BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan.	))))	Case No. 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

SECOND ENTRY ON REHEARING

The Commission finds:

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

(2) On September 4, 2013, the Commission issued its Opinion and Order (Order), approving DP&L's proposed electric security plan (ESP), with certain modifications. On September 6, 2014, the Commission issued an Entry Nunc Pro Tunc to its Order.

(3) Pursuant to R.C. 4903.10, any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the

Commission, within 30 days of the entry of the order upon the Commission's journal.

(4) On October 4, 2013, Ohio Partners for Affordable Energy and Edgemont Neighborhood Coalition (OPAE/Edgemont), the Ohio Consumers' Counsel (OCC), Industrial Energy Users-Ohio (IEU-Ohio), FirstEnergy Solutions Corp. (FES), the Ohio Hospital Association (OHA), Ohio Energy Group (OEG), the Kroger Co. (Kroger), and DP&L, filed applications for rehearing. On October 31, 2013, memoranda contra the applications for rehearing were filed by FES, OCC, DP&L, OEG, the Retail Energy Supply Association (RESA), Kroger, IEU-Ohio, and the City of Dayton.

(5) On October 7, 2013, DP&L filed a motion and memorandum in support for an extension of time to file memoranda contra to the applications for rehearing. By entry issued on October 8, 2013, the attorney examiner granted DP&L's motion for an extension of time and set the deadline for October 31, 2013.

(6) By entry issued October 23, 2013, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing on the September 4, 2013 Order. The Commission also denied two assignments of error filed by DP&L and FES, and ordered DP&L to conduct the initial auction.

(7) The Commission has now reviewed and considered all of the arguments on rehearing. Any arguments on rehearing not specifically discussed herein have been thoroughly and adequately considered by the Commission and are hereby denied. The Commission will address the merits of the assignments of error by subject matter as set forth below.

I. SERVICE STABILITY RIDER

(8) IEU-Ohio contends that the ESP Order is unlawful and unreasonable because the Commission is preempted from increasing DP&L's total compensation for the provision of wholesale energy and capacity service under the Federal Power Act. IEU-Ohio asserts that the SSR will increase DP&L's total compensation for the provision of wholesale energy and capacity. IEU-Ohio contends that the SSR is an

unlawful compensation structure for DP&L to recover above-market capacity and energy revenue, which a Maryland District Court recently held to be unlawful in a similar case. *See PPL Energyplus, LLC, et al. v. Douglas R.M. Nazarian, et al.*, Civ. Action No. MJG-12-1286 (decided Sept. 20, 2013).

DP&L argues in its memorandum contra that rehearing on this assignment of error raised by IEU-Ohio should be denied. DP&L contends that *PPL Energyplus, LLC*, is entirely inapplicable because the ESP does not affect the rates for wholesale energy or capacity. DP&L notes that in *PPL Energyplus, LLC*, the court explained that Congress intended the Federal Power Act to give the Federal Energy Regulatory Commission (FERC) exclusive jurisdiction over setting wholesale electric energy and capacity rates or prices and thus intended this field to be occupied exclusively by federal regulation. *PPL Energyplus, LLC et al.*, Civ. Action No. MJG-12-1286 (Sept. 20, 2013). Under the ESP, a portion of DP&L's load will be determined by market rates for wholesale energy and capacity that are established by PJM. DP&L contends that this is entirely different than setting the wholesale rates or prices.

(9) The Commission finds that rehearing on this assignment of error should be denied. The Commission initially notes that the SSR is a financial integrity charge authorized pursuant to R.C. 4928.143(B)(2)(d) and is not a generation charge. Order at 21-22. Furthermore, the Commission agrees with DP&L that the ESP does not affect the wholesale energy or capacity rates and does not conflict with the Federal Power Act or the decision in *PPL Energyplus, LLC*. Adopting an ESP in which DP&L sources a portion of its SSO load from the wholesale energy and capacity markets is not equivalent to setting wholesale energy and capacity rates.

(10) IEU-Ohio asserts as one of its assignments of error that the ESP is anticompetitive and violates Ohio antitrust law under R.C. 1331. IEU-Ohio points out that a trust is a combination of capital, skills or acts by two or more persons for any of six enumerated anticompetitive purposes. IEU-Ohio argues that DP&L is a monopoly of separate lines of business that have acted jointly to fix electricity prices at a level that

would otherwise not occur without the SSR. IEU-Ohio contends that the SSR is a request by DP&L to establish the price of one or more electric services between them and others, so as to preclude free and unrestricted competition in the sale or transportation of electricity.

DP&L claims in its memorandum contra to IEU-Ohio's application for rehearing that Ohio antitrust law is inapplicable to this case. DP&L initially posits that R.C. 1331 is to be interpreted according to precedents under the Sherman Antitrust Act, 15 U.S.C. 1. *McGuire v. Ameritech Servs., Inc.* 253 F. Supp.2d 988, 1010 (S.D. Ohio 2003); *In re Title Insurance Antitrust Litigation,* 702 F. Supp.2d 840, 861-62 (2010).

DP&L then contends that Ohio antitrust law requires a combination of entities working together as one, and DP&L is a single entity. DP&L avers that the Commission confirmed this in the Order when it found that DP&L is not a structurally separated utility. Order at 22.

Next, DP&L asserts that R.C. 1331 is inapplicable pursuant to the state action doctrine, which holds that an otherwise monopolistic restraint on trade will not give rise to an antitrust violation where it stems from a clearly articulated and affirmatively expressed state policy or where such policy is actively supervised by the state itself. *McGuire* at 1006. DP&L argues that state policy in R.C. 4928 is clearly articulated and affirmatively expressed, and the proceedings held by the Commission demonstrate that the policy is actively supervised by the state itself.

DP&L next argues that R.C. 1331 is inapplicable here pursuant to the filed rate doctrine, which holds that a rate approved by the Commission is a legal rate that is not actionable as an antitrust injury, even if the rate resulted from an illegal combination of carriers to fix the rate. *In re Title Insurance Antitrust Litigation,* at 840, 846-47. DP&L then contends that pursuant to R.C. 1331.11, jurisdiction over antitrust claims is conferred on the courts and not the Commission.

Further, DP&L avers that since the SSR is in accordance with, and authorized pursuant to, R.C. 4928.143(B)(2)(d), it must not conflict with R.C. 1331 since R.C. 4928.143(B)(2)(d) was enacted subsequent to R.C. 1331. Finally, DP&L argues that Commission precedent exists for the authorization of charges similar to the SSR under R.C. 4928.143(B)(2)(d).

(11) The Commission finds that IEU-Ohio's assignment of error should be denied. The Commission agrees with DP&L that R.C. 1331 is inapplicable to the present case and that jurisdiction over R.C. 1331 lies with state courts rather than the Commission.

(12) Also, IEU-Ohio, FES, Kroger, and OCC claim that the Order is unlawful because it authorizes transition revenue or equivalent revenue in violation of R.C. 4928.38. These parties assert that the purpose of transition revenues is to compensate a utility when its assets would not be competitive when subjected to market prices. They argue that, if DP&L's financial integrity is compromised as a result of lower than desired generation revenue, use of the SSR to make up the difference makes it equivalent to a transition charge. Parties then argue that the Commission failed to consider their substantial and detailed evidence demonstrating that the SSR is a time-barred claim for transition revenue.

DP&L opposes IEU-Ohio, FES, Kroger, and OCC's argument that the SSR unlawfully recovers transition costs. DP&L initially notes that the Commission specifically addressed this issue in the Order holding that the SSR is not a transition charge and does not recover transition costs. DP&L then contends that the SSR is not a transition charge because it does not recover transition costs as they are defined under R.C. 4928.39. DP&L argues that R.C. 4928.39 indicates that transition costs are cost-based charges related to a cost that will be incurred by the utility. DP&L asserts that the SSR is not a cost-based charge and does not recover transition costs.

(13) The Commission finds that this assignment of error should be denied. The Commission initially notes that intervenors fail to raise any new arguments for the Commission's

consideration in support of their assignment of error. We explained in the Order that the SSR is not a transition charge and authorizing the SSR is not the equivalent of authorizing transition revenue. Order at 22.

We also agree with the arguments advanced by DP&L that the SSR is not a transition charge for the recovery of transition costs. According to R.C. 4928.39, transition charges are cost-based charges, and cost-based charges must be related to a cost that the utility will incur. *See In re Application of Columbus S. Power Co.*, 128 Ohio St. 3d 512, 2011-Ohio-1788, 947 N.E.2d 655. However, the SSR is not a cost-based charge; it was not designed for DP&L to recover specific costs. (Tr. I at 209; Tr. II at 552; Tr. III at 823; Tr. V. at 1304-05, 1433; Tr. XI at 2871.) The SSR was designed and authorized to provide DP&L stable revenue to maintain its financial integrity, in order to meet its obligation to provide an SSO, which has the effect of stabilizing and providing certainty regarding retail electric service (Tr. VII at 1707; Tr. VII at 1808-09; Tr. VIII at 2035; Tr. X at 2518.) Furthermore, the Commission notes that we considered the evidence provided by intervening parties, but we find that the argument that the SSR is the equivalent of a transition charge misplaced and unpersuasive.

(14) IEU-Ohio, FES, and OCC argue that the Order is unlawful and unreasonable because the SSR cannot be authorized pursuant to R.C. 4928.143(B)(2). IEU-Ohio contends that the SSR is a nonbypassable generation-related rider, which is not one of the permitted charges under R.C. 4928.143(B)(2).

Likewise, IEU-Ohio, FES, and OCC argue that the Commission erred in finding that the SSR is a permissible charge under R.C. 4928.143(B)(2)(d), because it does not have the effect of stabilizing or providing certainty regarding retail electric service. FES and OCC assert that the SSR provides certainty of revenues for DP&L but not certainty of retail electric service. Additionally, FES avers that the SSR does not provide stability in retail rates because it will result in an increase in customers' rates. IEU-Ohio also contends that the Commission did not determine that the SSR is required to affect the stability or certainty of retail electric service, only that the service quality may be affected without the SSR. IEU-Ohio also contends that without the SSR, stability and certainty in retail electric service would be maintained in DP&L's service territory through PJM's dispatch of generation assets.

DP&L responds that the Commission may approve a generation-related charge to allow a utility to provide stable retail electric service because generation is included in the definition of retail electric service pursuant to R.C. 4928.01(A)(27). Additionally, DP&L claims that it could not provide reliable distribution, transmission, and generation service without the SSR.

(15) The Commission finds that rehearing on the assignments of error raised by IEU-Ohio, FES, and OCC should be denied. The Commission fully explained in the Order that the SSR, as well as the SSR-E, meets the definition of R.C. 4928.143(B)(2)(d) because the SSR is a charge related to default service and bypassability and the SSR will have the effect of stabilizing and providing certainty regarding retail electric service. Order at 21-22.

As the Commission explained in the Order, the evidence in the record of this proceeding demonstrates that the SSR is necessary for DP&L to provide stable and reliable distribution, transmission, and generation service (DP&L Ex. 16A at 7-8; DP&L Ex. 12 at 23; DP&L Ex. 4A at 54). Order at 22. Intervenors contend that only DP&L's generation business has financial losses; however, the evidence indicates that the entire company's financial integrity is at risk (See Tr. Vol. I at 241-242; Tr. Vol. XI at 2804; OCC Ex. 28 at 28). Order at 19. Although, the Commission did not hold that the SSR and SSR-E are solely related to the provision of generation service, we note that, even assuming, arguendo, that the SSR is a generation-related charge, the Supreme Court has held that the Commission may approve a generation-related charge to allow a utility to provide stable retail electric service because generation is included in the definition of retail electric service pursuant to R.C. 4928.01(A)(27). *In re Application of Columbus S. Power Co.*, Slip Opinion No. 2014-Ohio-462 at ¶32.

Further, notwithstanding our determination that the SSR is necessary for DP&L to maintain its financial integrity, the Ohio Supreme Court has ruled that a finding of necessity is not a requirement pursuant to R.C. 4928.143(B)(2)(d). *In re Application of Columbus S. Power Co.*, Slip Opinion No. 2014-Ohio-462 at ¶26. Instead, the Court found that a term, condition or charge authorized under R.C. 4928.143(B)(2)(d), must have the effect of stabilizing or providing certainty regarding retail electric service. *In re Application of Columbus S. Power Co.*, Slip Opinion No. 2014-Ohio-462 at ¶27. As we found in the Order, the SSR is a charge related to bypassability and default service that has the effect of stabilizing and providing certainty regarding retail electric service. Order at 21.

(16) IEU-Ohio, FES, and OHA contend that the Order is unlawful and unreasonable because the SSR amount lacked record support. IEU-Ohio asserts that the evidence demonstrates that DP&L will achieve a seven percent ROE with a nonbypassable charge that is much smaller than $110 million per year. FES contends that DP&L overstated its expected costs and understated expected revenue and that, after adjusting for DP&L's projections, the record does not support the $110 million per year SSR authorized by the Commission. Additionally, IEU-Ohio, OCC, and FES also note that DP&L's switching projections are flawed, which should result in a downward adjustment to the SSR. OHA argues that any SSR revenues above the $73 million collected through the rate stabilization charge (RSC) is unlawful and unreasonable.

DP&L replies that the SSR amount authorized by the Commission is consistent with, and lower than, the amount supported by the evidence. DP&L asserts that without the SSR, it would earn negative ROEs during the ESP term. DP&L notes that the Commission specifically took into consideration O&M expenditure reductions when setting the SSR amount. DP&L avers that intervenors who disagree with DP&L's switching projections failed to consider the potential for large-scale aggregation to substantially increase shopping rates. Finally, DP&L argues that capital expenditure reductions may still be needed to maintain its financial integrity and they have not yet been approved for future periods.

(17) The Commission finds that rehearing on the assignments of error raised by IEU-Ohio, FES, and OHA should be denied. The Commission determined that the evidence, taking into account a reasonable balance between the differing forecasts and projections, supported an SSR amount of $110 million per year over the term of the ESP. Order at 25. The evidence for the SSR amount ranged between DP&L's proposed $137.5 million and the prior $73 million RSC (DP&L Ex. 1A at 11-13; OEG Ex. 1 at 3-5; Staff Ex. 1 at 4-5; FES Ex. 14A at 17-22; FEA Ex. 1 at 7; OCC Ex. 28A at 41; IEU-Ohio Ex. 1A at 18-19; Tr. Vol. VII at 1908; Tr. Vol. I at 189). Moreover, the Commission took into consideration planned O&M expense reductions, potential capital expense reductions, adjustments to the capital structure, and the potential for a distribution rate increase in determining the $110 million SSR amount.

Although the Commission reduced DP&L's proposed SSR amount by planned O&M savings, which directly impact the ROE, we did not offset the proposed SSR amount to account for potential capital expenditure reductions. Capital expenditure reductions do not have as significant of an impact on ROE as O&M savings, and DP&L should retain some ability to improve its ROE. Order at 25. Thus, the Commission used DP&L's forecasts and projections as a starting point but then adjusted DP&L's $137.5 million proposed SSR downward to account for planned O&M expense reductions, as well as other factors. This resulted in an SSR amount of $110 million, which is the minimum amount necessary for DP&L to maintain stable and reliable retail electric service (Order at 25; DP&L Ex. 1A at 11-13; DP&L Ex. 14A at 27-28; Tr. Vol. I at 189, 257-258; Tr. Vol. VII at 1908).

In light of the uncertainty and differences between forecasts, the Commission arrived at an SSR amount that we found provided DP&L with a reasonable opportunity to earn a seven percent ROE. Order at 25. Further, the Commission has adopted similar charges in other utility SSO proceedings. *See In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-346-EL-SSO, Opinion and Order

(August 8, 2012) at 26-38; *In re Duke Energy Ohio, Inc.*, Case No. 11-3549-EL-SSO, et al., Opinion and Order (November 22, 2011) at 26-38.

Additionally, the Commission notes that numerous intervenors assert that even if the Commission considers all of the numerous forecasts and projections, these forecasts and projections become less reliable as they project further into the future (Staff Ex. 10 at 5-6). However, the Commission authorized the SSR-E for this very reason. Order at 27. The SSR-E will provide updated and more accurate figures for determining the appropriate amount for a stability charge approaching the end of the ESP term. Further, the Commission established a cap on the SSR-E amount that may be authorized. This cap will provide rate protection and certainty for customers if DP&L is unable to improve its financial integrity.

(18) DP&L, OEG, and Kroger assert on rehearing that the Commission should clarify its decision regarding the SSR rate design and class allocation methodology. Kroger asserts that the Commission's Order unreasonably requires customers to pay the SSR through an energy charge when the costs are allocated on the basis of demand. OEG supports the Commission's finding that the SSR be allocated using a one coincident peak (1CP) demand allocation method but requests that the Commission add that the Primary and Primary-Substation rate classes should be grouped together for purposes of allocating the SSR charges. Furthermore, OEG asserts that the 1CP demand allocation method should apply to the entirety of the SSR, whereas DP&L proposes that the 1CP demand allocation method should only apply to the difference between the amount of the previously authorized RSC and the newly authorized SSR.

DP&L argues that the Commission should clarify that the rate design recommended by Staff and the class allocation methodology recommended by OEG is intended for DP&L to allocate only the increment of SSR that exceeds the current non-bypassable amount based on the single system peak. DP&L avers that, if the Commission intended that only the amount of the SSR that exceeds the current RSC should be allocated based on 1CP, then the Street Lighting and Private Outdoor Lighting tariff classes would continue to pay the current non-bypassable charge and would not be assigned any incremental amount for the SSR. DP&L argues that the Commission indicated that its intent was to minimize rate impacts upon customers, and this rate design will accomplish that intent.

(19) The Commission finds that rehearing on the assignment of error raised by DP&L and Kroger should be granted and that rehearing on the assignment of error raised by OEG should be denied. The Commission finds that the 1CP demand allocation method is the appropriate rate design method. Order at 26; Staff Ex. 8 at 14; OEG Ex. 1 at 7-8. However, we agree with DP&L that applying the 1CP demand allocation method to the difference between the SSR and RSC will minimize rate impacts upon customers. Therefore, we find that the 1CP demand allocation method should apply only to the difference between the RSC and the SSR amount.

(20) Kroger contends that the Commission failed to address its recommendation for a sunset date for the SSR. Kroger proposes that any shopping customer who has been shopping with a CRES provider for five years or longer should no longer be subject to paying stability charges. This would create greater rate certainty and stability, while also being consistent with the principle of cost causation. Additionally, through the RSC, long-term shopping customers have already contributed to DP&L's generation costs while purchasing their full generation requirements from a CRES provider.

(21) The Commission finds that Kroger's request for a sunset date should be denied. Shopping customers also benefit from a stable and certain SSO because the SSO remains available to shopping customers should they choose to return to the SSO provider. Further, we note that similar stability charges recovered by Duke Energy Ohio and AEP Ohio have also been nonbypassable and did not include a sunset provision. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-346-EL-SSO, Opinion and Order (August 8, 2012) at 26-38; *In re Duke Energy Ohio, Inc.*,

Case No. 11-3549-EL-SSO, et al., Opinion and Order (November 22, 2011) at 26-38.

II. SERVICE STABILITY RIDER - EXTENSION

(22) DP&L asserts as its first assignment of error that the Commission's Order was unlawful and unreasonable because it limited the amount that DP&L could receive through the SSR-E. DP&L contends that R.C. 4928.143(B)(2)(d) does not authorize the Commission to decide now the amount of a stability charge that DP&L can recover in a future proceeding.

FES responds that, if the Commission cannot set the amount of the SSR-E at this time, then it cannot determine at this time that the SSR-E is necessary to promote stability and certainty. OCC contends that the Commission rightfully limited the SSR-E amount so that it could properly consider whether the ESP is more favorable in the aggregate than the results that would otherwise apply.

(23) The Commission finds that rehearing on this assignment of error should be denied. The Commission notes that in this proceeding, we have authorized DP&L to establish the SSR-E and initially set the rider to zero. Further, the Commission established certain requirements that DP&L must meet and a maximum amount which will be authorized. Thus, the rider has been authorized in this ESP proceeding, and the terms and conditions regarding the SSR-E have been established for this ESP proceeding. The provision in the Commission's Order that DP&L may file an application, in a separate docket, to set the amount of the SSR-E, was for clarity of the record and administrative ease.

We note that it is not unusual to establish a rider in an ESP and to determine the amount of the rider in a separate docket. For example, in DP&L's previous ESP, the Commission authorized DP&L to implement a fuel adjustment charge and the amount of that clause has been adjusted in separate dockets. *In re The Dayton Power and Light Co.*, Case No. 08-1094-EL-SSO et al., Opinion and Order (June 24, 2009); *In re The Dayton Power and Light Co.*, Case No. 09-1012-EL-FAC, Finding and Order (December 16, 2009).

Similarly, in AEP-Ohio's ESP, we approved a generation resource rider (GRR) with an initial rate of zero and noted that it is not unprecedented for the Commission to adopt a mechanism in an ESP with an initial rate of zero. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-346-EL-SSO, et al., Opinion and Order (Aug. 8, 2012) at 24-25, *citing In re AEP Ohio*, Case No. 08-917-EL-SSO (Mar. 18, 2009); *In re Duke Energy-Ohio*, Case No. 08-920-EL-SSO (Dec. 17, 2008); *In re FirstEnergy*, Case No. 08-935-EL-SSO (Mar. 25, 2009).

Similarly, in the previous ESP, the Commission authorized DP&L to establish an energy efficiency rider; the amount of that rider was set in a separate docket, and a maximum amount for that rider was established. *In re The Dayton Power and Light Co. for Approval of its Electric Security Plan*, Case No. 08-1094-EL-SSO et al., Opinion and Order (June 24, 2009); *In re The Dayton Power and Light Co. to Update its Energy Efficiency Rider*, Case No. 11-2598-EL-RDR, Finding and Order (October 18, 2011).

The SSR-E has been authorized in this ESP proceeding, for the term of this ESP, and, based upon the record and financial projections provided by the parties to this proceeding. The Commission did not determine the level of stability charge that DP&L could seek in a future ESP. On the contrary, the Commission determined the maximum amount of stability revenues that DP&L may recover in this ESP.

(24) DP&L further contends in its first assignment of error that the Order is unlawful and unreasonable because the conditions for authorization of the SSR-E are not contained in R.C. 4928.143(B)(2)(d). DP&L asserts that by adding the conditions, the Commission has engaged in legislating in its own right and that it has essentially rewritten the statute.

DP&L further argues that the SSR-E conditions, individually, are unlawful and unreasonable. DP&L contends that the requirement to file an application for implementation of advanced metering infrastructure (AMI)/Smartgrid is unlawful and unreasonable because AMI/Smartgrid are too expensive, and there is no record support for implementation of AMI/ Smartgrid. DP&L then argues that the condition to file a distribution rate case by July 1, 2014, is overly burdensome and should be extended. Finally, DP&L contends that its billing system already has the capability to provide rate-ready billing so that SSR-E condition has already been satisfied and should not be a condition at all.

FES, OCC, IEU-Ohio and Kroger reply that, if the Commission authorizes the SSR-E, it should also authorize the SSR-E conditions as necessary to ensure that the SSR-E has the effect of providing stability and certainty regarding retail electric service. FES and IEU-Ohio argue that, by DP&L's logic, if the SSR-E conditions should be eliminated because they are not expressly contained in R.C. 4928.143(B)(2)(d), then the SSR-E itself should be eliminated. Additionally, FES notes that R.C. 4928.143(B)(2)(d) does not limit the Commission's discretion on how to structure authorized stability charges. FES asserts that the Commission may place restrictions on the stability charge so long as the Commission believes those restrictions are necessary to ensure that the charge has the effect of providing stability and certainty regarding retail electric service.

OCC asserts in its memorandum contra that the Commission appropriately implemented SSR-E conditions for the purpose of carrying out the policies of the state of Ohio set forth in R.C. 4928.02. OCC notes that requiring DP&L to file an application to implement AMI/Smartgrid carries out the policy set forth in R.C. 4928.02(D). Furthermore, OCC argues that the Commission rightfully established, as an SSR-E condition, that DP&L must file a distribution rate case and the Commission should not grant DP&L an extension of time to file its distribution rate case.

(25) The Commission finds that rehearing on DP&L's assignment of error regarding the SSR-E conditions should be granted, in part, and denied, in part. As a preliminary matter, the Commission notes that the end date for the SSR is independent of the existence of the SSR-E. Based upon the record of this proceeding, the SSR would end on December 31, 2016, and there would be no additional stability charge even if the Commission agreed with DP&L's arguments

regarding our ability to set conditions on the SSR-E. However, the Commission finds that R.C. 4928.143(B)(2)(d) authorizes the Commission to establish the SSR-E and does not limit our discretion or authority to make the SSR-E conditional for the purpose of providing stability and certainty to retail electric service or for the purpose of promoting the policy objectives of the state as set forth in R.C. 4928.02. The SSR-E conditions ensure that stability revenues collected by DP&L will continue to have the effect of providing certainty and stability regarding retail electric service in the future. As Staff testified at the hearing, financial projections beyond three years are inherently unreliable (Staff Ex. 10 at 4-5). Further, there is no evidence in the record regarding the potential magnitude of increases in distribution revenue if DP&L were to file a distribution rate case during the ESP and no evidence that a stability charge would continue to be necessary in the event of such distribution rate increase.

Further, we agree with OCC that requiring DP&L to file an application to implement AMI/Smartgrid carries out the state's policy as set forth in R.C. 4928.02(D). DP&L's contention that it may be unreasonably expensive to implement AMI/Smartgrid and that significant analysis is needed regarding the costs and benefits of AMI/Smartgrid supports the Commission's determination that DP&L should file an application for AMI/Smartgrid. The time for DP&L to conduct the analyses regarding the costs and benefits of AMI/Smartgrid is now. Every other electric utility in the state of Ohio has some form of AMI/Smartgrid deployment and it is time for DP&L to do likewise.

Finally, the Commission finds that DP&L should be required to provide rate-ready percentage off price to compare (PTC) billing, as directed by the Commission in the Order. Order at 28. The Commission notes that there was extensive testimony indicating that providing rate-ready percentage off PTC billing would improve the competitive environment in DP&L's service territory (Constellation Ex. 1 at 49-54; FES Ex. 17 at 19-26). Additionally, the Commission clarifies that, with DP&L's rate-ready percentage off PTC billing, DP&L should permit suppliers to submit percentages through a rate-ready billing process, under which DP&L would apply the discount off the customer's price to compare.

(26) FES and Kroger assert that the SSR-E should terminate prior to the end of the ESP term. In the alternative, FES requests that the Commission clarify that the SSR-E ends, date certain, on May 31, 2017. FES also asserts that the SSR-E should end before the end of the ESP term, to mitigate any chance that the Commission will permit the SSR-E to continue beyond the ESP if the Commission has not authorized a subsequent SSO.

DP&L replies that rehearing on the assignments of error, and the corresponding requests, by FES and Kroger should be denied. DP&L initially argues that FES failed to raise this issue in post-hearing briefs and does not cite to any testimony supporting the reasonableness of its request. Subsequently, DP&L contends that if it needs the SSR-E to enable it to provide safe and reliable service after the end of the ESP term, the Commission should not issue an Order now that may make it impossible for DP&L to provide safe and reliable service in the future.

(27) The Commission finds that rehearing on the assignments of error raised by FES and Kroger should be granted. The Commission finds that the SSR-E should end on April 30, 2017, one month prior to the end of the ESP. Pursuant to the Order, if a subsequent SSO has not been authorized by April 1, 2017, 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 until a subsequent SSO is authorized. Order at 16; Entry Nunc Pro Tunc at 2. Furthermore, DP&L must also divest all of its generation assets by no later than January 1, 2016. Therefore, since DP&L's SSO generation rates will be determined entirely by the market and all of its generation assets will have been divested, the Commission intends for the SSR-E to terminate date certain on April 30, 2017, if the Commission authorizes an amount for DP&L to recover.

III. GENERATION ASSET DIVESTITURE

(28) OCC and FES assert that the Order was unlawful or unreasonable because it should have ordered DP&L to divest its generation assets sooner.

DP&L replies that the Commission fully addressed this issue in its Order, and reiterates that it is restricted from transferring its generation assets sooner due to restrictions in its First and Refunding Mortgage and limitations on its ability to refinance bonds. Order at 15-16. DP&L reasserts that so long as the First and Refunding Mortgage remains in its current form, DP&L is prevented from effectuating a legal separation of the generation assets from the transmission and distribution assets. DP&L asserts that if it were compelled to transfer its generation assets now, then its transmission and distribution businesses would not be capable of supporting the full amount of the debt while providing safe and reliable service.

(29) The Commission finds that rehearing on this assignment of error should be granted. The Commission relied upon the testimony of DP&L witness Jackson that DP&L could not divest its generation assets before September 1, 2016. DP&L Ex. 16 at 4. Accordingly, the Commission ruled that DP&L must file a generation asset divestiture plan that divests its generation assets by May 31, 2017. Order at 15-16; Entry Nunc Pro Tunc at 2. However, on December 30, 2013, DP&L filed an application to divest its generation assets in Case No. 13-2420-EL-UNC. *In re The Dayton Power and Light Co.*, Case No. 13-2420-EL-UNC (*DP&L Divestiture Plan*), Application (December 30, 2013).[1] Subsequently, DP&L filed a supplemental application in that case representing that it has begun to evaluate the divestiture of its generation assets to an unaffiliated third party through a potential sale that could occur as early as 2014. *DP&L Divestiture Plan*, Supplemental Application (February 25, 2014) at 2; DP&L Ex. 16 at 4. Based upon new information contained in DP&L's supplemental application in Case No. 13-2420-EL-UNC, the Commission finds that the deadline for DP&L to

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1 The Commission hereby takes administrative notice of DP&L's application and supplemental application filed *In re The Dayton Power and Light Co.*, Case No. 13-2420-EL-UNC.

divest its generation assets should be subject to modification by the Commission in Case No. 13-2420-EL-UNC, but in no case will such modification be later than January 1, 2016. Further, we note that any approval of an amount for recovery through the SSR-E will take into consideration the timing and disposition of DP&L's generation assets.

IV. CBP BLENDING SCHEDULE

(30) OCC and FES assert that the Commission erred by not implementing 100 percent competitive bidding at the beginning of the ESP term. Furthermore, OCC and FES contend that it was unlawful and unreasonable to extend the ESP term beyond what DP&L proposed.

DP&L responds that the Commission struck a reasonable balance between the SSR amount and the ESP term. According to DP&L, a shorter ESP term would have required a larger SSR amount to maintain DP&L's financial integrity. Additionally, DP&L contends that the Commission was right not to implement the schedule proposed by DP&L because that schedule began on January 1, 2013, and the Commission's Order was not issued until September 4, 2013. DP&L alleges that the Commission's decision to begin the auction schedule on January 1, 2014, was reasonable.

(31) The Commission finds that rehearing on the assignments of error raised by OCC and FES regarding the CBP blending schedule should be granted. In determining the CBP blending schedule in the Order, the Commission relied upon the fact that DP&L would be unable to divest its generation assets before September 1, 2016. Order at 15. However, the Commission's intent was to implement full market-based rates as soon as practicable. Based upon the new information contained in DP&L's supplemental application in Case No. 13-2420-EL-UNC, we find that DP&L's CBP blending schedule should be accelerated. Accordingly, the CBP products should be 10 tranches of a 41 month product commencing on January 1, 2014, 50 tranches of a 29 month product commencing on January 1, 2015, and 40 tranches of

a 17 month product commencing on January 1, 2016.[2] This blending schedule is consistent with Staff's proposal for DP&L to move to 100 percent market-based rates over three years, which we now believe can be accomplished pursuant to DP&L's ability to divest its generation assets (Staff Ex. 2 at 4; Staff Ex. 10 at 6). The acceleration of the CBP blending schedule will benefit consumers through a more rapid move to full market-based rates, and the move to full market-based rates will be accomplished in a shorter time period than could be accomplished through an MRO.

V. RECONCILIATION RIDER

(32) IEU-Ohio and Kroger contend that the Order unlawfully and unreasonably authorized a non-bypassable reconciliation rider (RR-N) that is not consistent with R.C. 4928.143(B)(2), would recover generation-related costs through distribution rates, and would allow DP&L to collect costs of compliance with the alternative energy portfolio requirements on a nonbypassable basis in violation of R.C. 4928.64(E).

DP&L argues in its memorandum contra that the RR-N was lawful and the assignment of error alleged by IEU-Ohio and Kroger should be denied. DP&L initially notes that sufficient evidence was presented at hearing to support the Commission's decision with the RR-N. DP&L asserts that it faces a significant risk that it will have to recover a very large deferral balance from a very small group of customers. Including deferral balances from those riders that exceed ten percent of the base amount to be recovered under those riders eliminates that risk.

Additionally, DP&L asserts that the RR-N is lawful pursuant to R.C. 4928.143(B)(2)(d). The RR-N is a charge related to both default service and bypassability that has the effect of providing certainty and stability regarding retail electric service. Without the RR-N, standard service offer customers would not pay stable or certain rates due to the effect of increasing deferral amounts on a smaller SSO customer base.

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2 On October 28, 2013, DP&L conducted the initial CBP auction for 10 tranches of a 41 month product commencing January 1, 2014. *In re The Dayton Power and Light Co.*, Case No. 13-2120-EL-UNC, Finding and Order (October 30, 2013) at 2.

Finally, DP&L argues that retail electric service includes generation service, so it is lawful even if it permits DP&L to recover generation-related costs.

(33) The Commission finds that rehearing on this assignment of error should be denied. The RR-N is supported by the record evidence, including testimony on the effects of increasing deferral balances on the decreasing SSO customer base (DP&L Ex. 12 at 7, 8; Tr. V at 1432-1433; Tr. IX at 2242-2244). Further, the Commission authorized the RR-N pursuant to R.C. 4928.143(B)(2)(d) because the charge relates to DP&L's default service and provides for stability and certainty in retail electric service. The ten percent threshold operates as a "safety valve" in the event of increasing deferral balances and a decreasing SSO customer base. Order at 34-35. Moreover, the Commission has established similar mechanisms in other utility ESPs to address similar issues. *See In re Ohio Edison Co., The Cleveland Electric Illum. Co., and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 9.

VI. COMPETITIVE RETAIL ENHANCEMENTS

(34) DP&L asserts as its fourth assignment of error that there is no record support for the Commission's authorization of additional competitive retail enhancements. DP&L then contends that the proper context for reviewing and authorizing additional competitive retail enhancements is through the rule-making process.

RESA disagrees with DP&L and argues that there is substantial, probative, and reliable evidence in the record to support the Commission's decision. RESA points out the testimony of Stephen Bennett that multiple enhancements are needed beyond the six enhancements planned by DP&L, specifically to allow access to the minimum basic customer data, which RESA argues is fundamental to a competitive marketplace. Additionally, RESA points out that Mr. Bennett testified that more standardization across the industry would lead to more efficiency. Further, Constellation witness David Fein testified that competitive enhancements beyond the ones proposed by DP&L would better enable a sustainable and more robust marketplace.

Finally, RESA asserts that DP&L witness Dona Seger-Lawson even testified that DP&L's billing system would have to be improved to implement the proposed competitive retail enhancements. Accordingly, RESA asserts that the Commission should deny DP&L's assignment of error.

FES avers that the Commission was reasonable in requiring DP&L to implement the competitive retail enhancements which have already been implemented by every other electric distribution utility (EDU) in Ohio. According to FES, only DP&L would be in a position to conduct a cost-benefit analysis of additional competitive retail enhancements, and there is no requirement for a complete cost benefit analysis before implementing additional competitive retail enhancements.

(35) The Commission finds that rehearing on this assignment of error should be denied. As indicated by RESA and FES, substantial evidence was presented at hearing supporting the need for competitive retail enhancements to develop and support the competitive marketplace in DP&L's service territory (Tr. Vol. IX at 2191, 2310-2311, 2440-2441, 2445-2447; Tr. Vol. X at 2654). We find that DP&L has not demonstrated that competitive retail enhancements should be limited only to rule-making proceedings. The Commission has determined that the competitive retail enhancements will promote retail competition in DP&L's service territory (DP&L Ex. 10 at 8; OCC Ex. 18 at 5-6). Order at 38-39. This will facilitate the availability of supplier, price, terms, conditions, and quality options for consumers in furtherance of the state policy set forth in R.C. 4928.02(B).

(36) FES argues as its fifth assignment of error that the Commission's Order is unlawful and unreasonable because it fails to identify with specificity the competitive retail enhancements that DP&L is required to make. FES contends that the Commission should specifically identify which competitive retail enhancements DP&L is required to make.

DP&L opposes FES's request and asks the Commission to deny its assignment of error. DP&L asserts that it has already agreed to implement some of the competitive retail enhancements identified by intervenors. Further, DP&L

contends that FES did not address the additional competitive retail enhancements in its brief. DP&L asserts that since the Commission failed to clearly identify which additional competitive retail enhancements it was referring to, DP&L should not be required to implement any of them.

(37) The Commission finds that rehearing on FES's fifth assignment of error should be denied. However, we will clarify which electronic data interchange (EDI) processes, standards, or interfaces that we believe have been adopted by every other EDU in Ohio. Order at 38-39. Our intent in directing that DP&L adopt any competitive retail enhancement that has been adopted by every other EDU in Ohio was to bring consistency across the state of Ohio and to require DP&L to foster a more favorable competitive environment. We note that RESA witness Stephen Bennett, Constellation witness David Fein, and FES witness Sharon Noewer each provided testimony on barriers to competition in DP&L's service territory, as well as competitive retail enhancements that have been adopted by every other EDU in Ohio (RESA Ex. 6 at 14; Const. Ex. 1 at 45-53; FES Ex. 17 at 22).

Initially, the Commission notes that DP&L shall provide rate-ready percentage off PTC billing. The Commission believes that this will not only significantly advance competition in DP&L's service territory, but the Commission believes that it is necessary for stable and reliable service. It is for this reason that the Commission not only directed DP&L to adopt rate-ready percentage off PTC billing but also made it a condition of the SSR-E.

Additionally, DP&L should no longer charge a fee per bill for consolidated or dual billing, which are both unusual and excessive. RESA witness Bennett testified that DP&L is the only EDU in Ohio to assess a consolidated billing charge or a dual billing charge (RESA Ex. 6 at 14).

Additionally, FES witness Noewer and RESA witness Bennett testified that no other EDU in Ohio applies a charge to register rate codes for its consolidated billing system, whereas DP&L's tariff authorizes a $5,000 initial set up fee and $1,000 for each billing system change (FES Ex. 17 at 22;

RESA Ex. 6 at 14). Accordingly, DP&L should no longer charge an initial set up fee or a billing system change fee. Furthermore, the Commission finds that DP&L should permit the CRES providers to pay the switching fee consistent with the practice in the FirstEnergy, AEP-Ohio, and Duke Energy Ohio service territories. Additionally, DP&L's eligibility file should contain some form of identifier indicating whether a customer is shopping, DP&L should eliminate the supplier registration charge, and DP&L should eliminate the sync list charge.

DP&L should also either permit customer shopping on a per meter basis, or split customers with both a commercial and residential meter into two separate accounts. The Commission finds that customers with both a commercial and residential meter should be provided market access, consistent with the policies of R.C. 4928.02 to ensure market access and availability of competitive retail electric service.

Finally, DP&L should not require any customer to obtain an interval meter if the customer is below the 200 kW demand level. However, customers under the 200 kW threshold may install interval meters, at their expense, if they so choose. RESA witness Bennett testified that DP&L is the only EDU in Ohio to require a customer to obtain an interval meter if the customer is below the 200 kW demand level. (RESA Ex. 6 at 3-4.) DP&L should implement each of the competitive retail enhancements identified in this Second Entry on Rehearing as soon as practicable but not later than six months from the date of this Second Entry on Rehearing. Order at 38-39.

(38) OCC asserts that the Order is unlawful and unreasonable because it authorized DP&L to defer the costs of the competitive retail enhancements for collection in a future distribution rate case. OCC alleges that standard rate making and accounting policy is to require ordinary expenses to be recovered through annual revenues, except in instances of exigent circumstances and good reason. *In re Ohio Edison Co., The Cleveland Electric Illum. Co., and the Toledo Edison Co.,* 05-704-EL-ATA, et al., Opinion and Order (January 4, 2006) at 9; *Elyria Foundry Co. v. Public Util. Comm'n of Ohio,* 114 Ohio St.3d 305, 310-312, 2007-Ohio-4164.

OCC then alleges that CRES providers should cover the entirety of the cost of implementation of competitive retail enhancements. Finally, OCC contends that if the Commission permits deferral, DP&L should demonstrate that the deferred costs are reasonable, appropriately incurred, clearly and directly related to the circumstances for which they were authorized, and in excess of expense amounts already included in DP&L's rates at the time of approval.

DP&L responds that the costs of competitive retail enhancements are not ordinary utility expenses, but rather are capital improvements and expenses related solely to the competitive market. Specifically, many of the competitive retail enhancements will require changes to DP&L's billing system, which are capital in nature and should be recovered in a distribution rate case.

(39) The Commission finds that rehearing on OCC's assignment of error should be denied. First, the Commission notes that the granting of deferral authority is within the discretion of the Commission, and that quickly accomplishing distribution infrastructure improvements qualifies as exigent circumstances and good reason. *See In re the Ohio Edison Co., The Cleveland Electric Illum. Co. and the Toledo Edison Co.*, Case No. 05-704-EL-ATA, et al., Opinion and Order (Jan. 4, 2006) at 8-9; *Elyria Foundry Co. v. Public Util. Comm'n of Ohio*, 114 Ohio St.3d 305, 2007-Ohio-4164, 871 N.E.2d 1176.

Further, the Commission specifically indicated the need for urgency when it stated that the competitive retail enhancements should be implemented as soon as practicable. Order at 39. As noted above, these enhancements have already been implemented by every other electric distribution utility in this state. Additionally, the competitive retail enhancements may be properly characterized as capital improvements. The Commission will determine, in a future distribution rate proceeding, if the costs are reasonable, appropriately incurred, clearly and directly related to the circumstances for which they were authorized, and in excess of expense amounts already included in DP&L's rates.

VII. TRANSMISSION COST RECOVERY RIDER

(40) IEU-Ohio asserts that the nonbypassable transmission cost recovery rider (TCRR-N) is unlawful and unreasonable because it could result in double-billing customers for transmission service on a going-forward basis.

DP&L argues that the Commission has adopted a similar transmission cost recovery rider (TCRR) structure for both FirstEnergy and Duke Energy Ohio. *In re Ohio Edison Co., The Cleveland Electric Illum. Co., and The Toledo Edison Co.,* Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 11, 58; *In re the Application of Duke Energy Ohio, Inc.,* Case No. 11-2641-EL-RDR, et al., Opinion and Order (May 25, 2011) at 7, 17. DP&L then asserts that the record evidence in this case demonstrates that splitting the TCRR into a TCRR-N and a transmission cost recovery rider-bypassable (TCRR-B) is reasonable because the utility pays the nonbypassable components to the PJM Interconnection. Additionally, DP&L contends that IEU-Ohio has not demonstrated that customers actually will be double charged, even if customers were double charged the CRES providers may remove the charge from the customer's bill, and IEU-Ohio made no showing that any double charge would be a material amount.

(41) The Commission finds that rehearing on IEU-Ohio's assignment of error should be denied. The Commission is not persuaded that bifurcating the TCRR into the TCRR-N and TCRR-B poses a significant risk of double-billing customers. As the Commission indicated in the Order, the Commission believes that bifurcating the TCRR into market-based and nonmarket-based elements more accurately reflects how transmission costs are billed to customers. Order at 36. Additionally, the Commission notes that it has adopted a similar rate structure for other Ohio electric utilities. *In re Ohio Edison Co., The Cleveland Electric Illum. Co., and The Toledo Edison Co.,* Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 11, 58; *In re Duke Energy Ohio, Inc.,* Case No. 11-2641-EL-RDR, et al., Opinion and Order (May 25, 2011) at 7, 17.

(42) IEU-Ohio contends that the TCRR true-up is unlawful and unreasonable because there is no record support for the rider and there is no need for the rider. Similarly, IEU-Ohio avers that both the TCRR-N and the potential TCRR true-up rider unlawfully and unreasonably violate R.C. 4928.02(H) by recovering costs associated with standard service offer customers through a nonbypassable rider. IEU-Ohio contends that it is well settled that costs incurred by a utility to serve SSO customers must be bypassable. IEU-Ohio contends that the TCRR-N would reconcile the current under-recovery balance of bypassable non-market-based transmission charges to the nonbypassable TCRR-N.

DP&L argues that both the TCRR-B and TCRR-N were proposed as true-up riders. DP&L asserts that at the end of the ESP period, a deferral balance may remain for the TCRR-B and DP&L should be permitted to recover those incurred costs as part of a continued TCRR true-up rider (whether bypassable or nonbypassable). Additionally, DP&L believes that allowing it to recover those costs is consistent with DP&L's proposal to true-up all transmission-related costs from customers. Finally, DP&L asserts that there is a very real and substantial risk that DP&L may be left to recover a very large deferral balance from a very small group of customers without the rider. Further, DP&L asserts that IEU-Ohio's contention that it would violate R.C. 4928.02(H) for DP&L to recover the TCRR-N and TCRR true-up rider from shopping customers is not true. DP&L argues that it demonstrated, and the Commission agreed in the Order, that certain transmission costs are derived from shopping and non-shopping customers alike, and are fairly allocable through a nonbypassable rider to both shopping and non-shopping customers.

(43) The Commission finds that rehearing on IEU-Ohio's assignments of error regarding the TCRR and the TCRR true-up rider should be denied. The Commission notes that no subsequent TCRR true-up rider was authorized in its Order; the Commission simply directed DP&L to file with the Commission a proposal for such a rider at the end of the ESP term for appropriate collection of any uncollected TCRR balance that may exist. Order at 36. If a TCRR true-up rider is not necessary and there is no uncollected TCRR balance,

as IEU-Ohio contends, then there will be a zero balance, and no application will be necessary. However, if there is an uncollected TCRR balance at the end of the ESP term, then DP&L's application should propose a rider for recovery of the uncollected balance. The Commission will address the uncollected TCRR balance, if one exists, and the true-up rider at that time.

VIII. MORE FAVORABLE THAN THE EXPECTED RESULTS THAT WOULD OTHERWISE APPLY

(44) DP&L argues on rehearing that the Commission should clarify its decision regarding why the ESP is more favorable in the aggregate than the expected results that would otherwise apply. Specifically, DP&L contends that the qualitative benefits of the ESP exceed the quantitative benefits of the expected MRO. Similarly, IEU-Ohio, OCC, and FES assert that the Commission's Order is unlawful and unreasonable because the ESP is not more favorable in the aggregate than the expected results that would otherwise apply under R.C. 4928.142.

(45) The Commission finds that the applications for rehearing should be denied. Except to the extent specifically noted below, the parties have raised no new arguments on rehearing, and the Commission thoroughly addressed those arguments in the order. Order at 48-52.

Nonetheless, the Commission finds that the qualitative benefits of the ESP make it more favorable in the aggregate than the expected results that would otherwise apply. DP&L and FES request that the Commission identify the specific dollar amount that the qualitative benefits overcome the quantitative shortcomings of the ESP, yet a dollar amount cannot be calculated because the qualitative benefits are non-quantifiable. Therefore, the Commission must compare the non-quantifiable benefits and determine if they overcome the quantifiable difference between the ESP and the expected results that would otherwise apply. In this case, the Commission found in the Order that they do. Order at 52. Further, the Commission notes that, in this Second Entry on Rehearing, we have further accelerated DP&L's implementation of full market rates by modifying the CBP blending schedule, which enhances the qualitative benefits of the ESP. Thus, although the ESP fails the quantitative analysis the qualitative benefits overcome and far surpass this shortfall in the quantitative analysis.

(46) IEU-Ohio asserts that the Order is unlawful and unreasonable because it assigns subjective values to the qualitative benefits of the ESP. IEU-Ohio contends that the Commission must provide an objective and articulated explanation of how each of the qualitative benefits was weighted so that the parties, the Court, and the public may assess the validity of the Commission's decision.

(47) The Commission notes that IEU-Ohio claims that there are five qualitative benefits of the ESP, when, in fact, there are more qualitative benefits of the authorized ESP. The qualitative benefits of the authorized ESP identified by the Commission in the Order include the advancement of the state policies in R.C. 4928.02, the more rapid implementation of market rates, the preservation of the capability for DP&L to provide adequate, reliable, and safe retail electric service, funding for economic development, and numerous competitive retail enhancements. Order at 50-52.

The numerous competitive retail enhancements include the elimination of the minimum stay and return-to-firm provisions, a web-based portal for CRES providers, an auto-cancel feature to DP&L's billing system, removal of the enrollment verification, support for historical interval usage data (HIU) data requests, and a standardized sync list provided to CRES providers (DP&L Ex. 9 at 13-15). Additionally, the Commission has also required DP&L to implement those competitive retail enhancements that have been adopted by every other EDU in Ohio. These competitive retail enhancements include rate-ready percentage off PTC billing, elimination of the per bill fee for consolidated or dual billing, elimination of the charges to register rate codes, permitting CRES providers to pay the switching fee, raising the interval meter threshold, and requiring an identifier on the eligibility file (FES Ex. 17 at 19-26; RESA Ex. 6 at 14-15). Each of the competitive retail enhancements will further develop the competitive retail electric market in DP&L's service territory, and provide substantial qualitative benefits of the authorized ESP.

The Commission believes that the advancement of the state policies in R.C. 4928.02, the more rapid implementation of market rates, and the preservation of the capability for DP&L to provide adequate, reliable, and safe retail electric service are substantial qualitative benefits of the ESP. These qualitative benefits, in conjunction with the numerous competitive retail enhancements, provide a qualitative benefit of the ESP that outweighs the $313.8 million quantitative deficit. Furthermore, the Commission notes that there are substantial benefits of the ESP to shopping and SSO customers alike. The competitive retail enhancements authorized by the Commission will primarily benefit shopping customers and CRES providers in developing the retail electric market in DP&L's service territory. We disagree with IEU-Ohio's contention that the more rapid implementation of market rates does not benefit customers. As we explained in the Order, the modified ESP moves more quickly to market rate pricing than under an expected MRO, and this more rapid implementation of market rates is consistent with the policy of the state as set forth in R.C. 4928.02(A) and (B). Order at 50. Accordingly, rehearing on IEU-Ohio's assignments of error should be denied.

(48) FES asserts that the Commission's Order is unlawful and unreasonable because it compared the ESP to what would be DP&L's first application for an MRO. FES contends that DP&L already filed its first application for an MRO; therefore, under the plain language of R.C. 4928.142(D), DP&L's ESP should be compared to an MRO with an immediate 100 percent transition to market pricing through the CBP.

(49) The Commission finds that rehearing on FES's assignment of error on this issue should be denied. We are not persuaded by FES that DP&L has already filed its first application for an MRO. The facts of this case do not demonstrate that DP&L has filed its "first application" under R.C. 4928.142. The Commission made no determinations on the completeness of the application, no evidentiary hearing was held on the application, and the Commission made no legal

or factual findings on the merits of the application. Instead, DP&L voluntarily withdrew its MRO application before any of these events could take place.

Further, R.C. 4928.142(D) protects customers by requiring that the portion of SSO load to be competitively bid start at 10 percent for the first year and gradually increase thereafter. We believe that it would violate the intent of the General Assembly for the Commission to find that a utility that submitted an application for an MRO into a docket, and then subsequently withdrew it before the Commission could consider it, could deprive consumers of the statutory protections found in R.C. 4928.142(D). Therefore, because DP&L has not filed its first application under R.C. 4928.142, an MRO for DP&L would be subject to the provisions of R.C. 4928.142(D) and only 10 percent of the load would be sourced through a competitive bid in the first year rather than 100 percent as FES assumes.

IX. OTHER ASSIGNMENTS OF ERROR

(50) IEU-Ohio and OCC argue as one of their assignments of error that the Commission's Entry Nunc Pro Tunc was unlawful because it substantively modified the Commission's Order. IEU-Ohio and OCC further contend that the Commission's Entry Nunc Pro Tunc was unlawful because it did not give parties an opportunity to file applications for rehearing before modifying the Commission's Order. OCC asserts that *Helle v. Pub. Util. Comm.* and *Interstate Motor Transit Co. v. Pub. Util. Comm.* establish that the Commission's Entry Nunc Pro Tunc was unlawful because it amends a prior Order to indicate what the Commission believes it should have done. *Helle v. Pub. Util. Comm.*, 118 Ohio St. 434, 440, 161 N.E. 282 (1928); *Interstate Motor Transit Co. v. Pub. Util. Comm. of Ohio*, 119 Ohio St. 264, 163 N.E. 713 (1928).

DP&L asserted in its reply comments that the Commission should deny the assignment of error presented by IEU-Ohio and OCC. DP&L contends that the Entry Nunc Pro Tunc was lawful because entries nunc pro tunc are permissible to reflect what was actually decided. Further, DP&L asserts that the Commission may change or modify its orders as long as it justifies the changes. DP&L avers that, even if the Entry Nunc Pro Tunc is unlawful, the Commission could have achieved the same result on rehearing.

(51) The Commission finds that rehearing on the assignments of error alleged by IEU-Ohio and OCC on this issue should be denied. As a preliminary matter, the Commission notes that the precedents cited by OCC are not comparable to this case. In *Helle v. Pub. Util. Comm.*, the Commission issued an Entry Nunc Pro Tunc in 1927, after holding an evidentiary hearing to consider additional evidence, to amend a Commission Order that was issued in 1924. *Helle v. Pub. Util. Comm.*, 118 Ohio St. 434, 440, 161 N.E. 282 (1928). Similarly, in *Interstate Motor Transit Co. v. Pub. Util. Comm.*, which is also cited by OCC, the Commission took notice of other facts within its records and knowledge, before issuing an Entry Nunc Pro Tunc to revise its previous Order. *The Interstate Motor Transit Co. v. Pub. Util. Comm. of Ohio*, 119 Ohio St. 264, 163 N.E. 713 (1928).

In the present case, the Commission immediately recognized that a clerical error had been made and issued the Entry Nunc Pro Tunc a mere two days after the Order was issued. No additional evidence was considered and only two days had elapsed before the Commission issued the Entry Nunc Pro Tunc to correct the clerical error.

However, upon further review of the evidence on rehearing and as discussed in detail above, we find that the provisions of the ESP as set forth in our Order and the Entry Nunc Pro Tunc should be modified by the Commission. Accordingly, we find that the end date of the ESP should be May 31, 2017, and the length of the ESP should be 41 months. However, DP&L should divest its generation assets by no later than January 1, 2016. Further, the SSR will be in effect for three years at an annual amount of $110 million, and will end on December 31, 2016. The term of the SSR-E will be four months and end on its own terms on April 30, 2017, if DP&L files an application and the Commission authorizes DP&L to collect an SSR-E amount.

Finally, as discussed above, we find that the CBP blending schedule should be modified to be 10 tranches of a 41 month product commencing on January 1, 2014, 50 tranches of a 29 month product commencing on January 1, 2015, and 40 tranches of a 17 month product commencing on January 1, 2016.

(52) DP&L asserts as its eighth assignment of error that the Commission's order failed to state that the significantly excessive earnings test (SEET) threshold should apply only during the term of DP&L's ESP.

(53) The Commission finds that rehearing on DP&L's assignment of error should be granted. The 12 percent SEET threshold that we established in the Order should be applicable only during the term of this ESP. Order at 26.

(54) DP&L contends as its third assignment of error that the Commission does not have jurisdiction or authority to order DP&L's shareholders to contribute to an economic development fund (EDF). DP&L asserts that contributions to an EDF should be voluntary and there is no record support for DP&L to contribute to an EDF.

The City of Dayton opposes DP&L's third assignment of error. The City of Dayton notes that R.C. 4928.143(B)(2)(i) authorizes the Commission to provide for, without limitation, provisions under which an EDU may implement economic development, job retention, and energy efficiency programs. The City of Dayton also notes that R.C. 4928.243(B)(2)(i) does not require that these provisions allocate program costs across classes of customers of the electric utility; therefore, they may be derived from shareholders. Finally, the City of Dayton asserts that significant record evidence was presented on economic development and the need for economic development funding.

(55) First, the Commission notes R.C. 4928.143(B)(2)(i) provides that ESPs may include provisions related to economic development. Further, DP&L's contributions to the EDF are voluntary, as DP&L is not required to accept the ESP authorized by the Commission. If DP&L accepts the authorized ESP, DP&L shall contribute to the EDF. Additionally, the Order thoroughly addressed the

evidentiary foundation for the EDF, as well as the continuing need for EDF funds. Order at 42-43; Dayton Ex. 1 at 3-6. Therefore, the Commission finds that rehearing on DP&L's third assignment of error should be denied.

(56) OPAE/Edgemont raise as their assignments of error, and OCC argues as its final assignment of error, that the Commission failed to consider the record evidence regarding the state policy to protect at-risk populations. OPAE/Edgemont also asserts that the Commission did not properly consider the issues raised by OPAE and Edgemont in their briefs.

(57) The Commission finds that rehearing on OPAE/Edgemont's assignments of error, and the assignment of error raised by OCC, should be denied. Initially, the Commission notes that it considered the record evidence presented by OPAE, Edgemont, and other intervening parties that DP&L should be required to protect at risk populations, including the testimony of OPAE witness David Rinebolt and OCC witness James Williams; however, the Commission found that providing certainty and stability to electric rates in DP&L's service territory benefits at-risk customers as well as all other customers. Order at 21-22, 52; see also OPAE Ex. 1 at 5-7; OCC Ex. 19 at 3-29. OCC witness Williams testified that any change in ESP rates that does not reduce the current rates will have a negative financial impact on residential customers, but Mr. Williams failed to examine the negative financial impacts on the electric utility, as well as customers, if the rates were further reduced (OCC Ex. 19 at 6; Tr. at 1504-1506.) The Commission determined that the failure to approve the SSR would decrease DP&L's capability to provide safe, reliable, and certain retail electric service. This would have severe negative consequences on at-risk customers as well as all other customers.

In addition, the Commission rejected changes proposed by DP&L to the maximum charge provision and the FUEL rider, as well as DP&L's proposed rate design for the SSR, which may have had a significant impact upon at-risk populations. Further, the testimony failed to consider that the ESP, as approved by the Commission, contained provisions to promote competition and provisions for shareholder funding for economic development, which will also benefit at-risk customers. Order at 42. Accordingly, we find that the testimony provided by OPAE/Edgemont and OCC was fully considered and that the ESP, as approved by the Commission, fulfills the policy in R.C. 4928.02(L).

It is, therefore,

ORDERED, That the applications for rehearing filed by OCC, FES, Kroger, and DP&L be granted, in part, and denied, in part, as set forth above. It is, further,

ORDERED, That the applications for rehearing filed by OPAE/Edgemont, IEU-Ohio, OHA, and OEG be denied, as set forth above. It is, further,

ORDERED, That a copy of this Second Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler

Todd A. Snitchler, Chairman

Steven D. Lesser

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

GAP/BAM/sc

Entered in the Journal
MAR 19 2014

Barcy F. McNeal

Barcy F. McNeal
Secretary