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**Summary of PUCO's Orders Permitting DP&L to Terminate its ESP 2
and Partially Revert Back to its ESP 1**

On August 26, 2016, the PUCO issued orders authorizing DP&L to terminate its currently-effective ESP 2 and partially revert back to the provisions from its previously-defunct ESP 1. The PUCO also recognized that mercantile customers could benefit by shopping for all transmission services. The PUCO therefore encouraged mercantile customers to work with Staff to determine an approach (under the reasonable arrangement statute) for opting out of nonbypassable transmission charges imposed by DP&L thereby authorizing customers to procure transmission services from competitive suppliers.

The PUCO's orders follow from the Supreme Court of Ohio's recent decision which reversed the PUCO's authorization of DP&L's Service Stability Rider (SSR). The Court did not articulate a precise rationale for its reversal; however, the context of the case made it plain that the decision was invalidating the SSR because it enabled DP&L to recover transition revenue or its equivalent. In its request to terminate the ESP 2 and partially revert back to the ESP 1, DP&L claimed that the Court reversed the ESP 2 in its entirety. OMAEG and others challenged DP&L's expansive interpretation of the decision, claiming that the Court's reversal was limited to the SSR. But the PUCO agreed with DP&L. It also agreed with DP&L that any action by the PUCO to effectuate the Court's remand would be a modification to DP&L's ESP 2, which would authorize DP&L to terminate the ESP 2.

In conjunction with allowing DP&L to terminate the ESP 2, the PUCO allowed DP&L to partially revert back to its ESP 1. Under Ohio law, if a utility terminates an ESP, the utility is authorized to continue the provisions from its prior ESP with necessary fuel adjustments. OMAEG and others explained that DP&L's request violated this provision of Ohio law because DP&L's request sought to blend ESP 1 and ESP 2 provisions together. The PUCO found that such blending was permissible under the circumstances. The PUCO also permitted DP&L to resurrect its nonbypassable Rate Stability Charge (RSC). The RSC was originally created to compensate DP&L for serving as a provider of last resort (POLR); however, POLR service is now supplied by CRES participants through the competitive procurement process. Notwithstanding that the justifications for compensating DP&L for POLR service no longer apply, the PUCO reasoned that DP&L still maintains a long-term obligation to provide POLR service because there are no competitive procurements scheduled after its current ESP (May 31, 2017).

On a positive note, although the PUCO authorized DP&L to collect the RSC instead of the unlawful SSR, the RSC charge is less than the SSR charge. Additionally, the PUCO rejected DP&L's request to collect a bypassable Environmental Investment Rider (EIR) from ESP 1 that allowed DP&L to recover costs incurred to comply with environmental regulations. The PUCO reasoned that the competitive procurement process no longer justified cost recovery through the EIR.

Unless the orders are later modified, the partial reversion to ESP 1 will remain in effect until the PUCO approves DP&L's pending ESP 3 application.

The legal ramifications of the PUCO's orders suggest that a utility has an everlasting right to terminate an ESP following an adverse Court ruling even if, in the case of DP&L, the utility has been operating under and collecting charges through the ESP for almost three years. This would seem to limit the value of challenging an ESP-related PUCO decision to the Court. Following the PUCO's logic, if a utility suffers an adverse ESP-related ruling on appeal that benefits customers, the utility could then counteract the effects of the Court's ruling by simply requesting to terminate its current ESP and revert back to a prior ESP, or any combination thereof, whichever is more favorable to the utility.