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. 16-395-EL-SSO
IN THE MATTER OF THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY FOR APPROVAL OF REVISED TARIFFS.	CASE NO. 16-396-EL-ATA
IN THE MATTER OF THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY FOR APPROVAL OF CERTAIN ACCOUNTING AUTHORITY.	CASE NO. 16-397-EL-AAM

OPINION AND ORDER

Entered in the Journal on October 20, 2017

I. SUMMARY

{¶ 1} In this Opinion and Order, the Commission modifies and adopts the Amended Stipulation filed by various parties and authorizes the Dayton Power and Light Company to establish its third electric security plan.

II. PROCEDURAL HISTORY

{¶ 2} The Dayton Power and Light Company (DP&L or the Company) is a public utility as defined under R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission. On February 22, 2016, DP&L filed an application for a standard service offer pursuant to R.C. 4928.141. DP&L's application is for an electric security plan (ESP) in accordance with R.C. 4928.143. Additionally, DP&L filed accompanying applications for approval of revised tariffs and for approval of certain accounting authority.

{¶ 3} By Entry on April 11, 2016, the attorney examiner scheduled a technical conference for May 5, 2016. By subsequent Entry, on August 16, 2016, the attorney examiner scheduled a local public hearing for September 27, 2016, as well as an evidentiary hearing that was eventually continued several times.

{¶ 4} Thereafter, on October 11, 2016, DP&L filed an amended application for an ESP.

{¶ 5} On January 30, 2017, a stipulation and recommendation was filed by DP&L and some of the parties. Subsequently, on March 14, 2017, an amended stipulation and recommendation (Amended Stipulation) was filed by DP&L and some of the parties, including additional parties that were not part of the first stipulation.

{¶ 6} Motions to intervene were granted to the Environmental Law and Policy Center (ELPC), the Independent Market Monitor for PJM (Market Monitor), the Ohio Energy Group (OEG), Energy Professionals of Ohio (EPO), Industrial Energy Users Ohio (IEU-Ohio), Dynegy, Inc. (Dynegy), the Kroger Company (Kroger), Ohio Manufacturers' Association Energy Group (OMAEG), the Ohio Consumers' Counsel (OCC), IGS Energy (IGS), Noble Americas Energy Solutions, LLC (Noble), Ohio Partners for Affordable Energy (OPAE), the Ohio Environmental Council and Environmental Defense Fund (Environmental Groups), EnerNOC, Inc. (EnerNOC), Sierra Club, the Ohio Hospital Association (OHA), City of Dayton (Dayton), Duke Energy Ohio, Inc. (Duke), PJM Power Providers Group and Electric Power Supply Association (EPSA), Honda of America Manufacturing, Inc. (Honda), Wal-Mart Stores East, LP and Sam's East, Inc. (Wal-Mart), Edgemont Neighborhood Coalition (Edgemont), Mid-Atlantic Renewable Energy Coalition, Utility Workers Union of America Local 175 (UWU), the Retail Energy Supply Association (RESA), the Citizens to Protect DP&L Jobs (CPJ), People Working Cooperatively (PWC), PJM Interconnection (PJM), and Murray Energy Corporation (Murray).

{¶ 7} A hearing was held, as scheduled, on April 3, 2017, and continued, intermittently, for eight days. Seven witnesses testified in support of the Amended Stipulation, and 12 testified against.

{¶ 8} A large number of public comments were filed in the docket. The majority of the comments were against DP&L's application and the Amended Stipulation.

{¶ 9} Initial briefs were filed by Murray Energy, CPJ, Walmart, Edgemont, OPAE, Kroger, Dayton, Honda, the Market Monitor, OEG, Sierra Club, PWC, OCC, IGS, RESA, UWU, the Environmental Groups, DP&L, and Staff. Reply briefs were filed by IEU-Ohio, Murray Energy, CPJ, Honda, Dayton, Edgemont, OPAE, OCC, the Environmental Groups, OEG, Kroger, OMAEG, Sierra Club, IGS, RESA, PWC, DP&L, and Staff.

III. Discussion

{¶ 10} R.C. Chapter 4928 provides an integrated system of regulation in which specific provisions were designed to advance state policies of ensuring access to adequate, reliable, and reasonably priced electric service in the context of significant economic and environmental challenges. In considering these cases, the Commission is cognizant of the challenges facing Ohioans and the electric power industry and is guided by the policies of the state as established by the General Assembly in R.C. 4928.02, as amended by Am.Sub.S.B. 221 (S.B. 221).

{¶ 11} In addition, S.B. 221 amended R.C. 4928.141, which provides that, beginning January 1, 2009, electric utilities must provide customers with an SSO consisting of either a market rate offer (MRO) or an ESP. The SSO is to serve as the electric utility's default service. R.C. 4928.143 sets forth the requirements for an ESP. Additionally, R.C. 4928.143(C)(1) provides that the Commission is required to determine whether the ESP, including its pricing and all other terms and conditions, including deferrals and future recovery of the same, is more favorable in the aggregate as compared to the expected results that would otherwise apply under R.C 4928.142.

A. *Summary of the Application*

{¶ 12} In its original application, DP&L proposed an ESP with a term lasting from January 1, 2017, to December 31, 2026. Further, the Company requested to continue its current process for supplying its standard service offer load through 100 percent competitive bidding. DP&L also proposed several new riders. This included: (1) A Distribution Investment Rider (DIR) that would allow DP&L to recover the costs of specific infrastructure needs; (2) a Reconciliation Rider that would permit DP&L to recover deferred costs from the Ohio Valley Electric Corporation (OVEC); (3) a Distribution Decoupling Rider so that DP&L could account for the decoupling associated with energy efficiency requirements; (4) a Clean Energy Rider to facilitate investment in renewable and advanced technologies; and, finally, (5) a Reliable Electricity Rider (RER), which would permit DP&L to credit or charge customers the annual projected variance between the revenue requirement and revenues expected for its generation assets.

{¶ 13} In its amended application, the Company requested an ESP with a shorter term, lasting from 2017 through 2023. Additionally, DP&L also withdrew the RER and replaced it with the Distribution Modernization Rider (DMR). Through the DMR, DP&L requests to recover $145 million per year to permit the Company to access equity and debt capital to finance infrastructure modernization investments. DP&L asserts that the Company's financial integrity is facing significant threats due to a falling credit rating, anemic load growth, and historically low market prices. Accordingly, DP&L requests the DMR be approved so that the resulting cash flow can be used: to pay interest obligations on existing debt at DP&L and its parent company, DPL Inc.; to make discretionary debt prepayments at DP&L and DPL Inc.; and to allow DP&L to make capital expenditures to modernize and maintain transmission and distribution infrastructure. Without the DMR, DP&L states it would have insufficient cash flow to pay normal course obligations and would face an immediate downgrade of its credit rating to below investment grade level.

B. *Summary of the Amended Stipulation*

{¶ 14} As discussed, DP&L and numerous parties filed the Amended Stipulation (Jt. Ex. 1) on March 14, 2017. Below is a summary of the provisions agreed to by the stipulating parties, which is not inclusive of all provisions in the Amended Stipulation and is not intended to replace or supersede the Amended Stipulation.

a. During the term of the ESP, DPL Inc. will not make any dividend payments to AES Corporation or to AES Ohio Generation, LLC (collectively, AES).

b. During the term of the DMR, DPL Inc. will not make any tax-sharing payments to AES and AES will forgo collection of the payments. AES and DPL Inc. will convert the entirety of the current and non-current DPL Inc. Tax Sharing Liabilities to an additional equity investment in DPL Inc. on or before the effective date of the ESP. Thereafter, during the term of the DMR, AES and DPL Inc. will, each month, convert the additional DPL Inc. Tax Sharing Liabilities for that month to an additional equity investment in DPL Inc. AES, DP&L and DPL Inc. agree that the conversions will not be reversed at any future date.

c. Assuming approval by the Federal Energy Regulatory Commission (FERC), DP&L agrees to transfer its generation assets and non-debt liabilities to AES Ohio Generation, LLC, an affiliated subsidiary of DPL Inc., within 180 days following final Commission approval of the Amended Stipulation, provided that the Commission approves the Amended Stipulation without material modifications.[1]

d. DP&L will commit to commence a sale process to sell to a third party its ownership in Conesville, Miami Fort, and Zimmer Stations.[2]

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1 On August 29, 2017, FERC approved the transfer of DP&L generation facilities to its affiliate, AES Ohio Generation LLC. *The Dayton Power and Light Co./AES Ohio Generation LLC*, 160 FERC ¶ 61,034 (August 29, 2017) (order authorizing disposition and acquisition of jurisdictional facilities).

2 On July 24, 2017, DP&L provided notice of the sale of its ownership interests in the Miami Fort Generation Station (Miami Fort) Units 7 and 8 and in the Zimmer Generation Station (Zimmer). *In re Dayton Power and Light Co.*, Case No. 13-2420-EL-UNC, Notice Filing (July 24, 2017) (notice of anticipated sale of ownership interests in generation assets). The Commission hereby takes administrative notice of this

e. AES will use all proceeds from any sale of the coal generation assets to make discretionary debt repayments at DP&L and DPL Inc.

f. DP&L will implement the DMR for years one through three of the term of the ESP. The DMR shall be designed to collect $105 million in revenue per year. With Commission approval, DP&L may have the option of extending the duration of the DMR for an additional two years. DP&L may apply for such extension by filing an application in a separate docket by June 1, 2019. The Commission will determine the amount of the DMR for the two-year extension period based upon the evidence presented in the separate docket, including, but not limited to evidence of DPL Inc.'s and DP&L's financial needs and evidence of the measures undertaken by DPL Inc. and DP&L, to address their financial issues.

g. Cash flow from the DMR will be used to (a) pay interest obligations on existing debt at DPL Inc. and DP&L; (b) make discretionary debt prepayments at DPL Inc. and DP&L; and (c) position DP&L to make capital expenditures to modernize and/or maintain DP&L's transmission and distribution infrastructure.

h. The cost allocation of the DMR to tariff classes will balance the bill impact to customers, fairness, and cost-causation principles. This allocation shall be as follows: 34 percent allocated based on 5 Coincident Peaks, 33 percent allocated based on distribution revenue, and 33 percent based on historic allocation of the currently charged nonbypassable rider. The DMR will include an annual true-up mechanism, without carrying charges.

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filing. Accordingly, as the July 24, 2017 Notice Filing acknowledges the sale of the two generation stations, OCC's May 15, 217 motion requesting the Commission take administrative notice of an April 21, 2017 security filing documenting the same transaction is moot.

i. A DIR will be established, set initially at zero, to recover incremental distribution capital investments. Recovery of revenue requirements will be based upon and commence with the resolution of DP&L's distribution rate case or a future distribution rate case. All other matters related to the DIR, including, but not limited to cost allocation, term, rate design, and annual revenue caps, shall be addressed in the pending distribution rate case or a future distribution rate case.

j. The DMR revenues shall be excluded from Significantly Excessive Earnings Test (SEET) calculations. DP&L's SEET threshold will remain at 12 percent.

k. DP&L will file a comprehensive Distribution Infrastructure Modernization Plan (Modernization Plan) within three months of completion of the Commission's Power Forward initiative or February 1, 2018, whichever is earlier unless an extension is recommended by Staff or granted by the Commission.

l. The Modernization Plan should assess and analyze the cost-effectiveness and provide a cost/benefit analysis of all of its components and provide anticipated timelines for deployment. The Modernization Plan will identify operational cost savings from the program. The Modernization Plan will include a proposal for specific technology components.

m. The costs of DP&L's grid modernization efforts as outlined in the to-be-filed Modernization Plan, once approved by the Commission, will be recovered through a new Smart Grid Rider (SGR). The costs of the grid modernization program will be subject to an annual prudence review. The SGR shall be set initially at zero. All other matters relating to the SGR shall be addressed in a future proceeding seeking approval of the Modernization Plan.

n. DP&L will implement a bypassable, Standard Offer Rate that will be based on competitive bid auctions, as accepted by the Commission in Case No. 08-1094-EL-SSO and charged on a $/kilowatt hour (kWh) basis for all tariff classes.

o. Consistent with the current process, DP&L will procure renewable energy credits to meet the requirements in R.C. 4928.64 and recover those reasonable and prudent costs on a bypassable basis. Although these amounts will be separately identified in supporting schedules, these amounts will be included as a component of the Standard Offer Rate instead of a separate Alternative Energy Rider (AER) Tariff. Additionally, DP&L agrees to not implement the cash working component of the Standard Offer Rate as originally proposed in the Application.

p. For the proposed Standard Offer Rate, DP&L will phase in the proposed rate design for the Residential Heating Class and Secondary Class over a two year period such that DP&L's proposed rate design will be in place beginning year three of the ESP.

q. The Unbilled Fuel as proposed in the Application will be recovered and tracked separately on a bypassable basis over a three-year period with no carrying charges.

r. In DP&L's distribution rate case (Case No. 15-1830-EL-AIR), there will be an evaluation of costs contained in distribution rates that may be necessary to provide standard service offer service. Any reallocation of costs to the standard service offer as a result of this evaluation will be revenue neutral to DP&L.

s. DP&L will offer several different economic development incentives to large customers that are Signatory or Non-Opposing Parties. Customers may receive only one of the incentives below, and incentives may not be combined.

The costs of these programs will be recovered through DP&L's nonbypassable Economic Development Rider (EDR), consistent with how those costs are allocated and recovered through that rider currently. The provisions shall expire when the DMR expires, or when an equivalent economic stability charge intended to provide financial stability to DP&L or DPL Inc., whether proposed in this case or another proceeding, expires. DP&L will implement the following economic development incentives that will be equal to $(0.0040) per kWh for all kWh:

i. Economic Improvement Incentive: available to single site customers with megawatt (MW) demand of 10 MW or greater with an average load factor of at least 80 percent. The Signatory or Non-Opposing Parties that qualify for the incentive are: one member of OEG, one member of IEU-Ohio, and one member of OHA.

ii. Automaker Incentive: available to single site customers with MW demand of four MW or greater. The Signatory or Non-Opposing Parties that qualify for the incentive are: One member of OEG, Honda, and one member of OMAEG.

iii. Ohio Business Incentive: available to businesses headquartered in the State of Ohio; this incentive will aggregate accounts within the DP&L service area and must achieve a total average demand of two MW or greater. The Signatory or Non-Opposing Parties that qualify for the incentive are: Honda, two other members of OMAEG, Kroger, and one member of IEU-Ohio.

t. DP&L agrees to make the following economic development payments, which payments shall not be recoverable from customers. The provisions shall expire when the DMR expires, or when an equivalent economic stability charge intended to provide financial stability to DP&L or DPL Inc., whether proposed in this case or another proceeding, expires.

i. Economic Development grant fund of $1,000,000 annually for use by customers within DP&L's service territory for energy programs and infrastructure.

ii. Within 60 days of Commission approval of the Amended Stipulation, DP&L shall provide the first of no more than five economic development grants that will total $2 million dollars over the term of the ESP. DP&L will consult with the Adams County officials to identify the most appropriate third-party to administer the funds. The funds will be used specifically for (a) economic development activities, (b) workforce development, and (c) direct financial education assistance for job training at state or federally licensed educational institutions for individual DP&L employees who work at generation facilities in Adams and Brown Counties, Ohio and surrounding communities. At least half of the funds provided by DP&L shall be used for job training. DP&L further agrees to collaborate with local and statewide economic development organizations to identify and promote potential economic development in Adams and Brown Counties.

iii. To partially offset the costs of the Amended Stipulation and rate design modifications, within ten days of an Order by the Commission authorizing DP&L to file tariff sheets to collect the DMR, DP&L will pay $145,000 to IEU-Ohio for the benefit of its members, $18,000 to OMAEG for the benefit of its members, and $160,000 to Kroger. Thereafter, DP&L will pay the same amounts to IEU-Ohio, OMAEG and Kroger, on the annual anniversary of the date on which the first payment was made. If the Commission, another administrative agency, or a court modifies the proposed amount to be collected or credited under the DMR or the EDR credits, the parties agree that such modification is a material modification and agree to negotiate in good faith to amend this paragraph so that the parties receive the expected value of the agreement. In no event shall IEU-Ohio, OMAEG, Kroger or any of their benefiting members be obligated to return all or any portion of any payment made by DP&L.

u. DP&L has proposed riders in both its pending Distribution Rate case and this ESP case. Those requests will be treated as follows:

   i. In the Reconciliation Rider, DP&L shall withdraw its request to recover in this case OVEC costs that it has deferred pursuant to the Commission's Order in Case No. 13-2420-EL-UNC. After an Order in this ESP case, DP&L shall defer/recover or credit, the net of proceeds from selling OVEC energy and capacity into the PJM marketplace and OVEC costs. The Reconciliation Rider will be trued up and the rate allocation will be updated annually. DP&L agrees to continue pursuing options to discharge its OVEC obligations. DP&L shall file an annual report no later than February 28 of each year during the term of the ESP, outlining its efforts made in the prior 12 months to relieve itself of its OVEC obligations.

   ii. DP&L will implement the Decoupling Rider to include the lost revenues currently recovered through the Energy Efficiency Rider as agreed to in the Stipulation filed in Case No. 16-649-EL-POR on December 13, 2016. All other matters relating to the Decoupling Rider, including but not limited to cost allocation, term and rate design, shall be addressed in the pending distribution case, Case No. 15-1830-EL-

RDR or in DP&L's next Energy Efficiency Portfolio case. This Rider will be charged on a nonbypassable basis.

iii. DP&L's Transmission Cost Recovery Rider – Nonbypassable (TCRR-N) will be implemented as it is currently. In addition, DP&L agrees to deploy a small-scale pilot program providing an alternative means for customers to obtain and pay for services otherwise provided by or through the TCRR-N.

iv. DP&L will implement a nonbypassable Regulatory Compliance Rider (RCR) to recover the following five separate deferral balances: (1) Consumer Education Campaign costs; (2) Retail Settlement System costs; (3) Green Pricing Program costs; (4) Generation Separation costs; and (5) Bill Format Redesign costs. DP&L will recover carrying costs at DP&L's cost of debt on the Bill Format Redesign starting at the time those costs were incurred. Additionally, carrying costs at DP&L's cost of debt will be included at the onset of recovery of the RCR for the remaining RCR items except for Generation Separation costs. The rider will be trued up annually. The cost allocation of the RCR to tariff classes will be based on base distribution revenues. The RCR rate design will be a monthly charge per customer account. The total dollars recovered through the RCR shall not exceed a total of $20 million over the ESP term including the remaining costs associated with the separation of the generation assets which is capped at $10 million as set forth in Case No. 13-2420-EL-UNC. DP&L may also recover costs associated with supplier consolidated billing provisions, through the RCR, provided that the amount recovered through the RCR does not exceed the aforementioned cap.

v. The Storm Cost Recovery Rider (SCRR) will remain in place as a placeholder tariff. DP&L will file a future application if it seeks any recovery of costs from major storms. This nonbypassable rider will include Operating and Maintenance (O&M) expenses incurred for all storms that are determined to be "Major Events," as defined in Ohio Adm.Code 4901:1-10-01. No level of expenses for major storms will be in base rates, meaning that there will be no baseline for which an amount over would be considered. Therefore, all prudently-incurred expenses that are incremental to base rates would be considered for recovery. This would include, among other things, the amounts over the first forty hours of labor in a given week as well as overtime paid for union and management employees. If any mutual assistance revenue is received for storm repairs done in other markets, the straight-time labor portion of this would be deducted from the Company's storm rider recovery request to avoid potential double-recovery. Any capital assets would be addressed through the DIR.

vi. Additionally, carrying charges at the last approved cost of debt would be accrued from the point of deferral until recovery begins. Recovery would generally be over one year; however, if the deferred amount is large, the Company may request a longer recovery period to lessen the impact on rates. The Company will file yearly its SCRR by April 1 of each year and Staff will complete its audit with the Commission's approval for rates to be effective around August 1 of each year. The cost allocation of the SCRR to tariff classes will be based on base distribution revenues and will be a monthly charge per customer account. If the pending distribution rate case is not approved, then any future recovery will be offset by the three-year average of major storm repair expenses (less any outlier storms) until a future case decides an amount, if any, to be considered in base rates.

vii. As originally proposed in DP&L's distribution rate case, DP&L will implement an Uncollectible Rider to recover the uncollectible expense through a nonbypassable, annually filed true-up rider with the exception that DP&L will recover uncollectible expense associated with bypassable standard service offer rates through a bypassable component of the Uncollectible Rider. This rider will recover uncollectible expense that has historically been included in individual rate components and will track and recover actual costs. Implementation of this rider also represents the removal of uncollectible expense from other individual rate components except for the historical uncollected uncollectible Percentage of Income Payment Plan amounts up to the effective date of the rider. DP&L will address any uncollectible expense included in base distribution rates in the annual true-up filing of this rider, which will include an adjustment to revenue until new base distribution rates are in place. In addition, any amounts written off as uncollectible that are ultimately recovered will be credited back to the rider. Carrying charges will be included within the calculation of the over- or under-collection in the annual true-up mechanism.

v. No later than 60 days after a Commission order approving the Amended Stipulation with or without modifications, Staff will request that the Commission conduct a rule review to establish parameters to all for non-commodity billing in all electric distribution utility service territories. DP&L agrees to provide for a non-commodity billing on a customer's utility bills after the Commission has evaluated and approved billing requirements for non-commodity billing in a rule review process or another proceeding. DP&L will be permitted to seek cost recovery associated with providing non-commodity billing in part from Competitive Retail Electric Service (CRES) providers utilizing non-commodity billing and other third parties and ratepayers equally in another proceeding, with any application for cost recovery to be submitted on an expedited basis to ensure timely implementation of non-commodity billing. Notwithstanding any provision to the contrary, DP&L shall submit an application to the Commission to establish non-commodity billing and parameters and to establish any terms for cost recovery by DP&L no later than 18 months after the date the Commission issues an order approving the stipulation.

w. DP&L agrees to work with Staff, RESA, and IGS to determine the parameters of a two-year pilot supplier consolidated billing program for any CRES provider that is qualified and interested. The purpose of the pilot will be to provide the industry with data and information on the practicality of a supplier consolidated billing implementation in the Ohio electric choice market. Costs related to DP&L's implementation of the pilot supplier consolidated billing program will be shared 50 percent by participating CRES providers, and DP&L will develop and provide all interested CRES providers with an estimate of the total implementation costs, with the exception that DP&L will provide a credit of $150,000 toward the CRES providers' portion of these costs.

x. Finally, DP&L reached specific agreements with individual signatory parties, including Dayton, Honda, Edgemont/OPAE, OHA, and PWC, which are described in the Amended Stipulation. These provisions expire when the DMR expires, or when an equivalent economic stability charge intended to provide financial stability to DP&L or DPL Inc., whether proposed in this case or another future proceeding, expires.

C. *Consideration of the Amended Stipulation*

{¶ 15} As happens in many cases before the Commission, the parties filed a stipulation, which the parties specifically describe as the culmination of discussions and accommodation of diverse interests. Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *Consumers Counsel v. Pub. Util Comm.*, 64 Ohio St.3d 123,125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util Comm.*, 55 Ohio St.2d 155,157, 378 N.E.2d 480 (1978).

{¶ 16} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR (Apr. 14, 1994); *Western Reserve Telephone Co.*, Case No. 93- 230-TP-ALT (Mar. 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al. (Dec. 30, 1993). The ultimate issue for our consideration is whether the agreement is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria: (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties? (2) Does the settlement, as a package, benefit ratepayers and the public interest? (3) Does the settlement package violate any important regulatory principle or practice? The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

1. IS THE SETTLEMENT A PRODUCT OF SERIOUS BARGAINING AMONG CAPABLE, KNOWLEDGEABLE PARTIES?

{¶ 17} In the Amended Stipulation, the signatory parties assert the resulting settlement is a product of extensive, arm's-length bargaining among the signatory parties and non-opposing parties and that no parties were excluded from negotiations (Jt. Ex. 1 at 1-2). Company witness Sharon R. Schroder testified that numerous negotiations were held over a period of months and that the signatory parties and non-opposing parties represent diverse interests (Co. Ex. 2 at 4-5). Staff witness Patrick Donlon testified similarly, saying that the signatory parties and non-opposing parties are knowledgeable, capable parties that regularly participate in Commission proceedings and are represented by experienced and competent counsel (Staff Ex. 2 at 3-4). Honda, OEG, PWC, OPAE, and Kroger also aver that the Amended Stipulation meets the first prong of the test.

{¶ 18} OCC is the lone party that argues otherwise. OCC witness Mathew Kahal testified that only 10 of the roughly 30 intervenors support the Amended Stipulation, and of those intervenors, several of them do not explicitly support the DIR or the DMR. Other signatories, according to Kahal, only offer their support in exchange for cash handouts. (OCC Ex. 2 at 13, 16.) OCC witness James Williams further stated that the bulk of DP&L's customer base—the residential customers represented by OCC—do not support the Amended Stipulation. Without the support of the residential customers, who represent 89 percent of DP&L's customers, Williams submits that the Amended Stipulation does not represent a diversity of interests. (OCC Ex. 13 at 7.)

{¶ 19} In response, DP&L remarks that the Commission has repeatedly found that one party cannot effectively veto a stipulation, citing *In re FirstEnergy,* Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) at 41. Further, even though OCC opposes the Amended Stipulation, DP&L notes that the City of Dayton, the largest municipality in DP&L's service territory, as well as three low-income residential groups and Staff all signed the Amended Stipulation (Jt. Ex. 1 at 39-40). DP&L also maintains that OCC wrongly classifies the provisions that benefit specific parties as handouts. According to DP&L, many of the benefits are economic development incentives, which are specifically contemplated by R.C. 4928.143(B)(2)(i). Other contributions go to residential customers or further state policies. Thus, DP&L states the provisions are lawful and proper. In sum, DP&L states OCC's argument should be rejected, and the Commission should find that the Amended Stipulation is a product of serious bargaining.

{¶ 20} The Commission finds that the Amended Stipulation is the product of serious bargaining among capable and knowledgably parties. First, the signatory parties routinely appear in complex hearings before the Commission and all are represented by counsel with extensive experience (Staff Ex. 2 at 3-4). Further, the record demonstrates that the Amended Stipulation was the result of an extensive negotiations process (Co. Ex. 3 at 7-8), and there is no evidence that any party was unduly excluded from the negotiations process.

{¶ 21} We note that OCC witness Williams misstates the first prong of the three part test in his testimony (OCC Ex. 13 at 6). Although diversity of interests among signatory parties is not *necessary* for any stipulation to meet the first prong, it is *helpful* if the signatory parties do represent a variety of interests (Tr. Vol. V at 864-65). The parties signing the Amended Stipulation represent diverse interests, including a large municipality, competitive suppliers, commercial customers, industrial consumers, large businesses, advocates for low-income residential customers, and Staff. OCC's argument that the Amended Stipulation lacks a diversity of interests unless it includes OCC is without merit. Initially, we note that we have consistently rejected numerous proposals that any one class of customers can effectively veto a stipulation, finding that we will not require any single party, including OCC, to agree to a stipulation in order to meet the first prong of the test. *Dominion Retail v. Dayton Power & Light Co.*, Case No. 03-2405-EL-CSS, Opinion and Order (February 2, 2005) at 18; Entry on Rehearing (March 23, 2005) at 7.

{¶ 22} Moreover, it is inaccurate for OCC to assert that no residential customers support the Amended Stipulation. As discussed by DP&L, the City of Dayton, the largest municipality in DP&L's service territory, as well as three low-income residential groups and Staff all signed the Amended Stipulation (Jt. Ex. 1 at 39-40). We further find OCC's contention that some parties only agreed to the Amended Stipulation in exchange for cash payments to be unpersuasive. While many signatory parties receive benefits under the Amended Stipulation, we will not conclude that these benefits are the sole motivation of any party in supporting the Amended Stipulation. We expect that parties to a stipulation will bargain in support of their own interests in deciding whether to support a stipulation. Additionally, we believe that parties themselves are best positioned to determine their own best interests and whether any potential benefits outweigh any potential costs. The question for the Commission under the first prong of our test for the consideration of stipulations is whether the benefits to parties are fully disclosed as required by R.C. 4928.145.

{¶ 23} Accordingly, we find that, based upon the record before the Commission, all provisions of the Amended Stipulation and any other agreements among the parties were fully and adequately disclosed pursuant to R.C. 4928.145 and that the Amended Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties.

2. DOES THE SETTLEMENT, AS A PACKAGE, BENEFIT RATEPAYERS AND THE PUBLIC INTEREST?

{¶ 24} DP&L, as well as the City of Dayton, Honda, IGS, Kroger, OEG, RESA, and Staff, submits that the Amended Stipulation benefits ratepayers and the public interest for numerous reasons. DP&L first argues that with the approval of the Amended Stipulation, and in particular the DMR, DP&L will be able to maintain its financial integrity and thus continue to provide safe and reliable service to customers. (Co. Ex. 1 at 17-18.) The Company maintains that it is facing major financial difficulties and that its credit ratings were recently downgraded. The updated credit ratings, according to the DP&L, are either below investment grade or barely investment grade (Co. Ex. 105). DP&L asserts that this could lead to a higher cost of debt for the Company, which, in turn, would lead to higher utility rates for customers. (Co. Ex. 2 at 58-59.)

{¶ 25} DP&L further states that the DMR allows DP&L to pay down debt and modernize its distribution grid. The Company avers that the public and the ratepayers would benefit from a modernized grid as it would, among other things, significantly improve reliability. (Co. Ex. 2 at 58-59.) Staff agrees, noting that the Commission announced intentions to advance a smart grid initiative. Staff avers that while details of the initiative are still being determined, it will require a significant investment from all electric utilities. According to Staff, the DMR puts DP&L in a financial position to be able to make such investments. Staff states consumers will benefit from an improved, more advanced distribution grid and thus will benefit from the DMR.

{¶ 26} The Company additionally asserts that the public benefits from concessions made by DP&L's parent company, AES. As part of the Amended Stipulation, AES will not receive any dividends from DPL Inc., nor will AES collect DPL Inc.'s tax sharing payments. Further, AES will convert DPL Inc.'s tax liabilities into equity. DP&L affirms that these are material investments from AES that are not otherwise required or typically within the Commission's jurisdiction. According to DP&L, these concessions improve the Company's financial health by providing additional cash flow to DP&L and DPL Inc. (Co. Ex. 2 at 4.)

{¶ 27} DP&L submits that the Amended Stipulation has numerous other provisions that provide benefits to customers. These include:

a. Competitive bidding. DP&L states that 100 percent of the Company's SSO load will be provided through competitive bidding. According to DP&L, competitive bidding is the most significant reason for the reduction of residential customer bills.

b. Transfer of generation assets and sale of coal assets. The Company asserts that by transferring its generating assets to an affiliate, customers benefit. Further, with the sale of certain coal-fired generation assets, DP&L states it will use the proceeds to pay down debt at DP&L and DPL Inc. and thus improve its financial well-being and allow the Company to better serve customers.

c. Economic development incentives. According to DP&L, incentives provided to certain large employers allow those companies to retain existing employees and hire new ones. DP&L submits that these investments have a multiplier effect, as those employees then contribute to other local businesses.

d. Economic development grant fund. DP&L avers this provides funds to certain customers to use for energy programs, certain large employers within the Company's service territory, as well as to Adams County. DP&L maintains these costs are absorbed completely by the Company and not recovered from customers.

e. Reconciliation Rider. With this rider, DP&L can recover or credit the net proceeds of selling OVEC energy and capacity into PJM. DP&L asserts that the rider is necessary for the Company's financial integrity but also serves as a hedge for customers against future spikes in power prices.

f. Competitive enhancements. The Company states the Amended Stipulation provides three significant competitive enhancements which assist the competitive market, and, in turn, benefit customers. According to DP&L, this includes a pilot program that makes TCRR-N rider bypassable, a supplier consolidated billing program, and provisions to include non-commodity items on a utility consolidated bill.

g. Provisions regarding City of Dayton. DP&L avers the residents of the City of Dayton, which is the largest municipality in the Company's service territory, benefit significantly from a number of provisions in the Amended Stipulation. Among other things, DP&L agrees to maintain its headquarters within the city, develop a job training program, and contribute $200,000 annually for economic development programs.

h. Funds for low-income customers. DP&L states it is committing to provide $965,000 annually, of shareholder funds, for its low-income residential customers.

{¶ 28} Finally, the Company maintains that with the approval of the Amended Stipulation, a typical residential customer will experience a reduction in rates. DP&L asserts this would result in the Company having the lowest residential rates in the state. (Co. Ex. 3 at 20-21.)

{¶ 29} OPAE, Edgemont, and PWC agree that the Amended Stipulation benefits the public interest and ratepayers, particularly low income residential customers. OPAE notes that nearly 20 percent of the population of Montgomery County lives below the poverty line and utility costs represent a major housing concern for many residents. OPAE asserts that besides the $965,000 of shareholder funds that DP&L is contributing annually to low-income residential customers, the Company is also providing $200,000 a year to fund programs to assist low-income, elderly, and disabled customers. OPAE confirms that this is an increase in the amount of assistance low-income customers receive and will substantially help customers in need. (OPAE Ex. 1 at 3-4.)

{¶ 30} Intervenors opposing the Amended Stipulation, including OCC, the Environmental Groups, Walmart, Murray, and UWU, argue that the Amended Stipulation does not benefit ratepayers or the public interest, as discussed below.

a. Whether the DMR benefits ratepayers and the public interest

{¶ 31} As discussed, DP&L maintains that, without the DMR, the Company's financial integrity would be jeopardized, which would affect the Company's ability to provide safe and reliable service to its customers. According to DP&L, the Company needs the DMR in order to have sufficient cash flows to pay all normal course obligations, including its operating expenses. Further, with the DMR, DP&L claims it will be on a path to be able to modernize its distribution grid.

{¶ 32} OCC argues that the DMR is not needed in order for DP&L to provide its customers with safe and reliable service. OCC asserts that the Commission sets specific reliability standards for electric utilities such as DP&L and requires them to file annual reports regarding their performance. According to OCC, DP&L has met or exceeded those standards every year for the past five years. OCC further maintains that if DP&L fails to meet the reliability standards, the Commission has rules in place that gives the Company nearly two years to correct any issues contributing to the decreased reliability performance. Accordingly, OCC submits that DP&L has not demonstrated that the current status of the Company's financial integrity is affecting its ability to provide safe and reliable service. (OCC Ex. 13 at 19-21.)

{¶ 33} DP&L responds that it is not disputed that the Company's financial integrity is presently at risk. DP&L further maintains that the Company's ability to provide safe and reliable service to its customers is directly tied to its financial integrity. Therefore, DP&L states the DMR is necessary and needed. While DP&L has continued to satisfy the Commission's reliability standards, DP&L avers this is because of previously stability riders that are no longer available. Moreover, DP&L affirms it is illogical to wait for service to become unreliable before addressing known concerns.

{¶ 34} OCC, Walmart, and the Environmental Groups further assert that the DMR is harmful to consumers and is not a cost that should be covered by ratepayers. OCC avers that DP&L is requesting the DMR to address significant debt issues that are affecting the Company's financial integrity. OCC states the debt issues stem from AES's purchase of DPL Inc. and DP&L. According to OCC, when AES purchased DP&L, and its generation assets, AES burdened DPL Inc. with approximately $1 billion in debt. OCC asserts that DP&L, by itself, is not facing any financial hardships and still maintains an investment grade credit rating (Co. Ex. 105). Walmart agrees and states that the decision to house the debt with DPL

Inc. was a business decision made by AES. Both Walmart and OCC submit that it is thus unfair for ratepayers to solve the Company's self-inflicted financial predicament. If approved, OCC asserts the DMR will be harmful to residential customers, as the average residential ratepayer will be paying $9 per month for the DMR, or $107 per year. Walmart further argues that the DMR, while harmful, does not change the Company's financial situation. According to Walmart, even with the cash infusion from the DMR factored in, DPL Inc.'s credit rating would still not be investment grade. OCC and Walmart submit that, instead of the DMR, DP&L should have pursued other, better options to address the Company's financial dilemma. Both OCC and Walmart suggest that DP&L's parent company, AES, could provide some form of equity infusion to alleviate DPL Inc.'s financial difficulties. OCC additionally states that the implementation of ring fencing measures to create greater credit rating separation between DPL Inc. and DP&L would also be beneficial. In sum, OCC, Walmart, and the Environmental Groups maintain that AES has the means and ability to alleviate the financial problems faced by DPL Inc. and DP&L and it should not be the responsibility of the ratepayers to pay the Company's debts.

{¶ 35} In reply, DP&L avers that AES is making significant concessions in order to address the financial issues facing DP&L and DPL Inc. The Company notes that the concessions agreed to in the Amended Stipulation would not otherwise have been available if the case was fully litigated. Even with the concessions by AES, however, DP&L claims that the DMR is still necessary.

b. The evidence demonstrates that the possible downgrade of DP&L's credit rating and the actual downgrade of DPL's credit rating has had an adverse effect upon the Company's ability to access capital markets and invest in the grid.

{¶ 36} In the FirstEnergy utilities' most recent electric security plan proceeding, the Commission was confronted by evidence of potential adverse consequence of a possible downgrade of three electric distribution utilities' credit ratings and the possible downgrade of the credit ratings of their parent company. In this proceeding, there is undisputed evidence of the actual adverse consequences of a possible downgrade to an electric distribution utility as well as the actual downgrade of its parent company. These adverse consequences are real and have a significant impact on the Company's ability to access capital markets to fund grid modernization in its service territory. In fact, OCC witness Kahal conceded that he considered it to be vitally important that DP&L have an investment grade credit rating (Tr. Vol. IV at 695).

{¶ 37} The record demonstrates that at the time DP&L's testimony was filed in this case on October 11, 2016, DPL's ratings were B+/BB/Ba3 with negative outlooks (Fitch/S&P/Moody's) and DP&L's secured bond rating was BBB/BBB-/Baa2 with negative outlooks (Fitch/S&P/Moody's). Thus DPL was below investment grade while DP&L was investment grade with negative outlooks. (Co. Ex. 1B at 28; Co. Ex. 2B at 42-43). However, the record also reflects that, by the time of the hearing, S&P had downgraded the issuer credit rating of both DPL and DP&L to BB- which is below investment grade (Tr. Vol. IV at 698-700; Co. Ex. 105).

{¶ 38} As a result, in its recent refinancing of debt, DP&L was unable to refinance the debt on terms typical for a traditional investment grade utility. Instead, DP&L was forced to accept credit terms including: a short-term maturity (six years); a relatively high variable cost of borrowing; and a covenant package which, among other terms, prevents the Company from raising debt to modernize the transmission and distribution system for the term of the loan (Co. Ex. 1B at 9-10; Tr. Vol. I at 109-110). The Commission finds that these terms pose a significant obstacle to grid modernization in the DP&L service territory.

c. *DP&L and its parent company have taken affirmative steps to address their financial difficulties.*

{¶ 39} The record demonstrates that DP&L and DPL have taken affirmative steps to address their financial difficulties prior to seeking relief from the Commission in this proceeding. DPL sold its interest in its retail affiliate, raising $90 million in cash. Further, DP&L sold its interest in the East Bend generation facility, raising $15-$20 million in cash and eliminating the negative cash flow from East Bend's operations. (Tr. Vol. I at 33-34).

{¶ 40} In addition, although DP&L has paid dividends to DPL Inc., including $50 million in 2015, DPL Inc. has used these dividends, exclusively, to meet interest obligations and to retire debt at DPL Inc. On the other hand, DPL Inc. has not made any dividend payments to its parent, AES, since 2012. (Co. Ex. 1B at 11; Tr. Vol. I at 88). Instead, DPL Inc. has used all excess cash flows to pay down debt (Co. Ex. 1A at 11).

{¶ 41} The evidence in the record demonstrates that DP&L's financial difficulties result from a number of factors. These factors include weak load growth due to the slow economic recovery and increased use of energy efficiency measures; the low capacity clearing price in the most recent PJM capacity auction; and low energy prices caused by low natural gas prices (Co. Ex. 2B at 8). Moreover, all of the debt at DP&L was issued with the full faith and credit of the utility and is supported by the assets and cash flow of DP&L (Co. Ex. 1B at 13). To the extent that the debt at DPL Inc. resulting from the acquisition is also a factor, it is important to note that, as discussed above, DPL Inc. has not made a dividend payment to AES since 2012 and has used all excess cash flows to pay down debt (Co. Ex. 2B at 11). Moreover, in the Amended Stipulation, DPL Inc. has committed that AES will make the equivalent of an equity contribution under the Amended Stipulation, which will result in a significant improvement to DPL Inc.'s capitalization ratio. (Tr. Vol. I at 107-108).

d. The DMR would provide a needed incentive to DP&L to focus its efforts on grid modernization.

{¶ 42} We agree with the testimony of Staff witness Donlon that the DMR will enable the Company to procure funds to invest in its grid modernization initiatives (Staff Ex. 2 at 4). The Company will use the funds recovered under the DMR exclusively to improve its ability to access capital markets and to invest in grid modernization. Specifically, the Company has committed to use the cash flow from the DMR to: (1) pay interest obligations on existing debt at DP&L and its parent, DPL Inc.; (2) make discretionary debt prepayments at DP&L and DPL Inc.; and (3) allow DP&L to make capital expenditures to maintain and modernize its distribution and transmission infrastructure (Co. Ex. 11B at 12-13). Moreover, testimony during the hearing shows that the Company cannot fund grid modernization investments without the DMR (Tr. Vol. I at 106-107). However, in conjunction with the Reconciliation Rider, the DMR will enable DPL Inc. and DP&L to pay down their existing debt (Co. Ex. 2A at 64).

{¶ 43} Nonetheless, in order to ensure that DMR revenues are used in a manner consistent with the Amended Stipulation, the Commission directs Staff to conduct an ongoing review of the use of Rider DMR cash flow during the ESP. In order to assist Staff in performing such review, the Commission directs Staff to prepare a request for proposal (RFP) for a third-party "monitor" to assist Staff and work with DP&L and DPL, Inc. This RFP should include interim quarterly updates on the use of DMR funds to Staff, a mid-term report to be docketed in any proceeding in which DP&L seeks an extension of the DMR, within 60 days of after the filing of an application for extension, and a final report in a separate docket established for the review of the DMR, to be filed 90 days after the termination of the DMR or its extension. This review process is consistent with reviews established for riders similar to the DMR. *See In re FirstEnergy,* Case No. 14-1297-EL-SSO, Eighth Entry on Rehearing (Aug. 16, 2017) at 49-50.

{¶ 44} OCC may be correct in its arguments that the DMR is not needed to maintain reliability, but that argument is of limited relevance to our decision. The Commission notes that the record shows that grid modernization will improve reliability by reducing the number of outages and improving responses to outages by the EDUs, and that grid modernization also is necessary to deliver innovative products to consumers, to empower consumers to make informed decision in the marketplace and to improve the efficiency of the grid, all of which are consistent with state policy set forth in R.C. 4928.02(B), (C), (D), and (F). (Co. Ex. 2B at 77).

e. The amount of the DMR provided by the Amended Stipulation is supported by the record.

{¶ 45} The evidence in the record demonstrates that including the DMR, as proposed in the Amended Stipulation, and the Reconciliation Rider, in DPL Inc. and DP&L revenues and cash flows, respectively, will result in a marked improvement in the financial condition and integrity of DP&L and DPL Inc. (Co. Ex. 2A at 61). Further, the DMR and Reconciliation Rider should provide stability and certainty regarding future cash flows which should enable DP&L to manage short-term debt maturities and to mitigate refinancing risks (Co. Ex. 2A at 62-63).

f. Whether the provisions regarding AES are beneficial to ratepayers and the public interest

{¶ 46} DP&L states that in agreeing to make several equity investments into DPL Inc., as discussed above, AES is making significant contributions towards alleviating DPL Inc. and DP&L's financial issues, which thus benefits both ratepayers and the public interest. DP&L affirms that these measures are unique and outside the jurisdiction of what the Commission can typically require. (Co. Ex. 2 at 4.)

{¶ 47} OCC responds that the contributions from AES are largely illusory. OCC notes that DPL Inc. has not paid dividends to AES or made tax sharing payment since 2012 (Tr. Vol. V at 16-21). According to OCC, AES would likely continue this practice whether or not the Amended Stipulation was in place. Thus, OCC submits that customers do not receive any benefits from this agreement. (OCC Ex. 12 at 12-14.) Additionally, Walmart argues that AES's commitments are unenforceable and should not be considered a potential benefit to ratepayers or the public interest. Walmart avers that AES did not sign the Amended Stipulation or participate in negotiations, nor does the Commission have jurisdiction over AES. Accordingly, Walmart and OCC conclude that any commitment from AES should be ignored by the Commission.

{¶ 48} The Commission finds that the future contributions to be made by DP&L's ultimate parent, AES are not illusory and are in the public interest. In the Amended Stipulation AES, through DP&L and DPL Inc., commits that, during the six-year term of the ESP, DPL will not make any dividend payments to AES or AES Ohio Generation LLC. (Co. Ex. 3 at 10, 18-19; Jt Ex. 1 at 3). We find no reliable basis for OCC's claim that, because DPL Inc. has not made any dividend payments since 2012, it is likely that this will continue for the next 6 years; OCC witness Kahal merely asserts this would "almost certainly continue" without any persuasive explanation why this is necessarily so (OCC Ex. 12 at 31).

{¶ 49} In addition, the Commission finds that the provisions related to tax sharing payments are the equivalent of cash equity infusion into DPL Inc. Under these provisions, AES has agreed not to collect tax-sharing payments from DPL Inc. that have accrued since 2012, and AES has agreed not to collect any additional required tax payments that accrue during the term of the DMR. Instead, the accrued liabilities will be converted to an equity investment in DPL Inc. and, during the term of the DMR, any additional tax sharing liabilities will be converted, on a monthly basis, to an additional equity investment. (Co. Ex. 3 at 19; Jt. Ex. 1 at 3-4). The record demonstrates that this will result in an equity investment in DPL which will provide additional cash flow available for debt service and for improving the DPL Inc. and DP&L financial health (Co. Ex. 2A at 4). This additional equity infusion would result in a significant strengthening of DPL's balance sheet (Co. Ex. 2A at 61-62, 66-67). As with the dividend payments, we find no reliable basis for OCC's claim that, because DPL Inc. has not made any tax sharing payments since 2012, it is likely that this will continue in the future.

{¶ 50} Moreover, the Amended Stipulation provides that DP&L's ownership interests in three generation stations will be sold to a third party and that the proceeds of the sale will be used to further pay off debt at DP&L and DPL (Co. Ex. 3 at 19; Jt. Ex. 1 at 4).

{¶ 51} The Commission finds that all three of these contributions by AES are in the public interest as each contribution will assist in alleviating DPL Inc.'s and DP&L's financial issues. We also note that each of these contributions are consistent with the testimony of OCC witness Kahal. Mr. Kahal recommends that DP&L's financial integrity could be better protected through a combination of ring fencing and equity investments by AES, which could take the form of asset divestiture/sales, dividend payment reductions by AES, and AES providing cash investments to DPL Inc. for debt reduction (OCC Ex. 12 at 29). In fact, as shown above, the Amended Stipulation provides for generation asset sales, the proceeds of which will be used for debt reduction (Co. Ex. 3 at 19); no dividend payments from DPL Inc. to AES for six years (Co. Ex. 3 at 18-19) and equity investments by AES in DPL Inc. through the tax-sharing provisions (Co. Ex. 2A at 4; Co. Ex 3 at 19). In fact, OCC witness Kahal admits three steps—not taking dividend payments, not collecting tax sharing payments and converting liabilities into equity amounts to—is analogous or equivalent to AES infusing equity into DPL Inc. (Tr. Vol. IV at 712).

{¶ 52} Finally, the Commission does not agree with claims that these commitments are not enforceable. Both DP&L and its parent, DPL Inc., are signatory parties to the Amended Stipulation. By adopting the Amended Stipulation in this Opinion and Order, the Commission establishes DP&L's ESP for the next 6 years, commencing with the approval of the Amended Stipulation and makes the Amended Stipulation the order of the Commission. The Commission has considerable statutory authority to enforce its orders, but, more importantly, in the highly unlikely event that AES, through DPL Inc. and DP&L, were to breach the terms of the Amended Stipulation, any and all benefits to DPL Inc. and DP&L under the Amended Stipulation would be placed at risk. We are confident that compliance with the terms of the Amended Stipulation will not be an issue.

g. Whether other riders and programs included in the Amended Stipulation are beneficial to ratepayers and the public interest

{¶ 53} OCC argues that a number of riders and provisions in the settlement do not benefit ratepayers or the public interest. This includes the proposed Smart Grid Rider (SGR). OCC states that, with the SGR, DP&L proposes to collect costs associated with a distribution grid modernization plan and grid modernization investments. According to

OCC, however, the initiative is in such an early stage that the plans and possible investments are still unknown. OCC asserts it does not benefit ratepayers to start paying for undetermined investments. OCC further avers that the costs for such an investment are better recovered through a distribution base rate case. (OCC Ex. 13 at 8-10.)

{¶ 54} DP&L requests that OCC's argument be dismissed. DP&L asserts that the SGR will initially be set at zero and will not cost ratepayers anything. Further, DP&L avers that cost recovery will not begin until after a cost/benefit analysis and a review by the Commission. While OCC submits that the costs are best recovered through a distribution rate case, the Company counters that the cost recovery would occur either way.

{¶ 55} OCC additionally maintains that the TCRR-N pilot program is not in the public interest as it lacks necessary safeguards. According to OCC, if the program is to go forward, DP&L should outline the goals it seeks to achieve, identify all necessary costs, and state the anticipated benefits. OCC further recommends that the program be evaluated after a two-year term, instead of the requested six-year term, to ensure all customers are benefitting from the rider. (OCC Ex. 11 at 6.)

{¶ 56} In response, IEU-Ohio asserts that OCC's requested parameters are unnecessary. IEU-Ohio affirms that the purpose of the pilot program is explicitly mentioned in the Amended Stipulation and further discussed in DP&L's supporting testimony. That purpose, according to IEU-Ohio, is to explore whether customers would benefit from opting out of TCRR-N and instead applying an alternative transmission billing methodology. IEU-Ohio identifies several potential benefits of the program, including an enhanced competitive market, reduced need for transmission investments, and reduced costs to customers. IEU-Ohio argues that OCC previously recognized that the TCRR-N was imperfect and that the pilot program seeks to address some of the underlying issues with the TCRR-N. IEU-Ohio further affirms there is no need to evaluate the program after two years, as there is nothing to examine that would impact the lawfulness and reasonableness of the program.

{¶ 57} OCC additionally claims that the Reconciliation Rider unfairly burdens SSO customers. OCC submits that, because the rider is bypassable, residential and small business customers taking the SSO rate will be the customers paying for the rider. OCC states that this artificially inflates the SSO rate, which allows competitors to also raise their rates, which are often compared against the SSO rate. Further, according to OCC, as more customers decide to shop and less customers remain on the SSO rate, the Reconciliation Rider's rates will increase. OCC reasons that this is unfair and not in the public interest. (OCC Ex. 12 at 38.)

{¶ 58} DP&L, IGS, RESA, and IEU-Ohio submit that it is reasonable for the Reconciliation Rider to be bypassable. DP&L reiterates that the rider will serve as countercyclical hedge against changing energy prices and that it is logical for SSO customers to pay for the rider, as it relates to generation. IGS, RESA, and IEU-Ohio submit that the Reconciliation Rider is an enhancement to the competitive market because customers that do not want to pay for the Reconciliation Rider as part of the SSO can instead shop for generation service.

{¶ 59} We disagree with OCC's claim that the SGR is not in the public interest. The Amended Stipulation provides for the filing of a comprehensive infrastructure modernization plan. This plan will include proposals to modernize DP&L's grid, including advanced metering infrastructure, meter data management systems, system-wide distribution modernization and Volt-VAR optimization. The plan will include a cost/benefit analysis of each component as well as a timeline for deployment. After the plan has been filed, interested stakeholders will have a full and fair opportunity to comment upon and provide input into the final plan to be approved by the Commission. Once the plan has been approved by the Commission, the costs of implementing the plan will be recovered through the SGR, which will initially be set at zero. (Jt. Ex. 1 at 7-8). OCC witness Williams contends that the Commission should complete our PowerForward initiative before authorizing DP&L to invest in grid modernization and that all smart grid programs should be evaluated to determine if they are cost effective and provide sufficient benefit to customers (OCC Ex. 13 at 10-11). We agree. We will review any proposed plan to ensure that it is consistent with the PowerForward initiative, and the Amended Stipulation provides for a cost/benefit analysis of every component of the plan when it is proposed (Jt. Ex. 1 at 7-8). However, as we are currently continuing our work in the PowerForward initiative, we will modify the Amended Stipulation to provide for the filing of the comprehensive infrastructure modernization plan to be the earlier of three months after the completion of the PowerForward initiative or August 1, 2018, unless otherwise ordered by the Commission.

{¶ 60} We find that the provisions of the Amended Stipulation related to the SGR are in the public interest as such provisions comport with the state policy to encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, smart grid programs, and implementation of advanced metering infrastructure. R.C. 4928.02(D). We also reject OCC's claim that the costs related to grid modernization are better recovered through a distribution rate case. The General Assembly specifically included in R.C. 4928.143 provision authorizing single issue ratemaking and authorizing provisions regarding distribution infrastructure and modernization incentives for the electric distribution utility. R.C. 4928.143(B)(2)(h). The regulatory lag associated with traditional distribution rate cases under Chapter 4909 of the Revised Code may inhibit the expeditious deployment of grid modernization projects, which will require significant up-front capital investments.

{¶ 61} We also reject OCC's claim that the TCRR-N pilot program is not in the public interest. The pilot program will allow certain customers to opt out of DP&L's Transmission Cost Recover Rider and purchase transmission services directly from PJM, Inc., the regional transmission operator (Co. Ex. 3 at 16; Jt. Ex. 1 at 14-17). We note that we have approved similar pilot programs in other electric distribution service territories in order to determine if allowing customers to purchase transmission services directly from PJM will result in a net aggregate customer savings in each service territory. *In re FirstEnergy,* Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (October 12, 2016) at 139-140. Such pilot programs are consistent with the state policy to recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment. R.C. 4928.02(G).

{¶ 62} Nonetheless, as we have noted in other proceedings involving similar transmission pilot programs, the TCRR-N pilot program is a pilot program which bears further study to determine if the actual results of the pilot program are in the public interest. The Commission directs DP&L and Staff to continuously review the actual results of the pilot program and periodically report their findings to the Commission. Such review should include, at a minimum: whether there is an aggregate savings in transmission costs for all of DP&L's customers; whether transmission costs are being shifted to customers not participating in the pilot program; whether the benefits of the pilot program outweigh any costs; and whether the TCRR-N mechanism results in an overall costs savings to customers. Such review is necessary for the Commission to determine whether the TCRR-N should be continued with the ability for customers to opt out; whether the TCRR-N should be continued without the ability for customers to opt out; and whether Rider TCRR-N should be terminated and replaced with a different mechanism to recover transmission costs incurred by DP&L. The Commission retains the right, during the term of the ESP, to modify the provisions of the TCRR-N based upon the results of this review. *See also FirstEnergy,* Case No. 14-1297-EL-SSO at 139-140.

{¶ 63} Moreover, we affirm that as modified by the Commission below, the provisions related to the Reconciliation Rider are in the public interest. The record shows that, under the Reconciliation Rider, DP&L will sell its share of the output from the OVEC generation plants into the wholesale marketplace and will net the proceeds against DP&L's share of the associated costs. This will benefit customers because it will act as a hedge which will mitigate spikes in market prices. (Co. Ex. 3 at 14; Tr. Vol. IV at 755-756). However, because the signatory parties have proposed that the Reconciliation Rider be bypassable, we agree that there is the potential for escalating bill impacts as shopping increases. Therefore, we will modify the Amended Stipulation to provide that the Reconciliation Rider be nonbypassable. As agreed to in the Amended Stipulation, recovery of OVEC costs through the Reconciliation Rider will commence effective the date of this Opinion and Order (Jt. Ex. 15-16). In light of our decision to make the Reconciliation Rider nonbypassable, we find that the Reconciliation should be allocated to tariff classes based on an allocation method of 50 percent demand and 50 percent energy with demand being allocated on total load on a 5 Coincidental Peak basis and charged on a kWh basis.

{¶ 64} The Commission also notes that the Amended Stipulation does not provide for carrying charges for the Reconciliation Rider but provides for all other details regarding its implementation. Therefore, we believe that it is the intent of the signatory parties that there should not be carrying charges for the Reconciliation Rider. In the event that this is not the signatory parties' intent, we will modify the Amended Stipulation to provide that there will be not carrying charges for the Reconciliation Rider. This is consistent with our approval of similar provisions in AEP-Ohio's current ESP. Likewise, we will modify the Amended Stipulation to provide that costs during outages of extended periods and capacity performance penalties may not be recovered through the Reconciliation Rider. *See In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al., Second Entry on Rehearing (Nov. 3, 2016) at ¶ 59.

h. Whether the pilot program regarding consolidated billing is beneficial to ratepayers and the public interest

{¶ 65} As to the proposed pilot program for supplier consolidated billing, OCC avers that it is not in the public interest. OCC notes that, as proposed in the Amended Stipulation, customers who receive generation from a marketer may receive a single consolidated bill for both regulated distribution charges and deregulated distribution charges. OCC argues that while customers are covering half of the costs of consolidated billing, only the marketers benefit from this program, as they are able to include new line items and their own branding on customer bills. OCC requests that the program either be rejected or that marketers be responsible for 100 percent of the program's costs. (OCC Ex. 11 at 6-7.)

{¶ 66} IGS and RESA ask the Commission to reject OCC's arguments regarding consolidated billing. According to IGS and RESA, the implementation of supplier consolidated billing allows customers to receive more innovative and energy efficient products and services. Regarding the cost allocation, IGS and RESA respond that it is appropriate for CRES providers and customers to divide the costs. They first note that there is an initial cap on the amount of money that can be recovered from customers. Further, IGS and RESA state that, because customers benefit from a more robust competitive market, it is reasonable for customers to incur some of the costs of market enhancements. (RESA Ex. 1 at 5-7.)

{¶ 67} The Commission notes that the implementation of supplier consolidated billing has been at issue since the inception of retail electric competition. In 2000, prior to the commencement of retail electric competition, the Commission noted that "all utilities have agreed in their transition case settlements to implement supplier-consolidated billing by target dates ranging from January 1, 2001 to July 1, 2002." However, we also cautioned that "we adopt these dates with the understanding that both EDUs and CRES provider may need to make substantial investments in time and money to modify or develop process and systems to handle these new services, and that unforeseen circumstances or developments in the market during the start-up period may require changes to these timelines." *In the Matter of the Establishment of Electronic Data Exchange Standard and Uniform Business Practices for the Electric Utility Industry,* Case No. 00-813-EL-EDI, Finding and Order (July 29, 2000) at 16-17.

{¶ 68} As we have noted in other recent proceedings, as the marketplace is currently situated, the Commission's desired course for competitive suppliers is to ultimately offer supplier consolidated billing and dual, billing. This would facilitate the innovative marketplace that we envision for the state of Ohio and would easily resolve how suppliers can bill for the goods and services that they wish to market and then bill to their customers. *In re Ohio Power Co.*, Case No. 15-1507-EL-EDI, Finding and Order (September 27, 2017) at 7-8. Our approval today of the supplier consolidated billing pilot program in this proceeding is consistent with that goal.

{¶ 69} It is time to move forward with the implementation of supplier consolidated billing in DP&L's service territory, and the provisions in the Amended Stipulation promise real progress on this issue (Co. Ex. 3 at 15-16; Jt. Ex. 1 at 21-26). The Commission finds that all customers, both shopping customers and SSO customers, benefit from a robust competitive market, and supplier consolidated billing is a positive step in the development of that competitive market. We note that RESA witness White, on behalf of competitive suppliers, supported the pilot supplier consolidated billing program (RESA Ex. 1 at 8-10). In the Amended Stipulation, although all customers benefit from the development of a competitive market, CRES providers have agreed to contribute 50 percent of the costs of implementing the program.

{¶ 70} We further find that approval of the pilot supplier consolidated billing program is consistent with the policy of this state set forth in R.C. 4928.02 to ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs and to ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers. R.C. 4928.02(B) and (C), respectively. As a pilot program, the proposed supplier consolidated billing program is also consistent with the state policy to recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment. R.C. 4928.02(G). Accordingly, the Commission finds that the provisions for a pilot supplier consolidated billing program are in the public interest.

i. Whether the closing and sale of certain generation assets is beneficial to ratepayers and the public interest

{¶ 71} As part of the Amended Stipulation, DP&L committed to transfer its generating assets to an affiliate of DPL Inc., as well as to commence a sale process to sell its ownership in its Conesville, Miami Fort, and Zimmer generation stations. Further, AES agreed to use the proceeds from any sale to make discretionary debt repayments at DP&L and DPL Inc. Murray notes the Stuart and Killen stations are absent from the proposed sale and asserts that DP&L intends to close both of the plants. Murray, along with UWU, argue that it does not benefit the public interest to close Stuart and Killen and both stations should be included as part of the sale process.

{¶ 72} Murray first explains that while the Stuart and Killen stations are not specifically mentioned within the Amended Stipulation, the Commission has authority to prevent the plants' closure and include them as part of proposed sale in the Amended Stipulation. Murray avers that pursuant to R.C. 4928.17(E) EDUs are prohibited from selling or transferring a generating asset without first obtaining Commission approval. Murray also notes that DP&L previously applied to transfer its assets in 2013, which was later approved by the Commission in 2014. Murray contends that the terms from the 2014 divestiture significantly differ from the terms in the Amended Stipulation and thus the Commission should reevaluate the proposed transfer of generating assets. (Murray Ex. 2 at 7.)

{¶ 73} Murray affirms that a major component of the Amended Stipulation is the transfer and sale of DP&L's generation assets. Murray states the sale is being considered a major benefit of the Amended Stipulation, as sale proceeds will be used to reduce DP&L's debt. Murray claims, however, that it is not beneficial to omit the Stuart and Killen stations from the proposed sales. According to Murray, it is wrong to assume that the stations will not generate interested buyers and that there is no harm in investigating a possible sale. Murray asserts the energy market is dynamic and both plants have historically operated above 60 percent capacity. Moreover, Murray asserts the industry is likely to change and the value of coal-generation plants like Stuart and Killen is expected to increase. Thus, Murray contends that a major purpose of the Amended Stipulation is to improve DP&L's financial integrity and it would be beneficial to include Stuart and Killen as part of the sale of generation assets. (Murray Ex. 2 at 11-15.)

{¶ 74} Murray and UWU further maintain that if Stuart and Killen stations are not included as part of the sale process and DP&L goes forward with the plant closures, the results would be devastating to the surrounding communities. Murray notes the stations are the largest employers in Adams County and the resulting loss of tax revenue would impact the townships, the county, and the school districts. Additionally, Murray asserts the impact of the closures would have a rippling effect that would cause severe harm to the surrounding communities, the coal industry, and the entire state of Ohio.

{¶ 75} Sierra Club disagrees with Murray and avers that the Stuart and Killen stations have no legal relevance in these proceedings. Sierra Club submits that nothing in the Amended Stipulation requires DP&L to close those two stations nor is DP&L precluded from selling the stations to a third party. Sierra Club states that, if the stations were sold, their value would likely be minimal as the stations reportedly operate at a loss and DP&L values them at $0. Sierra Club also doubts Murray's assertions regarding a resurgence of the coal industry and submit that if the stations closed there would be minimal impact on the supply of energy and capacity or the cost of energy and capacity.

{¶ 76} In its reply, DP&L affirms that the Amended Stipulation is silent on the future of the Stuart and Killen stations. According to DP&L, nothing in the Amended Stipulation requires to the Company to close the plants and, similarly, nothing prevents the Company from selling the plants to a third party. Accordingly, DP&L asserts that Murray's argument is without merit.

{¶ 77} The Commission finds that the Amended Stipulation provisions related to DP&L's remaining generation assets are in the public interest. Divestment of DP&L's

ownership interest in the Conesville, Miami Fort, and Zimmer generation stations, as well as the transfer of any remaining generation stations to an affiliate, will improve the financial position of DP&L and DPL Inc. and facilitate competition in DP&L's service territory. AES Corporation, through DP&L and DPL Inc., has committed to use the proceeds from the sale of any generation assets to pay down debt (Co. Ex. 3 at 19; Jt. Ex. 1 at 4). The Commission notes that, since the hearing, DP&L has received approval from the FERC to transfer its interests in its generation stations to its affiliate, AES Ohio Generation, LLC (AES Ohio). 160 FERC ¶ 61,034. Further, DP&L has provided notice of the sale of its interests in Miami Fort Units 7 and 8 and Zimmer with a fair market value of the ownership interests of $50 million. *In re Dayton Power and Light Co.*, Case No. 13-2420-EL-UNC, Notice Filing (July 24, 2017). Moreover, the Commission finds that the transfer and divestment of DP&L's generation assets is consistent with the policy of this state set forth R.C. 4928.02 to ensure the availability of *unbundled* and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options. R.C. 4928.02(B).

{¶ 78} We agree with DP&L that the Amended Stipulation has no provisions related to the future of Stuart and Killen stations. DP&L has already received authorization from the Commission, as required by R.C. 4928.17(E), to transfer all of its generation assets to an affiliate or sell such assets to a third party. *In re Dayton Power and Light Co.*, Case No. 13-2420-EL-UNC, Finding and Order (September 17, 2014), Entry on Rehearing (December 17, 2014). In this Opinion and Order, the Commission neither authorizes nor approves either the sale or closure of Stuart and Killen. The future of Stuart and Killen is not part of this ESP and is at the sole discretion of the Company's management or the management of AES Ohio once the transfer has been completed.

j. Commission Conclusion

{¶ 79} In considering the second portion of the three-part test, it is necessary for the Commission to evaluate the Amended Stipulation, as modified by the Commission, as a package. In prior cases, the Commission has considered and approved stipulations that address a wide variety of issues, often resolving several pending proceedings at the same time, and specifically emphasizing that the stipulation must be viewed as a package. *See, e.g., In re Ohio Power Co.,* Case No. 94- 996-EL-AIR, et al. Opinion and Order (Mar. 23, 1995) at 20-21; *In re Columbus Southern Power Co. and Ohio Power Co.,* Case No. 99-1729-EL-ETP, et al., Opinion and Order (Sept. 28, 2000) at 44; *In re Dayton Power & Light Co.,* Case No. 02-2779-EL-ATA, Opinion and Order (Sept 2, 2003) at 29. Additionally, we emphasize the importance of the Commission's mission to assure all customers access to safe and reliable utility service at fair prices. R.C. 4928.02(A). In addition to the specific provisions addressed above, we find that the evidence in this proceeding demonstrates that the Amended Stipulation, as a package, is in the public interest. Staff witness Donlon testified that the Amended Stipulation benefits customers and the public interest (Staff Ex. 2 at 4). The Amended Stipulation provides for competitive bidding of DP&L's SSO for non-shopping customer (Co. Ex. 3 at 12; Jt. Ex. 1 at 8) and provides for the transfer and divestment of DP&L's generation assets.

{¶ 80} The record at hearing also demonstrates that the Amended Stipulation provides for competitive enhancements in DP&L's service territory. These competitive enhancements include the pilot transmission program (Co. Ex. 3 at 16; Jt. Ex. 1 at 14-17), and pilot supplier consolidated billing program (Co. Ex. 3 at 15-16; Jt. Ex. 1 at 21-25), discussed above. The competitive enhancements also include utility consolidated billing improvements supported by testimony by Company witness Schroder and RESA witness White on behalf of competitive suppliers (Co. Ex. 3 at 15; RESA Ex. 1 at 10-11; Jt. Ex. 1 at 21).

{¶ 81} The Amended Stipulation also contains provisions for economic development incentives for large employers (Co. Ex. 3 at 12-13; Jt. Ex. 1 at 9-10, 33), for an economic development grant fund (Co. Ex. 3 at 13; Jt. Ex. 1 at 10-12), and for economic development programs for the City of Dayton (Co. Ex. 3 at 16-17; Jt. Ex. 1 at 27-32). The Commission finds that these economic development programs supports state policy to facilitate the state's effectiveness in the global economy. R.C. 4928.02(N).

{¶ 82} Further, testimony at the hearing established that the Amended Stipulation provides for shareholder funding of programs to assist low-income residential customers (Co. Ex. 3 at 16; Jt. Ex. 1 at 33, 36). This shareholder funding promotes state policy to protect at-risk populations (OPAE Ex. 1 at 3-4). R.C. 4928.02(L).

D. Does the settlement violate any important regulatory principles or practices?

{¶ 83} DP&L asserts that the Amended Stipulation does not violate any important regulatory principles, to which Kroger, Honda, OEG, OPAE, Edgemont, PWC, and Staff agree. As discussed below, DP&L first maintains that, as required by R.C. 4928.143(C)(1), the ESP established by the Amended Stipulation is more favorable in the aggregate than an MRO. DP&L additionally argues that the various riders established by the Amended Stipulation, particularly the DMR, are lawful and authorized by the Ohio Revised Code. Accordingly, the Company requests the Commission find that the Amended Stipulation meets the third prong of the test.

k. ESP versus MRO test

{¶ 84} The Company notes that pursuant to R.C. 4928.143(C)(1) the Commission should approve, or modify and approve, an application for an ESP if it finds that the ESP, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO. DP&L further states that, in comparing the ESP to an MRO, factors to be considered by the Commission include quantifiable differences in the prices to be charged to customers and other quantifiable differences in customer charges, as well as non-quantifiable differences.

{¶ 85} In comparing the difference in price between the proposed ESP and an MRO, DP&L assert that there are no quantifiable differences. According to the Company, the SSO rates would be the same under either scenario. Additionally, because R.C. 4928.142(D)(4) permits an MRO to include a charge to address any emergency that threatens a utility's financial integrity, DP&L submits that the DMR would be available under either an MRO or an ESP. Similarly, DP&L represents that the other riders described in the Amended Stipulation would also be available under an MRO. Thus, DP&L states the SSO price under the proposed ESP or an MRO would be the same.

{¶ 86} DP&L maintains, however, that the benefits provided by DP&L shareholders are not required under an MRO, thus providing quantifiable benefits only available under the ESP. Specifically, DP&L avers that the economic development payments, energy education payments, and payments to assist low-income customers would provide between $9 million and $11.5 million in direct customers benefits that would not be otherwise required in an MRO. In addition, the Company maintains there are other, non-quantifiable benefits in the proposed ESP that would not be required under an MRO. These include the commitments made by AES, the transfer of DP&L's generation assets to an affiliate, a commitment to maintain DP&L's headquarters in the city of Dayton, and an accelerated implementation of grid modernization. Staff agrees with the Company and further reasons that the ESP provides a quicker and clearer path to implementing a smart grid.

{¶ 87} In opposing the Amended Stipulation, OCC argues that it is not evident that the proposed ESP is more beneficial than an MRO. OCC first submits that DP&L's arguments regarding the quantifiable benefits are contradictory. According to OCC, DP&L considers various shareholder commitments such as the economic development payments and provisions regarding AES as benefits specific to an ESP because there is no statute requiring such payments under an MRO. However, OCC asserts while such commitments are not required under an MRO, neither are they required under an ESP. OCC maintains that DP&L's shareholders could make the proposed commitments at any time and they should not be considered a benefit unique to the ESP. OCC additionally submits that the qualitative benefits of the ESP proposed by DP&L are illusory. OCC avers there is no evidence that grid modernization will occur more rapidly under the ESP. According to

OCC, a grid modernization plan is, at best, several months away from being filed and will then be subject to scrutiny from intervening parties, without any assuredness that it will be approved by the Commission. OCC further submits there is no benefit associated with DP&L's commitment to maintain its headquarters in the city of Dayton as there was no evidence that DP&L was considering relocating its headquarters. (OCC Ex. 12 at 45.)

{¶ 88} In reply, DP&L reiterates that the benefits provided by the shareholder payments and AES's commitments are unique to the proposed ESP. According to the Company, an MRO does not require these specific benefits that were negotiated as part of the Amended Stipulation and they would not exist under a fully litigated MRO. DP&L further maintains that the grid modernization implemented by the Amended Stipulation is a substantial benefit provided by the ESP. Although OCC discounts the speed at which grid modernization could be executed, the Company reasons that grid modernization is a major benefit regardless of whether it occurs now or in the future.

{¶ 89} The Commission finds that the record in these proceedings demonstrates that the proposed ESP is more favorable in the aggregate than the expected results of an MRO under R.C. 4928.142. Under the proposed ESP, the generation rates to be charged SSO customers will continue to be established through a CBP; therefore, generation rates in the ESP should be equivalent to the results which would be obtained under R.C. 4928.142 (Jt. Ex. 1 at 8-9; Staff Ex. 2 at 5). However, the evidence in the record further demonstrates that there are additional quantitative and qualitative benefits contained in the Amended Stipulation that make the proposed ESP more favorable in the aggregate than the expected results under an MRO.

{¶ 90} While OCC submits the DMR and other riders would not be available under an MRO, the Commission finds that equivalent riders would also be available under R.C. 4928.142. Under an MRO, pursuant to R.C. 4928.142 the Commission may assess such charges as the Commission "determines necessary to address any emergency that threatens the utility's financial integrity or to ensure that the resulting revenue available to the utility for providing the standard service offer is not so inadequate as to result, directly or indirectly in a taking of property without compensation pursuant to Section 19 of Article I, Ohio Constitution." Additionally, the Commission notes that electric utilities can seek emergency rate relief under R.C. 4909.16, and the Commission has provided factors for determining whether emergency rate relief can be granted. *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, et al., Opinion and Order (Aug. 23, 1988), 1988 WL 1617994 (Ohio P.U.C). We have previously identified that these factors specified by the Commission for cases brought under R.C. 4909.16 may provide guidance for factors the Commission may examine in a hypothetical application for a charge under R.C. 4928.142. *In re FirstEnergy*, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (October 12, 2016) at 161-163.

{¶ 91} One of the factors the Commission has previously considered under R.C. 4909.16 is whether the utilities' bonds are considered investment grade. There, we found a utility on the "ragged edge" of investment grade would qualify under R.C. 4909.16. *In re Cleveland Elec. Illum. Co.*, at 8. Similarly, under FirstEnergy's ESP versus MRO comparison, the Commission found that an electric utility still operating above investment grade would likely meet the standards applied by the Commission under R.C. 4909.16. *In re FirstEnergy*, at 163. Here, it is well established that DP&L and DPL Inc.'s credit ratings were respectively, at and even below the "ragged edge" of investment grade (Co. Ex. 105). Thus, it is likely that the Commission would grant relief in response to a hypothetical application under R.C. 4928.142(D). Accordingly, we agree with DP&L and Staff witness Donlon (Staff Ex. 2 at 6) that the DMR should be excluded from a quantitative analysis as the associated charges would be available under either an MRO or an ESP.

{¶ 92} While the SSO cost would be the same under either an ESP or an MRO, through the various economic development provisions, the Commission concludes that the proposed ESP, quantitatively, is more beneficial than an MRO. With the various economic development provisions, Staff witness Patrick Donlon testified that the proposed ESP provides $9 million for economic development that would not otherwise be available. He stated that, if the DMR is extended, that amount would increase. Further, this sum would be provided solely by DP&L shareholders. (Staff Ex. 2 at 5-6)

{¶ 93} We additionally find there are other, qualitative benefits associated with the proposed ESP, which would not be provided under an MRO. We note the various commitments by the Company, and its parent, towards improving DP&L's financial integrity. We discussed these benefits thoroughly above in consideration of the second prong. In sum, first, DP&L and DPL Inc.'s parent, AES, is committed to foregoing dividends from DPL Inc. (Co. Ex. 3 at 10, 18-19; Jt. Ex. 1 at 3). Additionally, AES is also committing to not collect tax-sharing payments from DPL Inc., significantly strengthening its balance sheet (Co. Ex. 2A at 4, 61-62-66-67; Co. Ex. 3 at 19; Jt. Ex. 1 at 3-4). As part of the Amended Stipulation, DP&L is additionally required to transfer its generation assets to an affiliate and, for certain generation assets, to begin a sale process. The proceeds of those sales are to go towards debt repayments. (Co. Ex. 3 at 19; Jt. Ex 1 at 3-4.) These commitments from the Company would not otherwise be available under an MRO and put DP&L in a better financial position to invest in its infrastructure and grid modernization (Tr. Vol. V at 883).

{¶ 94} Therefore, based upon the evidence in the record in this proceeding, the Commission finds that the proposed ESP, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO pursuant to R.C. 4928.142.

I. Whether the DMR violates any important regulatory principles

{¶ 95} According to DP&L, the DMR is authorized by statute and consistent with state policy. Additionally, DP&L states Commission precedent supports approval of the DMR, as the Commission has previously authorized similar DMRs for other utilities. Staff is in agreement with DP&L and asserts that the DMR does not violate any regulatory principles or policies. OCC, as well as the Environmental Groups, argue otherwise, asserting that the DMR is, among other things, an unlawful transition charge.

m. Whether the DMR is authorized under R.C. 4928.143(B)

{¶ 96} The Company maintains that the DMR is a lawful charge pursuant to R.C. 4928.143(B)(2)(h), 4928.143(B)(2)(d), and 4928.143(B)(2)(i). As to R.C. 4928.143(B)(2)(h), DP&L discusses how the statute permits charges going towards distribution infrastructure, including, specifically, infrastructure modernization. DP&L submits that the primary purpose of the DMR is incentivize and make grid modernization possible. Considering the financial difficulties that the Company is facing, DP&L states the DMR is necessary in order to finance the capital expenditures necessary to "maintain, modernize or grow existing transmission and distribution infrastructure." Accordingly, DP&L argues that, like previous riders approved by the Commission, the DMR is related to distribution and is intended to allow the Company to focus on grid modernization. Further, the Company avers that grid modernization improves service reliability, which is inline with customer expectations.

{¶ 97} DP&L further states the DMR is also permissible under R.C. 4928.143(B)(2)(d). The Company states that the statute permits an ESP to include a rider if it: (1) includes a term, condition, or charge; (2) relating to a limitation on customer shopping, bypassability, or carrying costs; and (3) has the effect of stabilizing or providing certainty regarding retail electric service. The Company first states the DMR is indisputably a charge and satisfies the first part of the statute. The DMR also satisfies the second prong of the statute, as, according to DP&L, the rider relates to a financial limitation on shopping, default service, and bypassability. Regarding the third prong, DP&L submits that, without the DMR, the Company would not have the financial integrity in order to provide safe and reliable service or to implement grid modernization. Accordingly, DP&L states the DMR provides certainty regarding electric service.

{¶ 98} The DMR is also permissible under R.C. 4928.143(B)(2)(i), according to DP&L. DP&L notes that R.C. 4928.143(B)(2)(i) allows an ESP to include provisions for economic development, job retention and energy efficiency programs. The Company reasons that with the implementation of grid modernization projects made possible by the DMR, there would be capital investments resulting in economic development and job creation. Therefore, DP&L submits that the DMR meets the requirements of R.C. 4928.143(B)(2)(i).

{¶ 99} OCC disputes DP&L's assertion that the DMR is permissible under R.C. 4928.143(B). OCC states that DP&L arguments regarding the lawfulness of the DMR wrongfully represent that the proceeds of the rider go towards grid modernization. OCC claims that the funds recovered for the DMR would be used to pay down debt. According to OCC, such funds are not necessary in order for DP&L to provide safe and reliable service, so the DMR is not needed to provide certainty regarding electric service, as required by R.C. 4928.143(B)(2)(d). OCC additionally maintains that because the DMR's resources are going towards debt payments and not grid modernization, DP&L's claim that the DMR provides economic development is without merit.

{¶ 100} The Commission finds that the DMR is authorized under R.C. 4928.143(B). R.C. 4928.143(B)(2)(h) allows an ESP to include:

> Provisions regarding the utility's distribution service, including, without limitation and notwithstanding any provision of Title XLIX of the Revised Code to the contrary, provisions regarding single issue ratemaking, a revenue decoupling mechanism or any other incentive ratemaking, and *provisions regarding distribution infrastructure and modernization incentives* for the electric distribution utility. R.C. 4928.143(B)(2)(h)(emphasis added).

{¶ 101} As proposed by the signatory parties, the DMR is a distribution modernization incentive. Under the plain language of the statute, the DMR is an incentive. As we have noted previously, Webster's defines an "incentive" as "something that stimulates one to take action, work harder, etc.; stimulus; encouragement." Webster's New World Dictionary, Third College Edition 682 (1988); *see In re FirstEnergy*, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (October 12, 2016) at 90. Staff witness Donlon states that the DMR provides DP&L with the ability to access the capital markets at favorable rates to ensure investment in the distribution system and that accessing the capital markets will enable the Company to procure funds to jumpstart their distribution grid modernization initiatives (Staff Ex. 2 at 4; Tr. Vol. V at 875-76). We find that the record demonstrates that the DMR is intended to incent the Company to focus its innovation and resources on modernizing its distribution system and that the DMR is a distribution modernization incentive authorized by R.C. 4928.143(B)(2)(h).

{¶ 102} In addition, we note that Staff has completed an examination of the reliability of DP&L's distribution system and ensured that DP&L's customers and the Company's expectations are aligned (Staff Ex. 1 at 3-7). We find that this examination complies with the requirements of R.C. 4928.143(B)(2)(h) for a approval of a distribution mechanism enumerated in that provision.

n. Whether the DMR constitutes Transition Revenues, pursuant to R.C. 4928.38

{¶ 103} OCC asserts that the DMR is an unlawful transition charge, as DP&L's underlying need for the rider is tied to its generation assets, not its distribution or transmission business. OCC avers that R.C. 4928.38 expressly prohibits the collection of transition charges, which, generally, are costs tied to generation. According to OCC, the purpose of the DMR is to pay down DPL Inc.'s debt acquired through AES's purchase of DP&L. OCC states that the reason DPL Inc., which gets 96 percent of its revenue from DP&L, cannot make debt payments is because of DP&L's underperforming generation business. Thus, OCC reasons that because the DMR is needed to overcome issues associated with DP&L's generation assets, the DMR is a transition charge and unlawful. OCC further maintains that because DP&L's generation assets have not yet been divested, any money coming in from the DMR will go to support transmission, distribution, and generation.

Because the incoming funds would not be specially separated, OCC submits that DP&L's generation assets would receive money from the DMR.

{¶ 104} DP&L counters that the DMR is not a transition charge as the DMR does not relate to retail electric generation service. The Company first notes that, as part of the Amended Stipulation, DP&L committed to transfer all of its generation assets to an affiliate and to pursue either a sale or closure of its coal-fired generation plants. DP&L thus concludes that the DMR will not be directly assignable or allocable to generation service once the transfers take place. DP&L further maintains that the purpose of the DMR is to put the Company in a financial position to provide safe and reliable distribution service and to modernize its distribution grid. The DMR, then, according to DP&L, is strictly tied to distribution, not generation. (Co. Ex. 2 at 70.)

{¶ 105} DP&L additionally argues that even if the DMR is a transition charge, the rider is still lawful. As discussed above, the Company claims that the DMR is permitted under multiple sections of R.C. 4928.143(B), including, specifically, R.C. 4928.143(B)(2)(h). DP&L avers that both R.C. 4928.143(B) and R.C. 4928.143(B)(2)(h) allow the DMR to be a part of an ESP "notwithstanding any other provision," including the provision prohibiting transition charges in R.C. 4928.38. DP&L further reasons that R.C. 4928.143, as the later-enacted statute, supersedes R.C. 4928.38.

{¶ 106} In response, OCC echoes its claim that the DMR is an unlawful transition charge. OCC maintains that while DP&L states the end purpose of the DMR is to modernize the distribution grid, the Company's means to get there is by using the DMR to pay debts. According to OCC, these debts are associated with generation assets; thus, the funds from the DMR are associated with generation and constitute a transition charge. Similarly, OCC reasons that even if DP&L transfers its generation assets, the debt associated with those assets will remain and be paid with money recovered through the DMR. OCC also discounts the Company's arguments regarding the "notwithstanding" clauses in R.C.

4928.143(B) and R.C. 4928.143(B)(2)(h), noting the Supreme Court of Ohio rejected those arguments.

{¶ 107} The Commission finds that the DMR does not permit DP&L to collect transition revenue or its equivalent. DP&L's SSO is entirely served through a competitive bidding process and DP&L's generation assets no longer serve SSO customers. Further, DP&L has committed to transferring its generation assets to a third-party or to an affiliate and has taken the appropriate steps to implement that commitment. *In re Dayton Power and Light Co.*, Case No. 13-2420-EL-UNC, Notice Filing (July 24, 2017) (notice of sale of ownership interests in Miami Fort Station 7 and 8 and in Zimmer); *Dayton Power and Light Co./AES Ohio Generation LLC*, 160 FERC ¶ 61,034. Therefore, DMR revenues cannot, and will not, be used to support DP&L's former generation assets. In approving the transfer of generation assets from DP&L to AES Ohio Generation LLC, FERC rejected arguments raised by OCC that the debt associated with the generation assets to be transferred could result in cross-subsidization of an affiliate by DP&L's retail customers. FERC specifically found that the transaction will not result in inappropriate cross-subsidization of a non-utility affiliated company by a utility company or in a pledge or encumbrance of utility assets for the benefit of an affiliate company. 160 FERC ¶ 61,034 at 17, 18.

{¶ 108} Further, we agree with DP&L that the purpose of the DMR is to put the Company in a financial position to provide safe and reliable distribution service and to modernize its distribution grid and that the DMR is tied to distribution, not generation (Staff Ex. 2 at 4; Tr. Vol. V at 875-76, 876-78). Accordingly, the Commission finds that the DMR does not permit DP&L to collect transition revenue or its equivalent.

o. *Whether the DMR violates other important regulatory principles or practices*

{¶ 109} OCC additionally claims the DMR violates Commission precedent as well as principles of cost causation. OCC states that the DMR was not created with any cost causation principles. Further, according to OCC, residential customers unfairly shoulder a significant portion of the costs. OCC avers that in the only previous case where the Commission approved a DMR, the Commission found that residential customers were excessively impacted by a proposed DMR cost allocation of 44 percent. Instead, says OCC, the Commission assumed a cost allocation of 50 percent energy and 50 percent demand. OCC requests the Commission adopt the same allocation for the DMR in this proceeding.

{¶ 110} DP&L responds that the cost allocation proposed in the Amended Stipulation has 34 percent allocated based on 5 Coincident Peaks, 33 percent allocated based on distribution revenue, and 33 percent allocated based on historic allocation of the currently charged nonbypassable rider. The Company avers that this was negotiated among the signatory parties to balance customer bill impact, fairness, and cost-causation principles. According to DP&L, in considering the Amended Stipulation as a package, residential customers will experience a decrease in rates. Further, DP&L notes that allocating the DMR charges based on the historic allocation of DP&L's current nonbypassable charge promotes gradualism.

{¶ 111} The Commission finds that the cost allocation of the DMR does not violate any regulatory principles. The Supreme Court of Ohio has held that that the Commission has broad discretion in rate design. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 125 Ohio St.3d 57, 2010-Ohio-134, ¶ 20 (citing *Payphone Assn. v. Pub. Util. Comm.*, 109 Ohio St.3d 453, 2006-Ohio-2988, 849 N.E.2d 4, ¶ 35). Moreover, as stated by OCC witness Fortney, cost allocation and rate design are more art than science (Tr. Vol. IV at 806). The Commission notes that the cost allocation for the DMR is based upon the cost allocation of DP&L's existing nonbypassable rider. Therefore, the Commission finds that the principle of gradualism support using a similar cost allocation to reduce impact on customer bills.

{¶ 112} We also note that the cost allocation and rate design of the DMR was negotiated as part of a larger stipulation that took into consideration multiple factors. This differs significantly from our previous consideration of a DMR cost allocation, as that was not the product of a negotiated stipulation. *In re FirstEnergy*, Case No. 14-1297 at 97-98. As discussed above, we found the Amended Stipulation, including the inclusion of the DMR, was negotiated among capable, knowledgeable parties. The resulting cost allocation of the DMR is reasonable and appropriately considers cost-causation principles as well as the overall customer bill impact (Jt. Ex. 1 at 5-6). We additionally note that the Amended Stipulation, as a whole, is expected to result in overall lower rates for residential customers (Co. Ex. 3 at 20-21).

p. Whether the DIR violates any important regulatory principles

{¶ 113} OCC first asserts that DP&L failed to comply with the standard filing requirements for infrastructure modernization plans, as outlined in Ohio Adm.Code 4901:1-35-03(C)(9)(g). OCC submits that DP&L's argument that necessary details regarding the DIR could be provided in a future rate case is without merit, as the filing requirements pertain specifically to an ESP proceeding. OCC further states that the DIR is not necessary as there are no pending reliability concerns. According to OCC, despite being the only utility without an infrastructure modernization plan, DP&L has consistently met or exceeded reliability goals while also maintaining high customer satisfaction scores. Accordingly, OCC reasons that there is no alignment between customers expectations and the need for an accelerated recovery of distribution investments, as required by Ohio Adm.Code 4901:1-35-03(C)(9)(g).

{¶ 114} DP&L responds that the DIR is lawful. DP&L asserts it is impossible to comply with the standard filing requirements at this time because the costs are still unknown. According to DP&L, the DIR will be set at zero and will not be populated until after the conclusion of the distribution rate case. The Company also disagrees with OCC's assertion that the DIR does not align with customer expectations. DP&L avers residential and commercial customers desire greater reliability, which would be provided by the DIR. The Company submits it would be illogical to wait for reliability to suffer before implementing the DIR.

{¶ 115} The Commission finds that OCC's argument that the DIR is unlawful lacks merit. In approving distribution investment riders for other electric utilities, the Commission has discussed how such riders allow utilities to maintain reliability by reducing regulatory lag. In doing so, the DIR promotes cost causation principles and prevents risking rate shock. *See, e.g., In re FirstEnergy*, Case No. 14-1297-EL-SSO at 115-116. Moreover, the Amended Stipulation specifically provides that the DIR will initially be set at zero and be used to recover incremental distribution capital investments. All other matters related to the DIR, including cost allocation, term, rate design, and annual revenue caps will be addressed in DP&L's pending distribution rate case, Case No. 15-1830-EL-AIR, or a future distribution rate case. We note that OCC, and any other interested stakeholder, will have a full and fair opportunity to participate in the pending distribution rate case or any future rate cases.

{¶ 116} Additionally, it was established that maintaining reliability is in alignment with customer expectations (Staff Ex. 1 at 3-7). Thus, because of the benefits associated with the DIR, it is irrelevant whether DP&L is presently meeting reliability standards or not.

q. Whether the Reconciliation Rider violates important regulatory principles

{¶ 117} As with the DMR, OCC asserts that the Reconciliation Rider is also an unlawful transition charge. Because the purpose of the Reconciliation Rider is to bolster the Company's financial integrity, and because the DP&L's financial integrity is struggling due to debt associated with generation assets, OCC claims the rider is a transition charge and barred by statute. OCC further maintains that the Reconciliation Rider violates Ohio law because residential customers will assume all of the costs of the rider even though the rider is not affiliated with SSO service.

{¶ 118} DP&L replies that the Reconciliation Rider is compliant with Ohio law. First, according to the Company, the Reconciliation Rider is not a transition charge. DP&L states that transition charges are nonbypassable and the Reconciliation Rider is bypassable. DP&L also affirms that the Commission has previously approved similar riders and found that those riders were not transition charges. As to the cost allocation of the Reconciliation Rider, DP&L claims that residential customers are not discriminated against. The Company argues that uniformity in utility prices and rates is not required and that, additionally, residential customers can avoid the charges by shopping for generation service.

{¶ 119} The Commission finds that the Reconciliation Rider, as modified by the Commission, is lawful and does not discriminate against residential customers. The Commission rejects the argument that the Reconciliation Rider is a transition charge. As we have discussed in other proceedings with similar proposed riders, the purpose of transition revenue was to allow electric distribution utilities to recover the costs of generation assets used to provide generation service to customers prior to the unbundling of rates in S.B. 3, if such costs could not be recovered through the market. R.C 4928.39. However, OVEC's generation output was used to provide generation service to the U.S. Department of Energy and its predecessors prior to January 1, 2001. Therefore, the OVEC contractual entitlement, which was a wholesale transaction between OVEC and DP&L, was not "directly assignable or allocable to retail electric generation service provided to electric consumers in this state." R.C. 4928.39(B). Moreover, at the time of the enactment of S.B. 3 and the transition to a competitive market on January 1, 2001, OVEC's generation assets were used to serve OVEC's customer, the U.S. Department of Energy. Therefore, DP&L was not "entitled an opportunity to recover the costs," within the meaning of the statute. R.C. 4928.39(D). *In re Ohio Power Co.*, Case Nos. 14-1693-EL-RDR et al. (*Ohio Power*), Second Entry on Rehearing (Nov. 3, 2016) at 100; Fifth Entry on Rehearing (Apr. 5, 2017) at 37-38. There is no evidence in the record of this proceeding to distinguish our determination in *Ohio Power* from the facts of this case. Accordingly, consistent with our decision in *Ohio Power*, we find that costs related to OVEC's generation assets do not meet the criteria for transition costs under R.C 4928.39(B) or (D). Since OVEC's generation assets were used to provide generation service to the U.S. Department of Energy and its predecessors prior to the transition to a competitive market on January 1, 2001, costs related to OVEC's generation assets cannot be the basis for transition charges or their equivalent. Further, we find that, as the Reconciliation Rider is now nonbypassable, OCC's arguments regarding discriminatory treatment are now moot.

r. Whether the economic development incentives violate regulatory principles

{¶ 120} OCC, as well as Walmart, submit the discounts and direct payments made to specific parties do not meet the requirements of traditional economic development arrangements. Instead, argues OCC, the discount were only applied in exchange for the parties' support or non-opposition to the Amended Stipulation. According to OCC, there has not been a demonstration of need for the discounted rates or an explanation of how the discounts would further state policy. Additionally, OCC and Walmart state there are no specific commitments by the parties to retain or expand jobs in Ohio.

{¶ 121} Walmart submits that while some parties are receiving cash payments and other, similarly situated customers are not, DP&L may be providing discriminatory rates. Walmart reasons that this impairs competitiveness in Ohio. OCC similarly avers that R.C. 4905.33 prohibits utilities from providing special rates and for specific corporations.

{¶ 122} DP&L submits that the economic development incentives and grants are lawful. The Company first affirms that economic development provisions are expressly permitted in an ESP, pursuant to R.C. 4928.143(B)(2)(i). DP&L further maintains that the economic benefits provided by the incentives justifies the distinction in rates. OMAEG argues similarly, stating that economic development payments offset cost associated with rate design modifications in the Amended Stipulation.

{¶ 123} The Commission concludes that the economic development incentives are lawful. We first note that R.C. 4928.143(B)(2)(i) expressly allows provisions for economic development and job retention. The statute does not require a demonstration of need or specific commitments. Further, we have already discussed the specific benefits derived from the provisions. This includes programs regarding job retention, energy efficiency, and utility assistance to low income customers (Jt. Ex. 1 at 27-35). OCC and Walmart's argument that the provisions are instead financial inducements is unconvincing. In addition to the economic benefits, the provisions offset costs associated with the Amended Stipulation and appear to be negotiated in good faith. Finally, we note that the record demonstrates that a significant number of people in the DP&L service territory live below the poverty line and that median household incomes have fallen. OPAE witness Cronmiller testified that one cause of the high poverty rate is that higher-paying, full-time jobs are being replaced with jobs that don't pay a living wage or jobs that are part-time or temporary. (OPAE Ex. 1 at 3). The Commission finds that this evidence supports the need for the economic development incentives contained in the Amended Stipulations.

s. Whether the Amended Stipulation allows DP&L to earn significantly excessive earnings

{¶ 124} OCC argues that if the Amended Stipulation is approved, along with the DMR, DP&L's return on equity will result in significantly excessive earnings. OCC avers that in DP&L's pending distribution rate case, a 10.5 percent return on equity is recommended. According to OCC, when factoring in the DMR, DP&L's return on equity would greatly exceed that amount. OCC asserts the Commission should impose a limit on the amount of profits that DP&L can earn in order to protect consumers.

{¶ 125} DP&L claims that it is appropriate to exclude the DMR from consideration of whether DP&L is receiving significantly excessive earnings. The Company asserts the purpose of a significantly excessive earnings test is to ensure that shareholderss are not being unjustly compensated. According to DP&L, because funds from the DMR are committed to be used to pay down debt, it is inappropriate to consider the DMR towards DP&L's return on equity. DP&L further argues that OCC is making assumptions from a pending distribution rate case that has not been litigated or resolved.

{¶ 126} Consistent with our previous orders in similar proceedings, the Commission finds that the DMR revenues should be excluded from SEET calculations. *In re FirstEnergy*, Case No. 14-1297-EL-SSO at 98. Including the revenue in SEET would introduce an unnecessary element of risk to DP&L and undermine the purpose of improving the financial integrity of the Company. However, we will reconsider whether to exclude DMR revenues from SEET when we rule upon any possible extension of the rider.

t. Whether a rules review regarding non-commodity billing violates regulatory principles

{¶ 127} OCC notes that the Amended Stipulation requires Staff to request rules regarding non-commodity billing with 18 months of the approval of the Amended Stipulation. According to OCC, this is inappropriate; instead OCC asserts the rules should reviewed as part of the typical five-year review process. OCC states the rules regarding marketers are set to be reviewed in 2019 and that is the appropriate time to review rules concerning non-commodity billing. IGS and RESA reply that OCC's argument should be denied. IGS and RESA aver that the Commission has broad discretion to manage its dockets and to decide the timing of a rule review. Additionally, according to IGS and RESA, non-commodity billing does not necessarily only apply to CRES providers, so it is logical to have a separate, stand alone rules proceeding.

{¶ 128} OCC's argument is both without merit and moot. IGS and RESA are correct that the Commission has broad discretion to manage its own docket. *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO et al, Entry on Rehearing (May 28, 2015) at 36. Additionally, the Amended Stipulation merely obligates Staff to request the Commission to initiate a rule review regarding non-commodity billing, and, in any event, the Commission has already opened new dockets for the review of Chapters 4901:1-10 and 4901:1-21, which govern non-commodity billing by utilities and CRES providers. *In the Matter of the Commission's Review of Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 17-1842-EL-ORD; *In the Matter of the Commission's Review of Chapter 4901:1-21 of the Ohio Administrative Code*, Case No. 17-1843-EL-ORD. In those dockets, the rules will be open to comments from all interested parties and subject to review by the Commission.

u. Whether other riders included in the Amended Stipulation violate regulatory principles

{¶ 129} OCC claims that the RCR, the SCRR, and the Uncollectible Rider should not be approved without first establishing necessary baselines and reviews. OCC avers the components of these riders are more appropriately handled in a distribution rate case. In response, the Company notes that all rider recovery costs are subject to review by Staff. Here, we find that DP&L is correct that the riders identified by OCC are still subject to review, and, ultimately, approval by the Commission. Accordingly, OCC's argument is without merit.

IV. Conclusion

{¶ 130} Upon consideration of the record, we find that the Amended Stipulation, as modified by the Commission, satisfies the three prong criteria employed by the Commission for consideration as to the reasonableness of a stipulation. Additionally, we find that the ESP, as proposed in the Amended Stipulation, is more favorable in the aggregate than an MRO. Thus, having made these determinations, the Commission concludes that the Amended Stipulation should be adopted and approved.

{¶ 131} Furthermore, the Commission finds that the Company should file final tariffs consistent with this Opinion and Order, and that the revised final tariffs shall be approved effective November 1, 2017, subject to final review by the Commission. Accordingly, the term of the electric security plan should commence November 1, 2017.

V. Findings of Facts and Conclusions of Law

{¶ 132} DP&L is a public utility as defined in R.C. 4905.02 and, as such is subject to the jurisdiction of the Commission.

{¶ 133} On February 22, 2016, DP&L filed an application for an SSO in accordance with R.C. 4928.141.

{¶ 134} A stipulation was filed on January 30, 2017, and amended on March 14, 2017. The signatory parties to the Amended Stipulation were DP&L, Staff, Dayton, RESA, IGS, Edgemont, OPAE, PWC, OEG, OHA, and Kroger. Additionally, Enernoc, Honda, IEU-Ohio, and OMAEG signed the Amended Stipulation as non-opposing parties.

{¶ 135} The evidentiary hearing in this proceeding was held starting on April 3, 2017.

{¶ 136} Pursuant to published notice, public hearings were held in Dayton on September 27, 2016.

{¶ 137} DP&L's application was filed pursuant to R.C. 4928.143, which authorizes the Company to file an ESP as its SSO.

{¶ 138} The Commission finds that the Amended Stipulation, as modified by the Commission, meets the three criteria for adoption of the stipulation, is reasonable, and should be adopted.

{¶ 139} The proposed electric security plan, as modified by the Amended Stipulation, including its pricing and all other terms and conditions, including deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply in under R.C. 4928.142.

VI. ORDER

{¶ 140} It is, therefore,

{¶ 141} ORDERED, That the ESP, as proposed in the Amended Stipulation and modified by the Commission, be adopted and approved. It is, further,

{¶ 142} ORDERED, That the Company shall file final tariffs consistent with this Opinion and Order, and that the revised final tariffs shall be approved effective November

1, 2017, subject to final review by the Commission. The new tariffs shall be effective the later of the date of filing or November 1, 2017. It is, further,

{¶ 143} ORDERED, That the Company file in final form two complete copies of tariffs consistent with this Opinion and Order. One copy shall be filed with this case docket, and one shall be filed with the Applicant's TRF docket. The Company shall also update their respective tariffs previously filed electronically with the Commission's Docketing Division. It is, further,

{¶ 144} ORDERED, That the Company shall notify their customers of the changes to the tariff via bill message or bill insert within 30 days of the effective date. A copy of this notice shall be submitted to the Commission's Service Monitoring and Enforcement Department at least 10 days prior to its distribution to customers. It is, further,

{¶ 145} ORDERED, That the DP&L take all steps necessary to implement the ESP, as proposed in the Amended Stipulation and modified by the Commission. It is, further,

{¶ 146} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

M. Beth Trombold

Thomas W. Johnson

Lawrence K. Friedeman

Daniel R. Conway

NJW/GAP/sc/vrm

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Secretary