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. 16-0395-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs	: :	Case No. 16-0396-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code § 4905.13	: :	Case No. 16-0397-EL-AAM

THE DAYTON POWER AND LIGHT COMPANY'S
REPLY BRIEF
PUBLIC VERSION

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THE DAYTON POWER AND LIGHT COMPANY'S REPLY BRIEF

I. INTRODUCTION AND SUMMARY

The Amended Stipulation ("Stipulation") in this case satisfies the Commission's three-part test, and should be approved without modification. The few parties that oppose the Stipulation (collectively, "Opposing Parties"),[1] make various arguments regarding why the Stipulation does not pass the three-part test.

1. Serious Bargaining: The arguments that Opposing Parties make regarding the serious bargaining prong are either not supported by the facts (e.g., that there is not a diversity of Signatory Parties), or are inconsistent with Commission precedent (e.g., that there was asymmetrical bargaining).

2. Customer Benefits: The evidence submitted by The Dayton Power and Light Company ("DP&L"), including numerous concessions by Intervenor witnesses, established that the Stipulation provides significant customer benefits, including that the Stipulation (1) would allow DP&L to continue to provide safe and stable service; (2) would allow DP&L to implement grid modernization; (3) includes equity investments by DP&L's ultimate shareholder, the AES Corporation ("AES"); and (4) accomplishes all of those items while providing a rate decrease to typical residential customers and providing the lowest rates in the State of Ohio to those customers. The Opposing Intervenors contest some (but not all) of those points, and as demonstrated below, their arguments related to those points are badly flawed.

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[1] The parties that filed briefs opposing the Stipulation were: The Office of the Ohio Consumers' Counsel ("OCC"); Wal-Mart Stores East, LP and Sam's East, Inc. ("Wal-Mart"); and Environmental Defense Fund and Ohio Environmental Council ("EDF/OEC"). Murray Energy Corporation and The Citizens to Protect DP&L Jobs ("Murray/Citizens") and Utility Workers Union of America, Local 175 ("Union") filed briefs that did not oppose the Stipulation, but that argued that a term should be added to the Stipulation.

3. Regulatory Principles: Opposing Intervenors make a variety of arguments regarding whether the Stipulation violates any regulatory principles, including whether it passes the "more favorable in the aggregate" test (Commission precedent establishes that it does) and whether the Distribution Modernization Rider ("DMR") is unlawful (Commission precedent establishes that it is not). As demonstrated below, the Commission should reject those arguments.

The Commission should thus conclude that the Stipulation passes the three-part test, and should approve the Stipulation without modification.

II. THE STIPULATION IS THE PRODUCT OF SERIOUS BARGAINING AMONG CAPABLE, KNOWLEDGEABLE PARTIES

The evidence at the hearing (including Intervenor witness concessions) demonstrated that there was serious bargaining among capable, knowledgeable parties. See DP&L's Initial Post-Hearing Brief, pp. 3-5. The only Opposing Intervenor that disputes whether this element was satisfied was OCC; its arguments are addressed below.

1. Asymmetrical Bargaining: OCC asserts (pp. 9-10) that there was asymmetrical bargaining because DP&L can reject modifications to its ESP application and retain the terms of its prior ESP. The Commission should reject that argument for two reasons. First, the Commission has previously rejected that argument. Nov. 3, 2016 Second Entry on Rehearing, ¶ 42 (Case No. 14-1693-EL-RDR) ("The Commission disagrees . . . that R.C. 4928.143(C)(2)(a) affords the electric utility superior bargaining power in settlement negotiations, as a result of the electric utility's ability to withdraw an ESP modified and approved by the Commission. Acceptance of opposing parties' argument would nullify the parties' ability to resolve any ESP by stipulation. The General Assembly did not include any such prohibition

in the ESP statute and, therefore, the Commission will not impose any such limitation."); Mar. 31, 2016 Opinion and Order, p. 41 (Case No. 14-1297-EL-SSO) ("The Commission notes that we have considered and rejected arguments that the criteria for the evaluation of stipulations should be revised in light of the EDU's statutory right to reject modifications to an ESP."). Second, there is no evidence that asymmetrical bargaining happened here. OCC witness Kahal testified that there "may" have been unequal bargaining here (Kahal Supp. Test. (OCC Ex. 12), pp. 13-14), but admitted at the hearing that he was not aware of any facts to support that assertion. Trans. Vol. IV, p. 724.

2. Diversity: OCC also claims (p. 22) that the Stipulation "is not supported by a diversity of parties." As DP&L demonstrated in its Initial Post-Hearing Brief, pp. 3-4, that is not true. OCC acknowledges (p. 22) that there is no "'veto'" power by any specific party, but then proceeds to argue (p. 23) in essence that OCC has a veto power because there is not support from "the bulk of DP&L's customers." Not only is that argument directly contrary to the precedent that OCC (and DP&L) cites, but also it is factually inaccurate. The City of Dayton, the largest municipality in DP&L's service territory, and three separate low-income residential groups signed the Stipulation. Stipulation, pp. 39-40. Further, Staff represents all parties.

3. Benefits to Parties: OCC asserts (p. 24) that the Stipulation was not the product of serious bargaining because Sections IV (pp. 9-10) and Section X (pp. 27-36) of the Stipulation provide specific benefits to parties. However, the benefits under Section IV are economic development incentives that are specifically authorized by Ohio Rev. Code

§ 4928.143(B)(2)(i). In fact, the Commission previously has approved Stipulations that included similar incentives.[2]

Further, the contributions to parties in Section X overwhelmingly go to residential customers. Specifically, that section provides that certain payments will be made to the City of Dayton (Stipulation, ¶ X.2 (pp. 27-32)); OCC witnesses conceded that the City of Dayton represents all of its residents (Trans. Vol. IV, p. 722 (Kahal); Trans. Vol. IV, p. 766 (Williams)). The Stipulation also provides for payments to Ohio Partners for Affordable Energy, Edgemont and People Working Cooperatively (Stipulation, ¶¶ X.3.a. (p. 33); X.6.a. (p. 36)); OCC witnesses conceded that OPAE, Edgemont and PWC represent low-income residential customers (Trans. Vol. IV, pp. 721-22 (Kahal); Trans. Vol. IV, pp. 765-66 (Williams)). Protecting at-risk customers is a policy of the state. Ohio Rev. Code § 4928.02(L).

There is also a payment to Ohio Hospital Association ("OHA") to support energy and demand savings for OHA's members. Stipulation, ¶ X.5.a.i. (pp. 34-35). Encouraging demand-side management is a policy of the state. Ohio Rev. Code § 4928.02(D).

The Commission should thus conclude that the benefits in Stipulation, ¶¶ IV and X to specific parties are lawful economic development incentives, will benefit residential customers, and are consistent with the policies of the state.

[2] Feb. 23, 2017 Order on Global Settlement Stipulation, pp. 31-32 (Case Nos. 09-872-EL-FAC, et al.) (approving stipulation in which AEP Ohio agreed to fund a one-time aggregate rate mitigation credit to signatory party Kroger in an amount equal to the projected impact of a rate change, which was to "be absorbed by [AEP-Ohio] as an economic development commitment . . . in recognition of the litigation cost incurred by Kroger to help provide the system-wide benefits" associated with the stipulation) (emphasis added); Dec. 14, 2011 Opinion and Order, p. 24 (Case Nos. 10-2376-EL-UNC, et al.) (approving stipulation in which AEP Ohio committed to provide "$5 million annually for the benefit of economic development" to the Ohio Growth Fund, which was to be advised by group of signatory parties and distribute $50,000 annually to signatory party AICUO) (emphasis added).

III. THE STIPULATION, AS A PACKAGE, BENEFITS CUSTOMERS AND PROMOTES THE PUBLIC INTEREST

DP&L presented extensive evidence that the Stipulation would provide significant customer benefits, and in their briefs, the Opposing Intervenors failed to refute that evidence.

A. DP&L's Evidence of Principal Benefits and Intervenors' Failure to Respond to That Evidence

1. DP&L Needs the DMR to Provide Safe and Reliable Service

DP&L's Evidence: DP&L's evidence (including numerous concessions by Intervenor witnesses) demonstrated that it needed the DMR to provide safe and reliable service. That evidence is summarized in DP&L's Initial Post-Hearing Brief, pp. 6-12.

Opposing Intervenors: The only Opposing Intervenor to contest that DP&L needs the DMR to provide safe and reliable service was OCC, which stated (p. 31) that: "DP&L is already providing safe and reliable service to customers" and that (p. 32) the Commission's rules require DP&L to provide such service. The evidence that OCC cites (pp. 32-33 nn.164-69) in support of that argument is the testimony of OCC witness Williams.

However, at the hearing, Mr. Williams conceded:

"Q. [Y]ou agree with me it's very important that DP&L be able to provide safe and reliable service, right?

A. As DP&L has been doing for many, many years, yes.

Q. You read the testimony of DP&L Witness Malinak, right?

A. I did.

Q. Okay. And his testimony contains detailed financial projections and charts at the back, right?

A. I recall seeing those projections.

* * *

Q. . . . [Y]ou don't disagree with those projections, right?

A. I have nothing to disagree with.

Q. Okay. And you understand that Mr. Malinak offers an opinion that DP&L's financial integrity is at risk, right?

A. I read those words.

* * *

Q. Okay. <u>There's nothing in your testimony that contradicts Mr. Malinak's assertion that DP&L's financial integrity is at risk, right</u>?

A. <u>I don't address that issue in my testimony</u>.

Q. <u>And you agree that to provide safe and reliable service, DP&L needs sufficient funds to do so, right</u>?

A. <u>Yes</u>."

Trans. Vol. IV, pp. 769-70 (emphasis added).

DP&L witness Malinak's testimony thoroughly demonstrated that DP&L needs the DMR to provide safe and reliable service. Malinak Test. (DP&L Ex. 2B), pp. 32-35, 52-64. Given Mr. Williams' admission that he does not contest Mr. Malinak's projections that DP&L's financial integrity is at risk and that DP&L needs sufficient funds to provide safe and reliable service, Mr. Williams' opinion that DP&L could provide safe and reliable service without the DMR is entirely without basis.

In addition, Mr. Williams' claim that DP&L has been providing safe and reliable service ignores the fact that DP&L has been collecting either the Rate Stabilization Charge ("RSC") or the Service Stability Rider ("SSR") since 2005. Dec. 28, 2005 Opinion and Order, p. 11 (Case No. 05-276-EL-AIR); June 24, 2009 Opinion and Order, p. 5 (Case No. 08-1094-EL-

SSO); Sept. 6, 2013 Entry Nunc Pro Tunc, p. 2 (Case No. 12-426-EL-SSO). DP&L Witness Malinak explained that the reason that DP&L has been able to provide safe and reliable service is that it has been collecting those charges. Trans. Vol. I, pp. 226-27. There is no evidence that DP&L could provide such service without such charges.

OCC goes on to argue (p. 32) that the reliability performance annual update filings are a sufficient means by which to ensure that DP&L is providing safe and reliable service. This concept is fraught with peril as it is essentially built upon the concept of allowing DP&L's service to degrade and then attempting to implement an action plan over the course of two years to correct the problem without addressing whether DP&L would have the financial means to do so. As a regulated utility, DP&L needs sufficient funds to provide safe and reliable service.

In short, the evidence at the hearing established that DP&L needs the DMR to provide safe and reliable service. There is no dispute that it is important that DP&L be able to provide such service,[3] and the fact that the Stipulation preserves DP&L's ability to do so is a significant benefit of the Stipulation.

2. **The DMR Will Allow DP&L to Implement Grid Modernization**

DP&L's Evidence: DP&L's evidence (including numerous concessions by Intervenor witnesses) demonstrated that grid modernization would provide substantial benefits to customers, and that DP&L could not implement grid modernization without the DMR. That evidence is summarized in DP&L's Initial Post-Hearing Brief, pp. 12-16.

[3] Trans. Vol. IV, p. 707 (Kahal); Trans. Vol. IV, pp. 768-69 (Williams).

Opposing Intervenors' Arguments: OCC (p. 40) asserts that "IGS/RESA Witness White does not guarantee that consumers will receive any competitive benefits from the Settlement" and that grid modernization has only the "'potential'" to benefit customers. The Commission should reject that argument because there can be no "guarantee" that grid modernization will benefit customers. However, there is extensive evidence regarding the expected benefits of grid modernization. Malinak Test. (DP&L Ex. 2B), p. 65; White Test. (RESA Ex. 1), p. 3. The Commission should thus conclude that a significant benefit of the Stipulation is that it will allow DP&L to implement grid modernization.

EDF/OEC make the puzzling argument (p. 8) that "While the first Stipulation had various components related to grid modernization and upgrades that may have benefitted DP&L customers, the Amended Stipulation is completely devoid of any benefit to customers . . . ." That is simply not true. The Amended Stipulation provides that DMR funds will be used to position DP&L to invest in grid modernization, and specifically requires DP&L to file a Distribution Infrastructure Modernization Plan. Stipulation, ¶¶ II.2.b (p. 5); II.3 (pp. 7-8).

3. Equity Investments by AES Are a Significant Benefit of the Stipulation

DP&L's Evidence: DP&L's evidence (including numerous concessions by Intervenor witnesses) demonstrated that AES made three concessions in Stipulation ¶¶ II.1.a. and II.1.b. (pp. 3-4) that amount to significant equity investments by AES. DP&L's evidence is summarized in DP&L's Initial Post-Hearing Brief, pp. 16-18.

Opposing Intervenors' Arguments: OCC (p. 29) asserts that "AES's promises do not result in any customer benefits and are nothing more than a weak attempt to show some contribution from AES." However, OCC's own witness Kahal had a different view. Mr. Kahal agreed at the hearing that those three measures in the Stipulation were benefits of the Stipulation (Trans. Vol. IV, pp. 710-11) and that they constituted "an equity infusion from AES into DPL Inc." Id. at 712 (emphasis added).

EDF/OEC (p. 10) and OCC (p. 30) argue that AES should take measures to pay down debt through the sale of assets and decreased dividends to shareholders. However, those very things are provided for in the Stipulation. Stipulation, ¶ II.1.a (p. 3); ¶ II.1.b and e (pp. 3-4). Given that OCC's own witness admitted that AES was making equity investments that would benefit customers, the Commission should reject OCC's argument.

OCC (p. 30) and Wal-Mart (p. 6) argue that AES should do more to protect the financial integrity of DP&L. However, they both admitted that the Commission does not have jurisdiction over AES. OCC Brief, p. 63; Wal-Mart Brief, p. 8. Staff witness Donlon testified that one of the benefits of the Stipulation was that Staff was able to negotiate concessions from AES that benefited customers. Trans. Vol. V., pp. 883-87. The Commission should thus conclude that the concessions by AES are significant benefits of the Stipulation that would not be available in a fully-litigated case.

Wal-Mart asserts (p. 8) that the fact that AES did not sign the Stipulation establishes that its commitments are "illusory." However, Wal-Mart ignores the fact that DPL Inc. signed the Stipulation. Stipulation, p. 39. The Stipulation provides that DPL Inc. will not pay dividends to AES for the ESP term, that DPL Inc. will not make tax-sharing payments to AES during the DMR term, and that DPL Inc. will convert the past and future (during the DMR term) tax liabilities to equity. Stipulation, ¶ II.1.a (p. 3); II.1.b. (pp. 3-4). Since DPL Inc. did sign the Stipulation, those commitments are not illusory. Trans. Vol. II, pp. 271-72 (Schroder).

The Commission should thus conclude that the concessions by AES in the Stipulation constitute significant benefits to customers that would not be available in a fully-litigated case.

B. **Other Benefits of the Stipulation**

The evidence at the hearing established that the Stipulation provided significant additional benefits. See DP&L's Initial Post-Hearing Brief, pp. 19-22. The arguments of Opposing Intervenors regarding those benefits are addressed below.

1. **Competitive Bidding**

DP&L's evidence (including Intervenor concessions) established that providing DP&L's Standard Service Offer ("SSO") via competitive bidding is a benefit of the Stipulation. DP&L's Initial Post-Hearing Brief, p. 19. OCC argues (p. 38) that competitive bidding is not a benefit of the Stipulation because competitive bidding would be available under a Market Rate Offer ("MRO"). OCC's argument ignores the fact that DP&L did not file and has no obligation to file an MRO. OCC also ignores the fact that the ESP statute requires that DP&L provide SSO service, but does not require such service be provided through competitive bidding. Ohio Rev. Code § 4928.143. In addition, OCC's witnesses conceded that that provision was a benefit of the Stipulation. Trans. Vol. IV, p. 709 (Kahal); Trans. Vol. IV, p. 768 (Williams).

2. **Transfer of Generation Assets**

DP&L's evidence (including Intervenor concessions) demonstrated that DP&L's commitment to transfer its generation assets to an affiliate was a benefit of the Stipulation. DP&L's Initial Post-Hearing Brief, p. 19. No Opposing Intervenors disputed the point.

3. **Sale Process for Certain Coal Assets**

DP&L's evidence (including Intervenor concessions) showed that a sale process for certain of DP&L's coal assets would benefit customers. DP&L's Initial Post-Hearing Brief, p. 19. No Opposing Intervenors disputed the point.

Murray Energy/Citizens (pp. 1-42)[4] and DP&L's Union (pp. 4-5) argue that DP&L's Stuart and Killen plants should be included in the sale process. However, their witness conceded at the hearing that there was nothing in the Stipulation that would require DP&L to close those plants, and that there was nothing in the Stipulation that would preclude DP&L from selling those plants to a third party. Trans. Vol. III., p. 565 (Medine). The Commission should thus reject that argument as DP&L remains free to sell those plants if a third party wants to buy them.

4. **Economic Development Incentives**

DP&L's evidence showed that the Economic Development Incentives in the Stipulation would benefit large employers in the state, and that those incentives would have multiplier effects that would assist employees. DP&L's Initial Post-Hearing Brief, pp. 20-21. OCC argues (p. 39) that the incentives do not provide a benefit because the eligible employers "do not have to create any new jobs to receive the incentive." OCC's argument ignores the fact that the incentives will lower the costs for large employers in the state, which those employers will consider when they make decisions. OCC's witness Kahal conceded that point. Trans. Vol. IV., p. 723.

[4] Murray Energy's brief contains a lengthy discussion of issues that are not relevant either to this case or to the relief that Murray Energy seeks (i.e., that Stuart and Killen should be included in a sales process). The Commission should thus disregard its brief.

5. **<u>Economic Development Grant Fund</u>**

DP&L's evidence showed that the Economic Development Grant Fund would provide significant customer benefits. DP&L's Initial Post-Hearing Brief, p. 20. No party disputed that the grant fund would benefit customers and the public interest.

6. **<u>The Reconciliation Rider</u>**

DP&L's evidence showed that The Reconciliation Rider would provide significant customer benefits, including acting as a hedge to protect against future changes in prices and ensuring that DP&L can maintain its financial integrity. DP&L's Initial Post-Hearing Brief, p. 20. OCC argues (pp. 42-43) that the Reconciliation Rider "will artificially inflate SSO costs to consumers" because the rider is bypassable. The Commission should reject that argument for three reasons: (1) it is reasonable that SSO customers pay the Reconciliation Rider, since it relates to generation; (2) DP&L's rates for typical residential customers will remain the lowest in the state and customers will receive a rate decrease (Schroder Test. (DP&L Ex. 3), pp. 20-21, Exs. A&B); and (3) customers can avoid that rider by switching.

7. **<u>Competitive Enhancements</u>**

DP&L's evidence showed that the Stipulation included three competitive enhancements that will benefit customers by assisting the competitive market to develop. DP&L's Initial Post-Hearing Brief, p. 21. OCC (p. 36) asserts that the TCRR-N pilot program will not benefit customers; DP&L has already thoroughly addressed that issue. DP&L Initial Post-Hearing Brief, pp. 48-49.

Regarding the Supplier Consolidated Billing Pilot in Stipulation ¶ VI.1.c (pp. 14-17), OCC asserts (pp. 37, 40) that "[t]here is no evidence that customers would benefit from this proposal, so they should not have to pay [50% of the costs] for it." OCC's claim that there was no evidence that customers would benefit from the Supplier Consolidated Billing Pilot is not true. Schroder Test. (DP&L Ex. 3), p. 13 (market enhancements, including supplier consolidated billing, will allow "suppliers to better serve their customers"); White Test. (RESA Ex. 1), p. 8 (explaining customer benefits of Supplier Consolidated Billing Pilot); Trans. Vol. II, pp. 450-51 (White) (explaining why all customers benefit from Supplier Consolidated Billing Pilot). In fact, OCC witness Haugh admitted that "I'm not opining on if there is a demand – if customer want this or not." Trans. Vol. III, p. 607. The Commission should thus reject OCC's argument.

8. City of Dayton

DP&L's evidence showed that the Stipulation contained significant benefits for the City of Dayton and its residents. DP&L's Initial Post-Hearing Brief, pp. 21-22. No Intervenor contests in their briefs that those were benefits of the Stipulation.

9. Funds for Low-Income Customers

DP&L's evidence showed that the Stipulation provided significant benefits to low-income customers. DP&L's Initial Post-Hearing Brief, p. 22. OCC asserts (pp. 33, 41) that the Stipulation will not benefit low-income customers. However, OCC ignores the fact that representatives of low-income customers signed the Stipulation and submitted testimony supporting the Stipulation. Stipulation, pp. 39-40; Cronmiller Test. (OPAE Ex. 1), pp. 2-4.

C. The Stipulation Results in a Rate Decrease for Typical Residential Customers; DP&L Will Continue to Have the Lowest Rates in the State

DP&L's evidence demonstrated that another significant benefit of the Stipulation was that typical residential customers would experience a rate decrease, and that DP&L will continue to have the lowest rates in the state. DP&L's Initial Post-Hearing Brief, p. 22. The Commission should thus conclude that low rates are another significant benefit of the Stipulation.

OCC (pp. 24-25) attempts to undermine this point by cherry picking certain riders while discounting or ignoring the other financial benefits of the Stipulation that result in a reduction to typical residential customer bills. Most notably, OCC claims that the reduction to customer bills due to the competitive auction are not true benefits. But under an ESP, DP&L does not have an obligation to provide generation service through a competitive bid. And under an MRO, there would be a blending period over a number of years (Ohio Rev. Code § 4928.142(D)), whereby a certain percentage of generation rates would be based upon current rates, which are higher than the projected rates for DP&L's upcoming auctions. Trans. Vol. IV, pp. 727-28 (Kahal); Schroder Test. (DP&L Ex. 3), p. 20 and Ex. A, pp. 1-36 Column G.

D. **Other Intervenor Arguments**

Opposing Intervenors make a variety of other arguments regarding whether the Stipulation benefits customers or the public interest. Those arguments are addressed below.

1. AES Acquisition: No party to this case disputes that DP&L's financial integrity is in jeopardy. In fact, OCC (p. 12) admits that to be true. OCC (pp. 2-3) and Wal-Mart (p. 5) argue that the cause of DP&L's financial integrity issues is the AES acquisition of DPL Inc. in general, and debt that DPL Inc. incurred in that transaction in particular. As background, AES incurred approximately $4 billion in debt in that transaction, $1 billion of which was placed on DPL Inc. Trans. Vol. IV., pp. 712-13 (Kahal).

The Commission should reject their arguments for three reasons. First, the terms of that transaction were reasonable at the time; in fact, the Commission approved the transaction. Nov. 22, 2011 Finding and Order, pp. 13-14 (Case No. 11-3002-EL-MER); Trans. Vol I., p. 98. Second, AES is making significant equity investments pursuant to Stipulation, ¶¶ II.1.a and II.1.b., (pp. 3-4); Malinak Test. (DP&L Ex. 2B), p. 4; Trans. Vol. IV, pp. 710-12 (Kahal). Third, that transaction cannot be undone and is thus irrelevant. July 13, 2016 Transcript Vol. III, pp. 662-63, 666 (Case No. 14-1297-EL-SSO) (filed on July 27, 2016).

The relevant question now is "what should the Commission do to ensure that customers receive safe and reliable service?" As demonstrated above, the Stipulation is the best path forward to that goal.

2. FFO-to-Debt Ratio: Wal-Mart (p. 7) argues that "The DMR does not achieve the FFO to debt level advocated by Company witness Jackson." That argument, however, would lead to the conclusion that the DMR should be even higher. In any event, the evidence at the hearing showed that the DMR amount was the minimum amount that DP&L needed to allow it to maintain its financial integrity and provide safe and reliable service. DP&L's Initial Post-Hearing Brief, pp. 6-12.

3. Ring Fencing: OCC asserts (p. 30) that the Commission should implement ring fencing. However, Staff witness Donlon testified that: (1) the three AES contributions (dividend restrictions, tax forgiveness, equity conversion) constituted ring fencing (Trans. Vol. V., pp. 884-85); and (2) additional ring fencing was not required (id.).

4. Asset Divestures/Sale: OCC argues (p. 30) that DP&L should use "proceeds from asset divestures/sales to pay down debt." OCC ignores the fact that the Stipulation, ¶ II.1.e (p. 4) provides that DP&L will do just that.

5. DMR Allocation: OCC argues (p. 41) that the method by which DMR costs are allocated in Stipulation, ¶ IV.2.c. (pp. 5-6) harms residential customers. Specifically, OCC (p. 54) argues that the DMR allocation threatens to make service unaffordable for residential customers. But that argument rings hollow, given the fact that typical residential bills will actually decrease. Schroder Test. (DP&L Ex. 3), pp. 20-21, Exs. A and B. The allocation argument is further addressed in DP&L's Initial Post-Hearing Brief, pp. 47-48.

6. Cost Causation: Wal-Mart (p. 3) and OCC (p. 53) argue that customers did not cause DP&L's financial integrity issues, and should not have to pay the DMR. That argument ignores the significant customer benefits that the DMR provides. In particular, DP&L could not provide safe and reliable service to customers without the DMR. DP&L's Initial Post-Hearing Brief, pp. 6-12. It is thus reasonable that customers pay the DMR.

7. Management Techniques: OCC asserts (p. 29) that the DMR is not necessary and that DP&L should instead "chang[] management techniques." However, OCC does not identify any specific "management techniques" that could resolve DP&L's financial integrity issues.

8. Smart Grid Rider: OCC asserts (pp. 34-35) that the Commission should reject the Smart Grid Rider because the Commission's Power Forward initiative "is in its early stages" and DP&L does not even understand it. OCC ignores the fact that the Smart Grid Rider will be set initially at zero, and will recover costs only after the Commission completes its Power

Forward initiative and DP&L incurs costs to implement grid modernization. Stipulation, ¶ II.3. (pp. 7-8).

OCC also quotes (p. 35) the testimony of one of its witnesses that "[t]he PUCO should not permit customers to be converted into investors by being asked to shoulder the risks for investments that DP&L makes that are not supported through sound financial analysis (including quantifiable costs/benefit analysis)." OCC's argument ignores the fact that Stipulation, ¶ II.3.b. (p. 7) provides that there will be a cost/benefit analysis, and that DP&L's costs will be subject to review before they are recovered. Trans. Vol. II, pp. 347, 356, 358 (Schroder).

Finally, OCC quotes (p. 35) testimony of one of its witnesses that DP&L should recover costs of grid modernization through distribution rates, not a rider. The Commission should reject that argument for two reasons. First, customers will pay the same amounts whether costs are recovered through a rider or through distribution rates. Second, even with the DMR, DP&L's financial condition will be poor. DP&L Ex. 105, pp. 1-2; Trans. Vol. I., p. 45 (Jackson). Given DP&L's limited access to funds, implementation of grid modernization would be impossible or significantly delayed without the Smart Grid Rider. Trans. Vol. II., p. 319 (Schroder).

IV. THE STIPULATION DOES NOT VIOLATE ANY IMPORTANT REGULATORY PRINCIPLE OR PRACTICE

A. The Stipulation Creates an ESP That Is More Favorable in the Aggregate than an MRO

DP&L's Initial Post-Hearing Brief, pp. 23-26 demonstrated that the ESP established by the Stipulation passes the more favorable in the aggregate ("MFA") test in Ohio

Rev. Code § 4928.143(C)(1). Specifically, the Stipulation provides the following benefits that would not be required under an MRO: (1) payments of $9 - $11.5 million of shareholder funds to provide customer benefits; and (2) significant non-quantifiable benefits.

OCC makes a variety of arguments regarding the MFA test, which the Commission should reject for the following reasons:

1. <u>Charges available under an ESP or an MRO are a "wash"</u>: OCC asserts (pp. 57-58) that "[t]he Settlement improperly foists substantial and improper costs on consumers through the DMR, Reconciliation Rider, and numerous other charges and riders whose costs are currently unknown. These massive charges are not justified and are not part of an MRO. Consequently, the ESP embodied in the Settlement clearly fails to pass the ESP versus MRO test on a quantitative basis." However, Commission precedent and the evidence at the hearing establishes that the DMR would be available under an MRO, pursuant to the emergency clause in the MRO statute. Oct. 12, 2016 Fifth Entry on Rehearing, ¶ 357 (Case No. 14-1297-EL-SSO); Donlon Test. (Staff Ex. 2), p. 5; Malinak Test. (DP&L Ex. 2B), p. 12. The testimony of DP&L witness Malinak demonstrated that DP&L needs the Reconciliation Rider to maintain its financial integrity (Malinak Test. (DP&L Ex. 2B), pp. 52-63); that rider would thus be available under an MRO under the same "emergency" clause. OCC does not identify the "other charges in riders" to which it refers. However, the other riders in the Stipulation would recover costs that could be recovered if DP&L had filed an MRO (through the MRO itself, a distribution rate case, or another proceeding). Trans. Vol. V, pp. 888-89 (Donlon); Malinak Test. (DP&L Ex. 2B), p. 14. For example, if DP&L had filed an MRO, it could still recover costs of grid modernization through a distribution rate case (assuming that DP&L had sufficient funds to implement grid modernization). Those other riders are thus a "wash" under the MFA test.

2. The MRO Statute Does Not Require Shareholder Payments: OCC argues (pp. 58-59) that the $9 - $11.5 million in shareholder payments would be "available" under an MRO. However, those payments are not required under the MRO statute. They are thus a benefit of the Stipulation that would not exist under a fully-litigated MRO.

3. Rapid Grid Modernization: OCC asserts (p. 62) that rapid grid modernization is not a benefit of the Stipulation because grid modernization is "likely years away" and would be available under an MRO. However, grid modernization is a significant benefit, whether it happens now or years in the future. Malinak Test. (DP&L Ex. 2B), p. 65 (describing benefits of grid modernization). Further, unlike the ESP statute (§ 4928.143(B)(2)(h)), the MRO statute (§ 4928.142) does not contain a specific provision authorizing distribution charges to recover grid modernization costs. DP&L cannot implement grid modernization without the Smart Grid Rider. Trans. Vol. II, p. 319 (Schroder).

4. AES's Commitments: OCC asserts (pp. 63-64) that AES's commitments are not a benefit of the Stipulation because AES could have agreed to provide them under an MRO, and the commitments are not real benefits in any event. However, there is no requirement in the MRO statute that AES make the commitments that it did in the Stipulation; those provisions thus are benefits of the Stipulation. Further, OCC witness Kahal admitted that those provisions were benefits of the Stipulation. Trans. Vol. IV., pp. 710-11.

5. Distribution System Reliability: DP&L witness Malinak testified at the hearing that if the DMR was not available under an MRO, DP&L's distribution system would be compromised, which would impose significant non-quantifiable costs on DP&L's customers. Malinak Test. (DP&L Ex. 2B), pp. 13, 18-19. OCC asserts (pp. 64-65) that DP&L has not

demonstrated that its distribution system reliability would be threatened without a DMR. That is not so. As demonstrated in DP&L's Initial Post-Hearing Brief, pp. 6-12, the evidence established that DP&L's ability to provide safe and reliable service would be compromised without the DMR.

6. OCC Misstates DP&L Witness Malinak's Testimony: OCC states (p. 66) that "DP&L Witness Malinak does recognize that weighing against any purported non-quantifiable benefits of the Settlement are the impacts of 'potentially higher electricity rates on the local economy.'" However, OCC misstates what Mr. Malinak was discussing at that point in his testimony. The cited page of his testimony (p. 19) reflects that he was comparing an ESP with the DMR to an MRO without the DMR. He concluded that the ESP would have higher prices under that scenario, but that the ESP would still pass the MFA test, due to non-quantifiable benefits (principally, the provision of safe and reliable service). Malinak Test. (DP&L Ex. 2B), pp. 18-19.

7. DP&L's Headquarters: OCC asserts (pp. 65-66) that maintaining DP&L's headquarters in Dayton is not a benefit, since there is no evidence that DP&L planned to move its headquarters. That argument makes no sense. The headquarters commitment ensures the Commission that DP&L's headquarters will remain in Dayton.

B. The DMR Is Authorized by Ohio Rev. Code § 4928.143(B)(2)

As demonstrated in DP&L's Initial Post-Hearing Brief, the DMR is authorized by three separate provisions in the ESP statute: Section 4928.143(B)(2)(d), Section 4928.143(B)(2)(h), and Section 4928.143(B)(2)(i). None of the Opposing Intervenors contests that the DMR is authorized by those sections. The Commission should thus conclude that those sections authorize the DMR.

Opposing Intervenors argue that the DMR violates other sections of the Ohio Revised Code. The Commission should reject those arguments for the following separate and independent reasons.

1. **The DMR Is Lawful "Notwithstanding" the Sections that <u>Opposing Intervenors Cite</u>**

OCC (pp. 7-9) and EDF/OEC (pp. 12-13) argue that the DMR is an unlawful transition charge under Ohio Rev. Code § 4928.39. OCC also argues (p. 18) that the DMR violates Ohio policy in § 4928.02(H) by subsidizing the cost of providing competitive generation service.

However, as discussed at length in DP&L's Initial Post-Hearing Brief, pp. 34-36, the DMR is lawful pursuant to the "notwithstanding" clauses in § 4928.142(B). The sections that OCC and EDF/OEC cite do not fall within the exceptions to the notwithstanding clause in § 4928.143(B), and the notwithstanding clause in § 4928.143(B)(2)(h) does not contain any exceptions. The Commission should thus reject OCC's and EDF's/OEC's argument that the DMR violates those sections.

2. <u>**The DMR Is Not a Transition Charge**</u>

DP&L's Initial Post-hearing Brief, pp. 33-34 demonstrated that the DMR is not a transition charge.

OCC argues (pp. 14-15) that the <u>causes</u> of DP&L's financial integrity issues (including the debt at DPL Inc.) are all generation related. The Commission should reject that argument for two reasons. First, it is not true. For example, DP&L witness Jackson identified slow load growth as a factor contributing to DP&L's financial integrity issues. Jackson Test. (DP&L Ex. 1B), p. 8. That factor would impact distribution revenue.

Second, and more importantly, OCC's causal arguments ignore the effects of DP&L's financial integrity issues. As demonstrated at length on pages 6-12 of DP&L's Initial Post-Hearing Brief, DP&L cannot provide safe and reliable distribution service to its customers without the DMR. Indeed, OCC witness Kahal conceded that "prompt action" was needed to improve DP&L's financial integrity. Trans. Vol. IV, p. 707. The Commission should conclude that the DMR is needed to allow DP&L to provide safe and reliable distribution service and to implement grid modernization. Thus, it is not a transition charge.

OCC also asserts (p. 16) that "[t]here is no assurance that DMR dollars will be segregated from other dollars that DP&L brings in so as to ensure that DMR dollars will not support generation." However, OCC's argument ignores the fact that Stipulation, ¶ II.2.b (p. 5) establishes that DMR funds will be used to pay debt so as to position DP&L to implement grid modernization. Further, the Stipulation establishes that DP&L will institute a sales process for certain of its coal-fired generation assets (Stipulation, ¶ II.1.e (p. 4)), and DP&L has announced plans to close the remaining coal-fired plants (Malinak Test. (DP&L Ex. 2B), p. 70). The DMR funds thus will not support those generation assets. In any event, the testimony of DP&L witness Schroder establishes that the DMR will not be used to support generation assets. Schroder Test. (DP&L Ex. 3), pp. 22-23.

3. <u>The DMR Does Not Violate § 4928.02(H)</u>

OCC also argues (pp. 18-20) that the DMR violates § 4928.02(H), which provides that it is state policy that distribution charges not support generation service. The Commission should reject that argument because the DMR does not support generation service. See DP&L's Initial Post-Hearing Brief, pp. 33-34, which addressed the same issue regarding whether the DMR was a transition charge.

C. <u>The Reconciliation Rider Is Lawful</u>

OCC argues (pp. 20, 55) that the Reconciliation Rider violates Ohio Rev. Code § 4928.39 (as a transition charge) and violates Ohio Rev. Code § 4905.35 (as an undue preference). The Commission should reject those arguments for the following separate and independent reasons:

1. <u>"Notwithstanding clause"</u>: The Reconciliation Rider is lawful pursuant to Ohio Rev. Code § 4928.143(B)(2)(d). Nov. 3, 2016 Fourth Entry on Rehearing, pp. 21-22 (Case No. 13-2385-EL-SSO). There is a "notwithstanding" clause in § 4928.143(B), and § 4905.39 and § 4905.35 are not among the listed exceptions to that clause. See DP&L Initial Post-Hearing Brief, pp. 34-36.

2. <u>The Reconciliation Rider is not a transition charge</u>: The Commission has already rejected the argument that a charge similar to the Reconciliation Rider is a transition charge. Nov. 3, 2016 Second Entry on Rehearing, ¶ 253 (Case No. 14-1693-EL-RDR). In addition, the Reconciliation Rider will be bypassable (Stipulation, ¶ VI.1.a.ii. (p. 13); transition costs are by definition "nonbypassable." Ohio Rev. Code § 4928.37(A)(1)(b).

3. The Reconciliation Rider is not an undue preference: OCC argues (p. 55) that the bypassable Reconciliation Rider unlawfully discriminates against SSO customers under Ohio Rev. Code § 4905.35. However, the Supreme Court of Ohio has held that "Ohio law does not require uniformity in utility prices and rates," In re Application of Columbus S. Power Co., 147 Ohio St.3d 439, 2016-Ohio-1608 at ¶ 61 (internal quotation marks and citation omitted), and that "[r]ational distinctions between customers are permitted," Ohio Consumers' Counsel v. Pub. Util. Comm., 109 Ohio St.3d 328, 2006-Ohio-2110, 847 N.E.2d 1184, ¶ 26. Accord: Columbus S. Power Co., 2016-Ohio-1608, at ¶ 61 (construing Ohio Rev. Code § 4905.35 as allowing different rates for different customers except for "like and contemporaneous service under substantially the same circumstances and conditions") (internal quotation marks and citations omitted). DP&L does not provide like and contemporaneous service to shopping and non-shopping customers, and the Reconciliation Rider directly benefits shopping customers whose generation service is sourced by competitive bidding. Schroder Test. (DP&L Ex. 3), p. 14 ("[T]he Reconciliation Rider will act as a hedge, and will protect customers from spikes in market prices[,]" and "will thus promote rate stability" for customers.). In addition, non-shopping customers are not unduly or unreasonably prejudiced by the Reconciliation Rider, which they can avoid altogether by shopping for generation service.

D. **The DMR Does Not Result In An Excessive ROE for DP&L**

OCC argues (p. 44) that the Stipulation will result in DP&L earning an excessive return on equity ("ROE"). However, the ROE figures that OCC cites are not reasonable measures of the ROE that DP&L will earn.

Specifically, DP&L witness Malinak explained that three adjustments need to be made to accurately measure the ROE that DP&L will earn under the Stipulation:

1. Exclusion of Asset Impairments: DP&L has recognized $1.354 billion in asset impairments as of December 31, 2016. Malinak Test. (DP&L Ex. 2B), p. 53 n.63. Mr. Malinak explains that those asset impairments should be excluded when calculating DP&L's ROE because "the amount of invested capital does not decline when an asset impairment charge is taken." Id. at 53. In other words, the dollars that were written off in the impairments were still dollars that have been invested by DP&L in the past, and it is reasonable to include them when calculating the ROE that DP&L will actually earn. Id. at 63. Moreover, this Commission has previously held that the significantly excessive earnings test should be calculated "excluding any non-recurring, special., and extraordinary items." June 30, 2010 Finding and Order, p. 18 (Case No. 09-786-EL-UNC).

2. Exclusion of DMR Funds: Stipulation ¶ II.2.b (p. 5) establishes that DMR funds will not go to DP&L's shareholders; instead, they will be used to pay off debt and/or for grid modernization. Mr. Malinak explains that it is thus reasonable to exclude those funds from an ROE calculation: "The DMR charge is meant primarily for mandatory debt reduction and capital investments, not 'discretionary' profit. It therefore makes economic sense to exclude it from the ROE calculations." DP&L Ex. 2B, p. 63 n.70. (Indeed, there will be no dividend payments to AES during the ESP term. Stipulation, ¶ II.1.a, p. 3.)

3. Exclusion of Reconciliation Rider Funds: The Reconciliation Rider will not provide any profits for DP&L; instead, it just recovers net costs associated with the Ohio Valley Electric Cooperative. Stipulation, ¶ VI.1.a (p. 13). It is thus reasonable to exclude that rider from ROE calculations. Malinak Test. (DP&L Ex. 2B), p. 63.

Mr. Malinak's testimony demonstrates that DP&L will earn ROEs ranging between [redacted]%. Malinak Test. (DP&L Ex. 2B), p. 63. OCC's witness failed to make the necessary adjustments. Kahal Supp. Test. (OCC Ex. 12), pp. 20-21. In fact, as OCC argues in its Brief (p. 44), its witness included an assumption for DP&L's distribution rate case, which has not been approved and remains in the discovery phase. Kahal Supp. Test. (OCC Ex. 12), pp. 20-21. The ROE figures that he cites are thus not indicative of the ROEs that DP&L will earn.

OCC also argues (p. 44) that the DMR funds should be subject to the significantly excessive earnings test in Ohio Rev. Code § 4928.143(F). DP&L thoroughly addressed that issue on pages 46-47 of its Initial Post-Hearing Brief.

E. **<u>The DIR is Lawful</u>**

OCC argues (pp. 48-49) that DP&L has failed to comply with the Commission's standard filing requirements ("SFRs") for the Distribution Investment Rider ("DIR"). That argument is puzzling since the DIR is set initially at zero, and will be populated in the future, after DP&L's distribution rate case is resolved. Stipulation ¶ II.2.d. (p. 6). Nor does DP&L know yet what costs it will seek to recover through the DIR. It is thus impossible for DP&L to comply with the SFRs at this time.

OCC also argues (p. 50) that the Commission should reject the DIR because DP&L has been meeting its reliability goals and has high customer satisfaction rankings. That argument turns § 4928.143(B)(2)(h) on its head; under that section, DP&L must be doing those things to receive a DIR-type charge; those are not reasons to reject the DIR. Further, the DIR will allow DP&L to implement distribution improvements more rapidly; a survey at DP&L's

residential and commercial customers shows that they desired greater reliability so DP&L and its customer's expectations are aligned. Williams Dir. Test. (OCC Ex. 13A), Ex. JDW 14, pp. 6034, 6046).

OCC also argues (p. 51) that "[t]here is no demonstrated need for a DIR until [DP&L's plant] records can be examined" in the pending distribution rate case. The Stipulation establishes that the DIR will be set initially at zero, and will not be populated with costs until the distribution rate case is resolved. Stipulation, ¶ II.2.d. (p. 6). The Stipulation thus does what OCC is arguing for.

F. **Other Riders**

OCC asserts (pp. 51-53) that the Commission should not approve the Regulatory Compliance Rider (Stipulation, ¶ VI.1.d. (p. 17)), the Storm Cost Recovery Rider (id. ¶ VI.1.e, pp. 18-19), or the Uncollectible Rider (id. ¶ IV.1.f., pp. 19-20) because Staff has not yet reviewed the costs to be recovered through those riders. However, DP&L witness Schroder testified at the hearing that the costs to be recovered through the riders are always subject to Staff review. Trans. Vol. II, pp. 347, 356, 358.

OCC (p. 52) also argues that these riders should be analyzed in a base rate case; however, that argument is inapposite. Per the Amended Stipulation, no level of storm expense will be in base rates (Stipulation, ¶ VI.1.e.i (p. 18)) and DP&L will address any uncollectible expense included in base rates during the annual true-up filing (Stipulation, ¶ VI.1.f (pp. 19-20). Finally, Staff has conducted discovery with respect to the costs that were previously incurred and included in the Regulatory Compliance Rider and Staff has the ability to conduct prudency reviews during the annual updates of each of the riders.

G. **Generation Separation**

There are a number of inaccuracies in the Opposing Intervenors' briefs regarding DP&L's obligation to separate its generation assets:

1. No Statutory Obligation to Separate: OCC asserts (p. 19) that it is now "seventeen years after the General Assembly called for [generation asset] divestiture." That is not true -- there is no provision in the Ohio Revised Code that required utilities to divest their generation assets.

2. No Commission Order: OCC also asserts (p. 16) that there was a "PUCO[] directive[] that DP&L was to divest [its generation assets] by January 1, 2017." OCC does not cite to a Commission Order, but OCC presumably is relying on the Commission's June 4, 2014 Fourth Entry on Rehearing, ¶ 12 (Case No. 12-426-EL-SSO), which did contain such a directive. However, the Commission subsequently granted DP&L's motion to withdraw and thereby terminate that case. Aug. 26, 2016 Finding and Order, ¶¶ 14-15 (Case No. 12-426-EL-SSO).

3. Authority to Transfer: The arguments asserted by Murray Energy/Citizens (pp. 33-34) are based upon the belief that DP&L has no authority to transfer its generation assets without debt to an affiliate. Not true. The Commission granted DP&L authority to do that in its Sept. 17, 2014 Finding and Order, ¶ 33 (Case No. 13-2420-EL-UNC).

H. **Economic Development Incentives**

OCC asserts (pp. 45-48) that payments to parties in Stipulation, ¶¶ IV (pp. 9-10) and X (pp. 27-36) violate important regulatory principles and practices. OCC made substantially similar arguments regarding whether the Stipulation was the product of serious bargaining, which DP&L refuted supra § II.3. That section of this Reply Brief demonstrated that the payments were lawful, would benefit residential customers, and were consistent with the policies of the State of Ohio.

The Commission should reject OCC's additional arguments for the following reasons:

1. Reasonable Arrangement Statute: OCC cites (p. 46) testimony of OCC witness Haugh (OCC Ex. 11, pp. 10-11) for the proposition that the Economic Development incentives in Stipulation, ¶ IV (pp. 9-10) do not comply with the reasonable arrangement statute in Ohio Rev. Code § 4905.31(E). However, DP&L does not seek approval of those incentives under that section; instead, DP&L seeks approval under Ohio Rev. Code § 4928.143(B)(2)(i), which authorizes economic development incentives. Mr. Haugh conceded that the reasonable arrangement statute does not apply to the economic development incentives in the Stipulation. Trans. Vol. III, pp. 613-14.

2. The Economic Development Incentives Are Not Illegal Rebates: OCC also asserts (p. 47) that the economic development incentives and grants are illegal rebates under Ohio Rev. Code § 4905.33. The Commission should reject that argument because the incentives and grants are expressly authorized by Ohio Rev. Code § 4928.143(B)(2)(i). As discussed at length in DP&L's Initial Post-Hearing Brief, pp. 34-36, Section 4928.143(B) contains a "notwithstanding" clause, and § 4905.33 is not one of the exceptions to that clause.

Further, the Supreme Court of Ohio has construed Section 4905.33 to "'prohibit a utility from charging different rates only when performing 'a like and contemporaneous service under substantially the same circumstances and conditions.'" In re Application of Columbus S.

Power Co., 147 Ohio St.3d 439, 2016-Ohio-1608, 67 N.E.3d 734, ¶ 61 (quoting Ohio Consumers' Counsel v. Pub. Util. Comm., 109 Ohio St.3d 328, 2006-Ohio-2110, 847 N.E.2d 1184, ¶ 23). In that case, OCC argued that the Commission approved capacity prices that discriminated against SSO customers in favor of marketers and shopping customers. Columbus S. Power, 2016-Ohio-1608, at ¶ 60. The Court rejected that argument, holding that OCC provided "no evidence that SSO customers are situated similarly to CRES providers when it comes to the provision of capacity service." Id. at ¶ 61. Accord: id.at ¶ 62 ("AEP provides capacity to SSO customers as a part of its bundled generation service, but it does not provide capacity directly to shopping customers. Instead, AEP sells generation capacity wholesale to CRES providers, who in turn sell generation service directly to shopping customers, with each CRES provider deciding how much of the wholesale capacity cost to pass on to retail consumers."). The Court further noted that "Ohio law does not require uniformity in utility prices and rates." Id. at ¶ 61 (internal quotation marks and citation omitted). Accord: Ohio Consumers' Counsel, 2006-Ohio-2110, at ¶ 25, 26 ("It was reasonable for the PUCO to approve a provision allowing residential aggregation groups and commercial and industrial customers to qualify for larger credits against the rate-stabilization charge, since their agreeing to stay with a competitive supplier can greatly reduce FirstEnergy's provider-of-last-resort risk, for which the rate-stabilization charge compensates. . . . Rational distinctions between customers are permitted.")); Weiss v. Pub. Util. Comm., 90 Ohio St.3d 15, 734 N.E.2d 775 (2000) (classification of customers based upon whether they had competitive alternatives for electric service was reasonable and lawful). Here, there is a rational reason to offer the economic development incentives to business customers but not to residential customers, as providing the incentives to residential customers would not promote economic development

V. CONCLUSION

The evidence in this case establishes that the Stipulation was the product of serious bargaining, that it will benefit customers, and that it does not violate any regulatory principle. The evidence also shows that DP&L needs the full DMR amount for five years for DP&L to provide safe and reliable service and implement grid modernization. The Commission should thus approve the Stipulation without modification.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing The Dayton Power and Light Company's Reply Brief (Public Version) has been served via electronic mail upon the following counsel of record, this 15th day of May, 2017:

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