 Ohio St. 3d 402, 2011-Ohio-958, 945 N.E.2d 501.

In conducting the quantitative analysis, we first consider the modifications we have made to the ESP. The Commission made numerous modifications to the proposed

ESP, including denying the ST, adjusting the term of the ESP to 36 months, adjusting the proposed blending percentages, adjusting the SSR to $110 million per year effective January 1, 2014, and denying the proposed rider AER-N. Each of these adjustments and revisions has an effect in the quantitative analysis on the projected cost of the modified ESP approved by the Commission.

The second step of our analysis for the quantitative analysis is to analyze the expected results that would otherwise apply pursuant to Section 4928.142, Revised Code. Based upon the record and review of the statute, the Commission believes that we cannot compare this ESP with what would otherwise apply under Section 4928.142, Revised Code, beginning today, as it would be impossible for DP&L to immediately establish an alternate plan under Section 4928.142, Revised Code, which meets all of the statutory criteria. Therefore, we believe that we should begin comparing the ESP to the expected MRO beginning on January 1, 2014. We note that this approach is consistent with the Commission's decision in the *AEP ESP II Case*. *AEP ESP II Case*, Opinion and Order (August 8, 2012) at 74. The MRO blending would then proceed consistent with Section 4928.142(D), Revised Code. However, the Commission notes that, pursuant to Section 4928.142(D), Revised Code, the SSO price for retail electric generation service should be a proportionate blend of the bid price and the "generation service price" for the remaining standard service offer load. The Commission finds that "generation service price" relates solely to bypassable charges paid by SSO customers; therefore, the RSC should not be included in the expected MRO as a legacy rate.

While we note that an MRO is not currently before us, an equivalent financial charge to the SSR should not be included in the expected MRO. DP&L alleged that the SSR should be included in the MRO pursuant to Section 4928.142(D)(4), Revised Code, as a financial integrity charge to address a financial emergency (DP&L Ex. 16 at 8). However, DP&L has not persuaded us that it is facing a financial emergency pursuant to the MRO statute, which is a different standard than the standard for a stability charge under Section 4928.143(D)(2)(d), Revised Code. While DP&L witness Malinak testified that the hypothetical situation of an MRO without any financial integrity-based non-bypassable charges would put DP&L in a highly compromised financial position, we are not convinced that DP&L could not undertake O&M reductions, a distribution rate increase, or other steps to improve its financial position (DP&L Ex. 16 at 5-6). We find that, based upon the record in this case, DP&L has not demonstrated that it faces a financial emergency as contemplated by Section 4928.142, Revised Code.

The third step of our analysis is to compare the ESP to the expected MRO to determine the quantifiable benefit or cost of the ESP. To begin the comparison, the Commission assumes that blended rates resulting from the CBP begin for both the ESP and the expected MRO on January 1, 2014. The Commission applied the SSR of $110 million per year beginning on January 1, 2014, for the first two years of the ESP, as

well as the SSR-E of approximately $92 million for the first 10 months of 2015 although the SSR-E is contingent upon certain conditions as discussed above.

Staff's quantitative analysis indicated that the ESP was less favorable than an MRO by approximately $243 million over Staff's proposed three-year ESP. Staff's quantitative analysis for the three year ESP used a $133 million SSR instead of a $110 million SSR (Staff Ex. 8 at 8; Staff Ex. 8 Attachment TST-1). Staff's quantitative analysis using a three year ESP needs to be adjusted to reflect that blending would begin on January 1, 2014, the blending percentages would be 10 percent, 40 percent, and 70 percent, the ST would be removed from both the ESP and the MRO, the SSR would be in the amount of $110 million for the first two years of the ESP, and the SSR-E would be authorized for the first ten months of the third year of the ESP. Furthermore, Staff's analysis needs adjusted to reflect that the ESP will not match up with the PJM planning year. Despite these necessary adjustments to Staff's quantitative analysis, the Commission believes that the Staff's final quantifiable calculation is substantially correct because the increased revenue to DP&L pursuant to the change in blending percentages in the modified ESP is offset by the decreased SSR and SSR-E amount. Staff found that the quantifiable cost of the ESP would be approximately $243 million and we believe that with the Commission's modifications to the ESP, the MRO is more favorable by approximately $250 million.

We note that DP&L's quantitative analysis demonstrated that its proposed ESP would be approximately $112 million more favorable than the expected results that would otherwise apply (DP&L Ex. 5 at 3-15, DP&L Ex. 14A at 4-14). Although the elimination of the ST from the ESP and the reduction in the annual SSR from DP&L's proposed $137.5 million to the approved $110 million would reduce the costs of the ESP, we note that elimination of the financial integrity charge from the expected MRO more than offsets that reduction in the costs of the ESP. Accordingly, we find that, even under DP&L's methodology, the quantifiable costs of the ESP as modified would exceed the costs of the expected MRO in the quantitative analysis.

By statute, our analysis does not end with the quantitative analysis, however, as we must consider the qualitative benefits of the modified ESP, in order to view the proposed plan in the aggregate. The Commission notes that many of the provisions of the modified ESP advance the state policies enumerated in Section 4928.02, Revised Code. The modified ESP moves more quickly to market rate pricing than under the expected MRO, DP&L will be delivering and pricing energy at market prices by January 1, 2017, and if DP&L were to apply for an MRO, it is likely that DP&L would not deliver and price energy at full market prices until 2019. The Commission believes that the more rapid implementation of market rates is consistent with Section 4928.02(A) and (B), Revised Code.

Moreover, although there is a quantifiable cost to the SSR, the SSR will ensure that DP&L can provide adequate, reliable and safe retail electric service until it divests its generation assets. Several witnesses have testified that this is essential to the implementation of a fully competitive retail market (Tr. Vol. VII at 1865-1866). Several witnesses also faulted DP&L for failing to divest its generation assets more quickly. However, we note that many, but not all, of those witnesses were sponsored by parties who agreed to a stipulation in 2009 in DP&L's first ESP which provided that DP&L would retain ownership of its generation assets (*ESP I Case*, Opinion and Order (June 34, 2009) at 4; Co. Ex. 102 at 17-18). In any event, the modified ESP contains provisions that will facilitate the complete divestment of DP&L's generation assets by the end of the term of the modified ESP and implement a fully competitive retail market in DP&L's service territory in accordance Sections 4928.02(B) and (C), Revised Code. Accordingly, we believe that the ESP obtains for customers the benefits of market pricing as soon as possible under the circumstances.

We are not persuaded by intervenors that we should compare the ESP to an expected MRO that goes immediately to 100 percent market rates because, as we have indicated previously, we are not convinced that DP&L could immediately divest its generation assets and still provide stable, safe, and reliable retail electric service. Moreover, based upon the record of this case, we are not convinced by FES that DP&L has already filed its "first application" for an MRO within the meaning of Section 4928.142(D), Revised Code (Tr. Vol. IX 2377-2384). We believe that an MRO that goes immediately to 100 percent market rates would create substantial quantifiable and non-quantifiable costs to DP&L and its customers, and we do not expect that such an MRO would be proposed by DP&L or authorized by the Commission.

Further, while intervenors contend that competitive retail enhancements are not a qualitative benefit of the ESP over the expected MRO, we disagree. Although costs associated with the competitive retail enhancements represent a quantifiable cost of the modified ESP, the record evidence in the hearing demonstrates that both consumers and CRES providers believe that the implementation of the competitive retail enhancements would benefit the development of Ohio's retail electric service market and that such benefit is substantially greater than the cost of implementation. Moreover, the Commission has modified the ESP to provide DP&L with incentives to modernize its billing system. As discussed above, at the hearing, witness testimony indicated that DP&L's billing system is essentially antiquated and incapable of supporting rate ready billing and percentage off PTC pricing (Constellation Ex. 1 at 49-54; FES Ex. 17 at 19-26). The billing system modernization will allow CRES providers to offer a more diverse range of products to customers consistent with the provisions of Section 4928.02(B), Revised Code.

Further, we find that the competitive retail enhancements, the billing system modernization, and the economic development provisions encourage economic development and improve the state's competitiveness in the global market as provided by Section 4928.02(N), Revised Code. Moreover, the modified ESP provides DP&L with incentives to submit a plan to modernize its distribution infrastructure in accordance with Section 4928.02(D) and (E), Revised Code.

Accordingly, we find the ESP, as modified, accelerates the implementation of full market rate pricing, facilitates competition in the retail electric service market in the state of Ohio, and maintains DP&L's financial integrity to continue to provide stable, safe, and reliable service to its customers. We believe that these qualitative benefits of the ESP significantly outweighs the results of the quantitative analysis and that the modified ESP is more favorable in the aggregate than the expected results that would otherwise apply under Section 4928.142, Revised Code.

IV. CONCLUSION

Upon consideration of the ESP application filed by DP&L and the provisions of Section 4928.143(C)(1), Revised Code, the Commission finds that the ESP, including its pricing and all other terms and conditions, including deferrals and future recovery of deferrals, as modified by this Order, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code. Therefore, the Commission finds that the proposed ESP should be approved, with the modifications set forth herein. As modified herein, the plan provides rate stability for customers, revenue certainty for DP&L, and facilitates the development of the retail electric market. Further, DP&L is directed to file proposed revised tariffs consistent with this Opinion and Order. To the extent that intervenors have proposed modifications to DP&L's ESP that have not been specifically addressed by this Opinion and Order, the Commission concludes that the requests for such modifications should be denied.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) DP&L is a public utility as defined in Section 4905.02, Revised Code, and, as such, DP&L is subject to the jurisdiction of this Commission.

(2) On December 12, 2012, DP&L filed an amended application for an SSO in accordance with Section 4928.141, Revised Code.

(3) Notice was published and public hearings were held in Dayton where a total of six witnesses offered testimony.

(4) The following parties filed for and were granted intervention in DP&L's SSO proceeding: IEU-Ohio, OMA, Honda, Duke Energy Retail, Duke Energy Commercial Asset Management, Duke Energy Ohio, Inc., FES, AEP Retail Energy Partners, LLC, Ohio Energy Group (OEG), OHA, Kroger, OPAE, EnerNOC, Inc., OCC, IGS, City of Dayton, RESA, OEC, Wal-Mart, Direct Energy Services, LLC, Direct Energy Business, LLC, Edgemont Neighborhood Coalition, Border Energy Electric Services, Inc., Exelon, Constellation, Ohio Power Company, SolarVision, Council of Smaller Enterprises, Border Energy Electric Services, Inc., FEA, and People Working Cooperatively, Inc.

(5) The evidentiary hearing on the ESP was called on March 18, 2013, and concluded on April 3, 2013.

(6) Briefs and reply briefs were filed on May 20, 2013, and June 5, 2013, respectively.

(7) The proposed ESP, as modified pursuant to this Opinion and Order, including the pricing and all other terms and conditions, deferrals and future recovery of the deferrals, and quantitative and qualitative benefits, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code.

VI. ORDER:

It is, therefore,

ORDERED, That DP&L's application for an electric security plan be approved, as modified by the Commission. It is, further,

ORDERED, That IEU-Ohio's request to review the procedural rulings is denied. It is, further,

ORDERED, That IEU-Ohio's motion to take administrative notice or to reopen the proceeding or to supplement the record is denied. It is, further,

ORDERED, That DP&L shall file proposed tariffs consistent with this Opinion and Order, subject to review and approval by the Commission. It is, further,

ORDERED, That a copy of this Opinion and Order by served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

BAM/GAP/sc

Entered in the Journal
SEP 04 2013

Barcy F. McNeal
Secretary

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 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

ENTRY NUNC PRO TUNC

The Commission finds:

(1) The Dayton Power and Light Company (DP&L) is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.

(2) On March 30, 2012, DP&L filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code. The application was for a market rate offer in accordance with Section 4928.142, Revised Code. On September 7, 2012, DP&L withdrew its application for a market rate offer. On October 5, 2012, DP&L filed an application for an electric security plan (ESP) in accordance with Section 4928.143, Revised Code. Additionally, DP&L filed accompanying applications for approval of revised tariffs, for approval of certain

accounting authority, for waiver of certain Commission rules, and to establish tariff riders. On December 12, 2012, DP&L amended its application for an electric security plan.

(3) On September 4, 2013, the Commission issued its Opinion and Order in this proceeding.

(4) Due to an administrative error, the Opinion and Order does not reflect the decision that the Commission intended to issue, including the length of the modified ESP period. Therefore, the Commission finds that the Opinion and Order should be amended *nunc pro tunc*. The Opinion and Order incorrectly states that the modified ESP term should end on December 31, 2016. The end date of the modified ESP should be corrected to May 31, 2017, and the length of the modified ESP should be corrected to 41 months. Further, DP&L is expected to divest its generation assets by May 31, 2017. The date by which DP&L should file its subsequent SSO should be August 1, 2016, and, in the event such subsequent SSO is not authorized by April 1, 2017, DP&L will begin procuring generation deliverable on June 1, 2017.

Further, the Opinion and Order incorrectly states that the service stability rider (SSR) should end on December 31, 2015. The SSR will be in effect for three years at an annual amount of $110 million. Therefore, all references to the SSR end date should be corrected to December 31, 2016. Likewise, the service stability rider extension (SSR-E) start date should be corrected from January 1, 2016, to January 1, 2017. Further, the term of the SSR-E should be five months and end on its own terms on May 31, 2017. All references to the term of the SSR-E should be corrected accordingly. The amount of the SSR-E should be corrected from $92 million to $45.8 million. However, DP&L will still be required to file an application to implement the SSR-E.

Moreover, the CBP auction products should be corrected to 10 tranches of a 41 month product commencing January 1, 2014, 30 tranches of a 29 month product commencing January 1, 2015, and 30 tranches of a

> 17 month product commencing January 1, 2016. This will not change the 10 percent/40 percent/70 percent blending percentages contained in the Opinion and Order.
>
> Finally, the amount that the modified ESP fails the quantitative analysis should be corrected accordingly.

It is, therefore,

ORDERED, That the Opinion and Order issued September 4, 2013, be amended, *nunc pro tunc*, including, but not limited to, pages 15, 16, 25, 26, 27, 49, and 50, as set forth above. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

GAP/sc

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SEP 06 2013

Barcy F. McNeal

Barcy F. McNeal
Secretary