BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

PUBLIC VERSION

INITIAL POST-HEARING BRIEF OF THE DAYTON POWER AND LIGHT COMPANY

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TABLE OF CONTENTS

THE DAYTON POWER AND LIGHT COMPANY'S INITIAL POST-HEARING BRIEF

I. INTRODUCTION AND SUMMARY

The Amended Stipulation and Recommendation ("Stipulation") provides significant customer benefits, the most important of which are that it ensures that The Dayton Power and Light Company ("DP&L") can continue to provide safe and reliable service and incentivizes DP&L to implement grid modernization. The Stipulation provides those benefits while at the same time providing a rate decrease to typical residential customers and continuing to charge those customers the lowest rates in the state.

Interstate Gas Supply, Inc. ("IGS") originally was a Signatory Party to the Stipulation, and agreed that "as a package, the Stipulation benefits customers and the public interest" and "violates no regulatory principle or practice." Stipulation, p. 2. IGS, nevertheless, filed a Notice of Withdrawal after the Commission modified a single term of the Stipulation, i.e., that DP&L's Reconciliation Rider be nonbypassable instead of bypassable as negotiated by the Signatory Parties. Oct. 20, 2017 Opinion and Order, ¶ 63. The Commission should reject IGS' arguments in this case for the following reasons.

1. No material modifications: To withdraw from the Stipulation, IGS must establish that the Commission's modification was material. Stipulation, ¶ XI.5. IGS cannot do so because the Commission modified only Stipulation ¶ VI.1.a., which provided that the Reconciliation Rider would be bypassable. There is a footnote to the Stipulation that states that "IGS do[es] not support" Section VI.1.a. Stipulation, p. 13, n.6. IGS cannot establish that a modification to a section that IGS did not support was material.

2. Serious bargaining: IGS' witnesses do not dispute that serious bargaining occurred or that the Stipulation was signed by a diverse group of parties. Indeed, the Retail Energy Supply Association ("RESA") signed the Stipulation and remains a Signatory Party. Stipulation, p. 40. IGS is a member of RESA, and IGS witness White is the President of RESA.[1] The Stipulation is therefore supported by a marketer group to which IGS belongs and leads.

3. Customer benefits: IGS originally signed and supported the Stipulation, which necessarily means that IGS believed that the Stipulation benefited customers and the public interest at the time. Stipulation, p. 2. The Commission modified the Stipulation so that the Stipulation would provide additional customer benefits. Opinion and Order, ¶ 63. IGS cannot establish that the Commission's modification now means that the Stipulation fails the customer-benefit test.

In addition, the Commission is required to consider the Stipulation as a "package." In its attack on the Stipulation, IGS ignores the many customer benefits of the Stipulation and focuses on only narrow portions of the Stipulation in isolation. There is no evidence that the Stipulation as a package fails the customer-benefit test.

Further, the Commission should conclude that IGS lacks standing to challenge the Distribution Modernization Rider ("DMR"). IGS does not pay the DMR and does not compete with DP&L or DPL Inc.; the DMR thus does not injure IGS. Indeed, IGS supports Smart Grid and the undisputed evidence shows that DP&L cannot implement Smart Grid without the DMR.

[1] Witness White has submitted two sets of direct testimony in this proceeding: one on behalf of IGS and RESA supporting the Stipulation prior to the Opinion and Order (RESA Exhibit 1) and one on behalf of IGS opposing the Stipulation (IGS Exhibit 1014) following IGS' Notice of Withdrawal. Witness White, nevertheless, conceded when cross-examined on his testimony in IGS Exhibit 1014 that his testimony in RESA Exhibit 1 is "still truthful." Trans. Vol. VIII, p. 1367.

Finally, there is extensive evidence in the record that the Stipulation benefits customers and the public interest as a package. Among other things, the evidence showed that the DMR would allow DP&L to continue to provide safe and reliable service and to implement Smart Grid. The testimony of IGS' witnesses is insufficient to show otherwise.

4. Regulatory principles: IGS' witnesses assert that the Reconciliation Rider is not a hedge and is a transition cost. The Supreme Court of Ohio recently rejected those exact arguments. In re Application Seeking Approval of Ohio Power Company's Proposal to Enter Into an Affiliate Power Purchase Agreement, Slip Op. No. 2018-Ohio-4698, ¶ 12-64. Accord: In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, et al., Case No. 17-1263-EL-SSO, et al., Dec. 19, 2018 Opinion and Order, ¶ 282 ("Although the PSR currently projects to be a loss, the volatility of the markets, particularly in times of extreme weather conditions, contrasted with the stability of OVEC's operating costs gives the PSR significant value as a hedge.").

IGS also asserts that the DMR would not be available in a Market Rate Offer ("MRO"), and the Stipulation thus fails the MRO versus Electric Security Plan ("ESP") test. However, prior Commission precedent establishes that the DMR would be available in an MRO. Oct. 12, 2016 Fifth Entry on Rehearing, ¶ 357 (Case No. 14-1297-EL-SSO). Moreover, any suggestion by IGS that the DMR violates any regulatory principle or practice is undermined by its previous position that the Stipulation did not do so.

The Commission should reject IGS' challenges to the Stipulation and conclude that the Stipulation as modified passes the Commission's three-part test.

II. IGS HAS FAILED TO SHOW THAT THE COMMISSION MADE A MATERIAL MODIFICATION TO THE STIPULATION

The Commission should reject IGS' challenge to the Stipulation because IGS has failed to show that the Commission's modification to the Stipulation was material to IGS. Specifically, Section XI.5 of the Stipulation provides the sole mechanism for withdrawing from the Stipulation:

> "If the Commission rejects or modifies all or any part of this Stipulation, any Signatory Party shall have the right to apply for rehearing. If the Commission does not adopt the Stipulation without material modification upon rehearing, or if the Commission makes a material modification to any Order adopting the Stipulation pursuant to any reversal, vacation and/or remand by the Supreme Court of Ohio, then within thirty (30) days of the Commission's Entry on Rehearing or Order on Remand . . . any Signatory Party may withdraw from the Stipulation by filing a notice with the Commission ('Notice of Withdrawal')."

(Emphasis added.)

Pursuant to Section XI.5, IGS could withdraw from the Stipulation only if the Commission made a "material modification." Id. The Commission should conclude that its limited modification of the Stipulation was not material to IGS for two reasons.

First, Section VI.1.a of the Stipulation stated that the Reconciliation Rider would be bypassable, and is thus the section that the Commission modified when it made the rider non-bypassable. Opinion and Order, ¶ 63. A footnote to that Section states: "RESA and IGS do not support but agree not to oppose Section VI.1.a.i. and ii. of the Stipulation." Stipulation, p. 13, n. 6 (emphasis added).

IGS did not support the only section of the Stipulation that the Commission modified. IGS previously told the Commission that footnote 6 to the Stipulation was included to

"insulate[] against the risk that another party cites to an isolated stipulation provision in another case." Nov. 2, 2018 IGS Memorandum Contra to DP&L's Motion to Strike, p. 9. IGS made a tactical decision not to support Section VI.1a, and having failed to support that Section, IGS should not now be able to argue that the Commission's decision to modify that section was material to IGS.

Second, IGS has failed to offer any evidence showing that the modification was material to it. For example, the evidence at the hearing showed that the Reconciliation Rider was estimated to be approximately $1.85 per month for a typical residential customer before the Commission modified the Reconciliation Rider. Trans. Vol. VII, pp. 1301-02; Schroder Test., Ex. A, p. 1. IGS' theory for why the modification was material to it is that the $1.85 would help to induce switching if the Rider was bypassable. However, IGS has not made a showing that any customers would be likely to switch for such a small monthly savings, much less that a material number of customers would switch. IGS introduced evidence from four witnesses at the hearing, but none of them sponsored any calculations showing any injury -- much less a material injury -- to IGS as a result of the modification to the Stipulation by the Commission.

The Commission should conclude that there has not been a material modification of the Stipulation, and IGS does not have the right to withdraw from it.

III. THE COMMISSION'S THREE-PART TEST FOR APPROVING STIPULATIONS

The terms of a stipulation are "accorded substantial weight" by the Commission. Office of Consumers' Counsel v. Pub. Util. Comm., 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (per curiam) (citing City of Akron v. Pub. Util. Comm., 55 Ohio St.2d 155, 157, 378 N.E.2d 480

(1978) (per curiam). 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?"

Feb. 23, 2017 Order on Global Settlement Stipulation, ¶ 101 (Case No. 09-872-EL-FAC).

The Supreme Court of Ohio has endorsed the Commission's use of those three criteria to evaluate a stipulation and stated that the Commission may place substantial weight on the terms of a stipulation. Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm., 68 Ohio St.3d 559, 629 N.E.2d 423 (1994) (per curiam).

IV. THE STIPULATION IS THE PRODUCT OF SERIOUS BARGAINING

As the Commission already found based on the record of this proceeding, "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." Opinion and Order, ¶ 23. Indeed, the testimony of DP&L and Staff witnesses show that the diverse Signatory Parties engaged in an extensive negotiations process from which no party was unduly excluded. Id. at ¶ 20. Accord: Schroder Test., pp. 4-8; Donlon Test., pp. 3-4. IGS' witnesses do not dispute these points.

RESA remains a Signatory Party to the Stipulation. Stipulation, p. 40. IGS is a member of RESA, and IGS witness White is the President of RESA. Trans. Vol. VIII, p. 1368.

The Stipulation is thus supported by a marketer group of which IGS is a member with a leadership role.

V. THE STIPULATION BENEFITS CUSTOMERS AND THE PUBLIC INTEREST

A. IGS ORIGINALLY WAS A SIGNATORY PARTY TO THE STIPULATION

IGS signed the Stipulation. Stipulation, p. 40. IGS confirmed by its signature that the Stipulation benefited customers and the public interest. Stipulation, p. 2 (agreeing that "as a package, the Stipulation benefits customers and the public interest"). IGS submitted testimony and a brief in support of that Stipulation. White Test., pp. 1-12 (RESA Ex. 1); May 5, 2017 Joint Initial Brief of IGS and RESA, p. 6 (asserting that the Stipulation benefited customers and the public interest as a package).

The Commission modified the Stipulation to make the Reconciliation Rider nonbypassable to provide additional benefits to customers. Opinion and Order, ¶ 63; Sept. 19, 2018 Third Entry on Rehearing, ¶¶ 45, 51. The Commission should reject IGS' argument that the Stipulation passed the customer-benefit test before the Commission's modification, but somehow fails it after the Commission modified it to provide additional customer benefits.

B. IGS HAS FAILED TO EVALUATE THE STIPULATION AS A "PACKAGE"

The Commission is again asked to determine whether the Stipulation benefits customers as a "package." Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm., 68 Ohio St.3d 559, 629 N.E.2d 423 (1994) (per curiam). While IGS witnesses identify particular provisions in the Stipulation on which they would like a better deal, none of them address the Stipulation as a "package."

Specifically, the evidence at the hearing showed that the Stipulation contains many customer benefits that IGS has ignored, including:

1. Equity Investments by AES: The evidence shows that the Stipulation requires that AES will make significant equity investments in DPL Inc., which the Commission could not require without a Stipulation:

a. No Dividends: AES has not received a dividend from DPL Inc. since 2012,[2] and agreed in the Stipulation not to receive a dividend during the ESP term (Stipulation, ¶ II.1.a (p. 3)).

b. Tax Liability Collection: AES files a consolidated tax return on behalf of itself and its subsidiaries, and DPL Inc. has a contractual obligation to pay DPL Inc.'s share of the tax liabilities to AES. Schroder Test. (DP&L Ex. 3), p. 19; Jackson Test. (DP&L Ex. 1B), p. 12. AES has not collected the required tax-sharing payments from DPL Inc. since 2012,[3] and agreed in the Stipulation not to collect tax-sharing payments during the DMR term (Stipulation, ¶ II.1.b (pp. 3-4)).

c. Conversion to Equity: While AES has not been collecting DPL Inc.'s contractually-required tax-sharing payments, those payments have been listed as a liability on DPL Inc.'s balance sheet. Jackson Test. (DP&L Ex. 1B), p. 12. AES agreed in the Stipulation to

[2] Jackson Test. (DP&L Ex.1B), p. 11.
[3] Trans. Vol. I, p. 49 (Jackson).

convert DPL Inc.'s past and future (during the DMR term) tax liabilities into equity (Stipulation, ¶ II.1.b (pp. 3-4)).

DP&L witness Malinak explained the financial magnitude of those commitments:

> "As part of these commitments, AES has agreed to convert the outstanding tax liability on DPL's books as of the effective date of the ESP to equity and, thereafter, each month, convert newly accrued liabilities (incurred during the term of the DMR) to equity. [Stipulation, pp. 3-4.] I project that this will result in a total incremental equity investment in DPL of [redacted] million by 2022."

Malinak Test. (DP&L Ex. 2B), p. 4 (footnote omitted). Accord: Trans. Vol. I, p. 154 (Malinak) (footnote omitted) (AES's contributions are equity investments).

Staff witness Donlon testified that those measures would constitute "ring fencing" and that "through this stipulation we were able to negotiate . . . something that is outside of the Commission's actual authority to be able to do in an order." Trans. Vol. V, p. 883. Accord: id. at 884-87 (explaining that Staff was able to negotiate with AES Corporation to provide appropriate measures that can be implemented only through a stipulation).

OCC witness Kahal agreed at the hearing that those three measures in the Stipulation were benefits of the Stipulation (Trans. Vol. IV, pp. 710-11) and that they would constitute "an equity infusion from AES into DPL Inc." Id. at 712 (emphasis added).

2. Competitive Bidding: The Stipulation provides that 100% of DP&L's SSO load will be provided through competitive bidding. Stipulation, ¶ III (pp. 8-9). There is no requirement in the ESP statute that SSO service be provided through competitive bidding. Ohio

Rev. Code § 4928.143. OCC's witnesses conceded that that provision was a benefit. Trans. Vol. IV, p. 709 (Kahal); Trans. Vol. IV, p.768 (Williams).

3. Transfer of Generation Assets: The Stipulation also provides that DP&L will transfer its generation assets to an affiliate. Stipulation, ¶ II.1.c (p. 4). OCC witness Kahal conceded that that term was a benefit to customers. Trans. Vol. IV, p. 713.

4. Sales Process for Certain Coal Assets: The Stipulation provides that DP&L will engage in a sale process for certain of its coal-fired generation assets, and that any proceeds from the sale will be used to pay debt at DPL Inc. and DP&L. Stipulation, ¶ II.1.d, e (p. 4). OCC witness Kahal conceded that that was "a completely appropriate thing to do." Trans. Vol. IV, p. 714. Subsequent to the Commission's Order in this case, those coal assets, as well as DP&L's peaking assets, were in fact transferred and sold for a total of $309 million, and the net proceeds have been used to pay down debt at DPL Inc. Trans. Vol. VII, pp. 1170-71, 1229.

5. Economic Development Incentives: The Stipulation also provides that certain DP&L customers that are large employers in DP&L's service territory will receive economic development incentives. Stipulation, ¶ IV (pp. 9-10). The incentives are "designed to promote Ohio's ability to create and retain jobs. Not only will the incentives assist those businesses to retain existing employees and hire new ones, but there would also be a multiplier effect in that those employees will support local businesses." Schroder Test. (DP&L Ex. 3), p. 13. Accord: Trans. Vol. IV, p. 723 (Kahal) (businesses look at their costs when making decisions).

6. Economic Development Grant Fund: The Stipulation also includes an Economic Development Grant Fund. Stipulation, ¶ V (pp. 10-12). The costs of that fund will be borne by DP&L (not customers), and it will provide the following benefits: (1) $1 million annually for customers to use for energy programs and infrastructure; (2) payments totaling $2 million to benefit Adams County, and (3) DP&L will provide offset payments to certain large employers within DP&L's service territory. Schroder Test. (DP&L Ex. 3), p. 13.

7. Competitive Enhancements: The Stipulation contains three significant competitive enhancements: (1) a pilot program allowing DP&L's customers to opt out of DP&L's TCRR-N, and acquire transmission service directly from PJM or from a CRES Provider; (2) a supplier consolidated billing program; and (3) provisions regarding the inclusion of non-commodity items on a utility consolidated bill. Stipulation, ¶¶ VI.1.c (pp. 14-17); IX.1 (p. 21); IX.2 (pp. 21-25). The testimony of RESA/IGS witness White demonstrates that those provisions will assist the competitive market within DP&L's service territory to develop. White Test. (RESA Ex. 1), pp. 8-11; Accord: Schroder Test. (DP&L Ex. 3), pp. 15-16.

8. City of Dayton: The Stipulation provides significant benefits for the largest municipality in the DP&L service territory – the City of Dayton and its residents – including:

a. A joint partnership with The University of Dayton's Hanley Sustainability Institute (Stipulation, ¶ X.2.a. (p. 27));

b. Payments of $50,000 annually for residential energy education and reduction programs (Stipulation, ¶ X.2.b (p. 27));

c. DP&L will participate in the Property Accessed Clean Energy Program, including payments to support that program (Stipulation, ¶ X.2.c (pp. 27-28));

d. DP&L will work to improve reliability at the Dayton International Airport (Stipulation, ¶ X.2.d (pp. 28-29));

e. City accounts will be exempt from paying redundant service charges (Stipulation, ¶ X.2.e (p. 29));

f. DP&L's operating headquarters will remain in the City of Dayton (Stipulation, ¶ X.2.f (p. 29));

g. DP&L will work with the City of Dayton to develop a job training program (Stipulation, ¶ X.2.g (p. 32));

h. DP&L agreed to provide special hiring outreach to City of Dayton residents (Stipulation, ¶ X.2.h (p. 32)); and

i. DP&L will contribute $200,000 annually to assist the City to provide economic development programs and essential city services to residences, including low-income residences (Stipulation, ¶ X.2.i (p. 32)).

DP&L witness Schroder explained the benefits of those provisions. Schroder Test. (DP&L Ex. 3), pp. 16-17.

9. Funds for Low-Income Customers: The Stipulation also provides that DP&L will use shareholder funds (i.e., customers will not pay) totaling $965,000 annually (during the initial DMR term) to benefit low-income customers. Stipulation, ¶¶ X.2.i (p. 32), X.3 (p. 33), X.6 (p. 36); Schroder Test. (DP&L Ex. 3), p. 16. OPAE/Edgemont witness Cronmiller explained the substantial benefits of the Stipulation to low-income customers. Cronmiller Test. (Edgemont/OPAE Ex. 1), pp. 2-4.

Not only does the Stipulation provide significant customer benefits, but also, a typical residential customer experienced a rate decrease under the Stipulation (Schroder Test. (DP&L Ex. 3), p. 20 and Ex. A), and DP&L's rates for typical residential customers have remained the lowest in the state after the Stipulation was approved (id. at 20-21 and Ex. B).

OCC witness Kahal described the rate impacts of the Stipulation as "surprisingly modest." Kahal Supp. Test. (OCC Ex. 12), p. 17. OCC witness Fortney conceded that customers would receive a rate decrease under the Stipulation. Trans. Vol. IV, p. 808.

IGS' four witnesses ignore entirely all of those benefits of the Stipulation in their filed testimony. Further, IGS witness Hess admitted that:

1. He did not know what the tax-sharing contract referred to in Stipulation, ¶ II.1.a meant. (Trans. Vol. VIII, p. 1441.)

2. He had no opinion on the Economic Development Rider in Stipulation, ¶ IV. (Id.)

3. He does not understand the Decoupling Rider in Stipulation, ¶ VI.1.b. (Id. at 1442.)

4. He does not understand the TCRR-N in Stipulation, ¶ VI.1.c. (Id.)

5. He does not know what co-generation refers to in Stipulation, ¶ VII. (Id. at 1442-43.)

6. He does not know what DP&L's Clean Energy Rider proposal was or why it was withdrawn in Stipulation, ¶ VIII.2. (Id. at 1444.)

7. He has no opinion on non-commodity billing in Stipulation, ¶ IX.1. (Id.)

8. He has no opinion on supplier consolidated billing in Stipulation, ¶ IX.2. (Id. at 1445.)

Again, the Commission is required to evaluate the Stipulation as a "package." IGS' witnesses have challenged only certain narrow sections of the Stipulation, but have failed to address whether the Stipulation benefits customers and the public interest as a "package." The Commission should thus conclude that this element is satisfied as well.

C. THE DMR BENEFITS CUSTOMERS

This section begins by demonstrating that IGS does not have standing to challenge the DMR. Assuming for the sake of argument that IGS does have standing, this section next demonstrates that the DMR benefits customers and that the Commission should reject IGS' arguments regarding the DMR.

1. IGS Lacks Standing To Challenge the DMR

The Commission should conclude that IGS lacks standing to challenge the DMR. The Supreme Court of Ohio has stated:

> "To establish traditional standing, a party must show that the party has 'suffered (1) an injury that is (2) fairly traceable to the defendant's allegedly unlawful conduct, and (3) likely to be redressed by the requested relief.' Moore v. City of Middletown, 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 977, ¶ 22, citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). 'These three factors—injury, causation, and redressability—constitute "the irreducible constitutional minimum of standing."' Moore at ¶ 22, quoting Lujan at 560."

State ex rel. Food & Water Watch v. State, 153 Ohio St.3d 1, 2018-Ohio-555, 100 N.E.3d 391, ¶ 19 (per curiam) (emphasis added). Accord: In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Service, Pub. Util. Comm. No. 94-987-GA-AIR, 1994 Ohio PUC LEXIS 684, at *8 (Aug. 4, 1994) ("The Commission has determined that intervention is not appropriate where the rates to be set will not be the rates charged to the petitioner.").

Here, IGS is not a DP&L customer and does not pay the DMR. The DMR funds are being used to pay interest and principal on debt at DP&L and DPL Inc. Stipulation, ¶ II.2.b; Trans. Vol. VII, p. 1237. IGS witness White admitted that IGS does not compete with either

DP&L or DPL Inc. Trans. Vol. VIII, pp. 1392, 1394. IGS has no evidence that it is harmed by the DMR.

Indeed, IGS' conduct in this case reveals that IGS is challenging the DMR even though the DMR will benefit IGS. Specifically, IGS supports Smart Grid. White Test., p. 3 (RESA Ex. 1); Trans. Vol. VIII, p. 1372 (White). DP&L's evidence showed that it cannot implement Smart Grid without the DMR,[4] and IGS witness Hess admitted that he does not contest that point. Trans. Vol. VIII, pp. 1454-55. IGS never explains why it would challenge a rider that IGS (a) does not pay, (b) does not compete against, and (c) is necessary to implement programs that IGS supports.

Since the DMR does not harm IGS, the Commission should conclude that IGS does not have standing to challenge it.

2. The DMR Is Necessary for DP&L to Provide Safe and Reliable Service and to Implement Grid Modernization

IGS witness Hess asserts that the Commission should reject the DMR because it does not benefit customers. Hess Test., pp. 11-31 (IGS Ex. 1016C). His testimony ignores the substantial evidence that the DMR will benefit customers by allowing DP&L to continue to provide safe and reliable service and to implement Smart Grid.

There is no dispute that it is critical that DP&L must be able to provide safe and reliable service. Trans. Vol. VIII, p. 1449 (Hess); Trans. Vol. IV, p. 707 (Kahal); Trans. Vol. IV, pp. 768-69 (Williams). There is also no dispute that to provide safe and reliable service, DP&L

[4] Trans. Vol. I, pp. 106-07, 109-10; Malinak Test. (DP&L Ex. 2B), p. 66.

needs to maintain its financial integrity. Trans. Vol. IV, p. 770 (Williams); Trans. Vol. IV, p. 804 (Fortney).

The testimony of DP&L witness Jackson demonstrates that without the DMR, DP&L would "have insufficient cash flows to pay all normal course obligations, including but not limited to operating expenses . . . and planned T&D capital expenditures" and that an inability by DP&L to maintain its financial integrity "would have a deleterious effect on the utility's . . . ability to provide stable and certain utility service to customers." Jackson Test. (DP&L Ex. 1B), pp. 17-18 (emphasis added).

DP&L witness Malinak explains that utilities whose financial integrity is at risk make materially lower capital investments than utilities that are financially healthy. Malinak Test. (DP&L Ex. 2B), pp. 32-35. He further testified:

> "Q. How would DP&L's customers be affected by DPL's and DP&L's financial distress?
>
> A. DP&L's customers would face a number of negative consequences. In fact, the financial condition of both DPL and DP&L is already compromised such that some of these negative consequences may already exist. If no DMR and Reconciliation Rider are awarded, and the financial condition of DPL and DP&L worsens, the impacts will be magnified and more invasive.
>
> - Based on my analysis of capital expenditures by financially distressed firms described above, DP&L likely would reduce or delay such expenditures. All else equal, this reduction would result in a less effective and less reliable infrastructure for delivering electric service, which would harm customers and the state of Ohio more generally.
>
> * * *

- DP&L likely would invest less in service operations, which would reduce the quality of customer service and customer satisfaction."

Malinak Test. (DP&L Ex. 2B), pp. 58-59 (emphasis added).

The evidence at the hearing also demonstrates that DP&L needs at least the $105 million DMR (and the other terms of the Stipulation) to be approved to allow DP&L to maintain its financial integrity. Perhaps the best evidence of that point comes from a report issued by S&P two weeks after the Stipulation was signed. DP&L Ex. 105. That report assumed that the DMR would be approved (p. 2) and issued the following credit ratings:

"• We are lowering our issuer credit ratings on both parent DPL and utility subsidiary DP&L to 'BB-' from 'BB'. The outlook is negative.

- We are lowering our rating on DPL's senior unsecured debt to 'B+' from 'BB' and revising the recovery rating on this debt to '5' from '4' based on deteriorating value of the merchant power assets and the structural subordination of this debt.
- At the same time, we are affirming our 'BBB-' rating on DP&L's senior secured debt. We revised the recovery rating on this debt to '1+' from '1', reflecting our assessment of modestly improved recovery prospects for the utility secured debt.
- In addition, we are revising our stand-alone credit profile assessment for DP&L to 'bbb' from 'bbb+'."

Id. (emphasis added). The BB- and B+ ratings are not investment grade; the BBB- rating is the lowest investment grade rating; the bbb rating is the second-lowest investment grade rating. Trans. Vol. IV, pp. 698-70 (Kahal).

IGS witness Hess agrees that it is in the "public interest" for DP&L to be investment grade. Trans. Vol. VIII, p. 1449. Similarly, OCC witness Kahal testified that it was

"vitally important" that DP&L have an investment grade credit rating. Trans. Vol. IV, pp. 695-97.

Mr. Kahal also testified that he "would support prompt action" to improve the credit ratings of DPL Inc. and DP&L:

> "Q. You also agree that prompt action is needed to shore up and improve the credit ratings of DPL Inc. and The Dayton Power and Light Company, right?
>
> A. Yes. I would support prompt action."

Trans. Vol. IV, p. 707 (emphasis added).

DP&L witness Malinak explained that the S&P Report shows "that the DMR is, if anything, too low":

> "Q. And what, if any, effect does [the S&P Report] have on your view as to the need for the DMR for DPL and DP&L?
>
> A. Well, it's clear evidence, I think, from this outside source that the DMR is, if anything, too low because they are being downgraded. They are already non-investment grade. They are being downgraded again. And S&P had access to the information in the stipulation, so they are aware of the terms of the stipulation, including the size of the DMR, and they put through a downgrade based on that information, so it's fairly strong evidence that the DMR is likely too low."

Trans. Vol. I, p. 116 (emphasis added).

DP&L witness Jackson explained that – even with the DMR – DP&L will have to make cuts, which may affect reliability, to achieve an appropriate FFO-to-debt metric:

> "Q. And as part of the proposed stipulation, the FFO to debt ratio plays no role in the $105 million, correct?

A. Well, the way I think about it is obviously we want to achieve a certain FFO to debt range. I don't believe that the 105 [million DMR] will get us there. The company is going to have to take some action, some cuts, which could have an impact to reliability, in order for to us [sic] achieve a certain FFO to debt metric."

Trans. Vol. I, p. 45 (emphasis added).

The evidence shows that DP&L could not maintain its financial integrity and provide safe and reliable service without the DMR. Accord: Opinion and Order, ¶ 108 ("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"). Providing safe and reliable service is one of the many public benefits achieved by the Stipulation.

3. The Stipulation Provides a Specific Path and Plan for Modernizing DP&L's Grid

The Stipulation provides that DMR funds will be used to allow DP&L and DPL Inc. to pay down debt, so that DP&L can modernize its distribution grid:

"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."

Stipulation, ¶ II.2.b (p. 5).

Staff witness Donlon testified that the primary purpose of the DMR is to allow DP&L "to invest in the distribution grid":

"Q. Okay. And it's correct, Mr. Donlon, that the primary purpose of the DMR is to pay off debt, correct?

A. I think it is -- that's only a portion of it. It's -- it's not necessarily the primary. I think the primary [purpose] is actually to allow the company to be able to invest in the distribution grid. The -- to get to that point, they have to pay down debt, so they can actually incur -- be able to go out and get new debt, get debt at a reasonable rate without massive covenants, but the primary goal is to invest in the grid."

Trans. Vol. V, pp. 875-76 (emphasis added).

Mr. Malinak's testimony explains that grid modernization will provide significant customer benefits, including improved reliability:

> "According to the US DOE, modernized grids can have the following benefits: greater resilience to hazards of all type; improved reliability for everyday operations, enhanced security from an increasing and evolving number of threats, additional affordability to maintain our economic prosperity, superior flexibility to respond to the variability and uncertainty of conditions at one or more timescales, including a range of energy futures, and increased sustainability through additional clean energy and energy-efficient resources.
>
> As a result, after the grid is modernized, customers can directly benefit from greater reliability and security as well as numerous smart grid features. In particular, the ability to manage power requirements to and from the utility will reduce the need for power, especially during high-use periods. Further, consumers and utilities can receive accurate, timely, and detailed information about energy use. Armed with this information, customers would be able to identify ways to reduce energy consumption with no impact on safety, comfort, and security. Next, because of the improved operational efficiency, utility operators would be able to easily identify, diagnose, correct and even prevent problems from happening. Finally, depending on the technology installed, consumers could have an opportunity to seamlessly integrate all clean energy technologies: electric vehicles, rooftop solar systems, wind farms, and storage devices."

Malinak Test. (DP&L Ex. 2B), p. 65 (footnotes omitted).

Similarly, in testimony filed before the Commission modified the Stipulation, IGS/RESA witness White testified:

> "Q. Should DP&L invest in smart grid?
>
> A. Yes. Smart grid has the potential to lay the groundwork for CRES providers to offer customers innovative products and services that help reduce demand on the grid and incentivize customers to use energy more efficiently. Properly executed smart grid deployment will provide great benefit to all customers."

White Test. (RESA Ex. 1), p. 3. Mr. White agreed at the recent hearing that his original testimony was still accurate and that he still supports Smart Grid. Trans. Vol. VIII, pp. 1367-68, 1372.

Significantly, a survey of DP&L's residential and business customers demonstrates that improving reliability is important to them. Williams Dir. Test. (OCC Ex. 13A), Ex. JDW 14, pp. 6034, 6046.

The evidence shows that DP&L could not implement grid modernization without the DMR. For example, DP&L witness Jackson testified:

> "Q. There was some questions posed to you about how DP&L would fund the SmartGrid rider and the DIR. Can you explain how those would be funded and whether they could be funded in the absence of the DMR?
>
> A. So we would -- in order to fund the capital required for a SmartGrid program or investments that would roll through the DIR, we would need to access the capital markets to do so. We are not in a position to do that today.
>
> The DMR will enable us to pay down debt to put us in a position in the future to be able to access the debt and equity markets. But where we are today, we are not in a position to be able to access capital to fund SmartGrid and DIR."

Trans. Vol. I, pp. 106-07 (emphasis added).

DP&L witness Malinak confirmed that if "DP&L would not have access to the funds from the financial integrity charges, DP&L would be experiencing severe financial distress and would not have the funds to implement robust grid modernization in a timely manner." Malinak Test. (DP&L Ex. 2B), p. 66.

A key piece of evidence demonstrating DP&L's need for the DMR to implement grid modernization relates to a DP&L debt issuance. Specifically, on August 24, 2016, DP&L refinanced $445 million in debt. Jackson Test. (DP&L Ex. 1B), p. 9. Due to DP&L's poor financial condition, DP&L was forced to refinance that debt in a market reserved for companies with a "below investment grade credit ratings," and forced to agree to "a covenant package that, among other things, prevents the Company from raising debt to modernize the transmission and distribution system during the term of the loan." Id. at 10.

Mr. Jackson explained that that covenant would preclude DP&L from issuing debt to pursue grid modernization:

> "EXAMINER PRICE: I only have a couple of questions, maybe only one.
>
> Can you turn to page 10 of your testimony. Line 7. However we got here, transactions in the past aside, you currently have a covenant package which precludes you from raising debt to modernize your transmission and distribution infrastructure; is that correct?
>
> THE WITNESS: That is correct.
>
> EXAMINER PRICE: . . . [D]oes that include any advanced metering . . . ?
>
> THE WITNESS: This covenant really prevents us from raising any debt at all, whether it's for advanced metering or

SmartGrid, so on and so forth. We don't have the ability to raise debt at DP&L.

EXAMINER PRICE: Any grid modernization?

THE WITNESS: Correct."

Trans. Vol. I, pp. 109-10. (Approval of a $105 million DMR is expected to allow DP&L to refinance debt in the future to allow DP&L to implement grid modernization.)

The Commission should, therefore, find that a significant benefit of the DMR is that it will enable DP&L to implement Smart Grid and again conclude that "the DMR is intended to incent the Company to focus its innovation and resources on modernizing its distribution system." Opinion and Order, ¶ 101.

4. **DP&L and DPL Inc. Are Linked**

IGS witness Hess testified that DP&L should stop paying dividends to DPL Inc., and that if DP&L did so, it would have sufficient funds to make its planned capital investments and pay its expenses. Hess Test., pp. 23-24 (IGS Ex. 1016C). IGS witness White claims that DP&L would not be injured by a DPL Inc. bankruptcy that would likely result if DP&L stopped paying dividends to DPL Inc. White Test., pp. 5-6 (IGS Ex. 1014). They assert that the DMR is therefore unnecessary.

The Commission should reject IGS' arguments for the following separate and independent reasons:

1. Smart Grid: As demonstrated above, DP&L could not implement Smart Grid without the DMR. Mr. Hess admitted that he did not analyze whether DP&L could implement Smart Grid without the DMR. Trans. Vol. VIII, pp. 1454-55. His testimony thus ignores a fundamental benefit of the Stipulation.

2. DP&L and DPL Inc. Are Linked: DP&L witness Malinak explained that DP&L's financial integrity is linked to DPL Inc.'s financial integrity:

> "Q. Why do you analyze the financial condition and integrity of DPL in addition to DP&L?
>
> A. The financial condition and integrity of DPL — which depends on its ability to service all of its consolidated debt — affects the financial condition and integrity of DP&L. For example, if DPL experiences financial stress, it would have a negative effect on DP&L including, but not limited to, unfavorable changes in DP&L's credit ratings, increased cost of debt/borrowing costs, reductions or other limits on capital expenditures or O&M that would negatively affect service quality, and redirecting management attention and effort to managing through financial distress. Also, just as importantly, in the event DP&L seeks incremental capital to finance grid modernization, it will require a healthy parent in order to receive equity capital, to complement debt capital, and to successfully finance these modernization investments."

Malinak Test. (DP&L Ex. 2B), p. 29 (emphasis added).

OCC's financial witnesses Kahal and Parcell conceded that DP&L's credit rating is "linked" to DPL Inc.'s credit rating, and that credit rating agencies may downgrade a utility based upon the financial weakness of the utility's parent. Trans. Vol. IV, pp. 704-05 (Kahal); Trans. Vol. V, p. 843 (Parcell). Again, IGS witness Hess agreed that it was in the "public interest" that DP&L have an investment grade credit rating. Trans. Vol. VIII, p. 1449. OCC witness Parcell also conceded that customers benefit from a financially healthy utility that is investment grade because it results in lower debt rates. Trans. Vol. V, pp. 843-44.

Mr. Kahal further testified that customers would be harmed if a utility has a financially distressed parent:

"Q. And as I understand it, MIK-1 [to Mr. Kahal's Direct testimony, OCC Ex. 12A] is a document that you've prepared that summarizes ring fencing testimony by a Mr. Charles Atkins in another proceeding?

A. It does.

* * *

Q. Okay. Turn, if you would, then to the second paragraph there, focus there. You say 'Mr. Adkins has identified three types of risks associated with a utility being owned by a financial distressed holding company parent that could be adverse to customers and utility regulators.' And then the first item you say is 'the distressed parent (which controls the utility) extracts cash flow or other assets from utility to address its needs thereby disrupting utility operations.' Did I read that accurately?

A. Yes.

Q. You would agree if that were to occur, that would have adverse effects on customers and regulators, correct?

A. Yes, it certainly could.

Q. Okay. Then the next item that you identify is that 'a parent in bankruptcy could require the utility subsidiary to participate voluntarily in that bankruptcy process.' Did I read that accurately?

A. Yes.

Q. And, again, if that were to occur, you believe that would have adverse effects for customers and regulators, right?

A. Yes.

Q. And then the last item you say 'a court could order the utility to be included in the parent's bankruptcy,' correct?

A. Yes.

Q. And, again, if that were to occur, that would have adverse effects on customers and regulators, right?

A. Yes."

Id. at 705-07.

DP&L witness Malinak explained that DPL Inc. would be under significant financial distress without the DMR:

In its recent decision approving a DMR for the FirstEnergy utilities, the Commission cited to and relied upon the fact that the credit ratings of utilities and their parent were linked. Oct. 12, 2016 Fifth Entry on Rehearing, ¶¶ 111, 194-95 (Case No. 14-1297-EL-SSO).

The evidence at the hearing showed that the financial integrity of DP&L and DPL Inc. are linked, and that DP&L's financial integrity would be significantly damaged if DPL Inc. were forced into bankruptcy.

3. The Banks Would Want to be Paid: Mr. Hess seemingly believes that a bankruptcy of DPL Inc. would cure the financial integrity issues of DPL Inc. and DP&L. However, Mr. Hess ignores a critical point – after a bankruptcy, DPL Inc.'s lenders would likely become its equity holders, and they would want to be repaid the debts owed to them.

DP&L witness Garavaglia explained that lenders in that position would likely make significant cuts to DP&L's expenses so they could be repaid:

> "Q. Let's assume that creditors exchange 100 percent of the debt that exists at DPL Inc. for 100 percent equity.
>
> * * *
>
> A. Okay. So I -- I don't know how the lenders in the position of owning of the DPL Inc. would operate DP&L. They certainly would be looking at getting their money back at some point, so I don't know how they would even treat investments in the grid at DP&L. They could even further reduce investments at DP&L so they could send more cash to DPL Inc. and as a result get their pay back even sooner."

Trans. Vol. VII, pp. 1189-90 (emphasis added).

In summary, the Commission should reject Mr. Hess' fanciful suggestion that all of DP&L's financial problems would be solved if DP&L simply stopped paying dividends to DPL Inc.

5. **The DMR Is Revenue, Not Customer Funded Capital**

IGS witness Hess also opined that the "DMR does not qualify as revenue[]" and should instead be treated as "ratepayer contributed capital." Hess Test., p. 25. The Commission should reject that argument for the following separate and independent reasons.

1. The DMR Is Revenue: The Stipulation establishes that the DMR will be treated as "revenue." Stipulation, ¶ II.2.a. Questioning of DP&L Chief Financial Officer by IGS' attorney established that the DMR was revenue:

> "Q. Okay. And you would agree that the DMR provides revenue that is greater than DP&L's total annual interest payments by approximately 3-1/2 times the total quantity?
>
> A. So the pretax DMR is 105. DP&L pays between 27 to 30 million dollars. So, yeah, approximately -- approximately three times, yeah, the interest payments only."

Trans. Vol. VII, pp. 1162 (emphasis added).

2. The DMR Is Not Customer Funded Capital: Staff witness Donlon testified that when customer funds are used for specific capital projects, then those funds are applied as an offset to the utility's rate base. Trans. Vol. VII, p. 1343. He used an example of when a customer pays a utility to run a gas line to the customers, then the utility would not earn a return on that capital. Id. at 1343-44.

Here, the DMR funds are not being used to fund any specific capital projects. Instead, they are being used to pay interest and principal on debt at DP&L and DPL Inc. to position them to invest in Smart Grid in the future. Stipulation ¶ II.2.b. DP&L witness Garavaglia testified that all of the DMR funds have been used to pay debt. Trans. Vol. VII, p. 1237.

The Commission should conclude that the DMR is revenue and is not customer funded capital for specific projects.

D. THE COMMISSION SHOULD REJECT IGS' ARGUMENTS RELATED TO SUPPLIER TERMS

IGS witnesses assert that the Commission should alter DP&L's collateral requirements (Crist Test., pp. 3-11 (IGS Ex. 1017)), eliminate DP&L's switching fee and interval data fee and allocate costs to SSO customers (White, pp. 7-10 (IGS Ex. 1014)). The Commission should not reward IGS' attempt to insert isolated provisions for its benefit that it was unable to obtain in settlement negotiations and that RESA has not pursued in this proceeding as a Signatory Party. The Commission should further reject IGS' arguments for the following reasons.

1. The Commission Rejected IGS' Arguments in the Distribution Rate Case

The Commission recently rejected arguments relating to interval data fees, switching fees and collateral requirements in DP&L's distribution rate case. Opinion and Order, ¶¶ 42, 43, 47 (Case No. 15-1830-EL-AIR, et al.). IGS was a party to that case.

IGS does not claim that circumstances have changed since that order was issued. Office of Ohio Consumers' Counsel v. Pub. Util. Comm., 10 Ohio St.3d 49, 51, 461 N.E.2d 303 (1984) (per curiam) (the Commission "is bound by certain institutional constraints to justify that change before such order may be changed or modified"). The Commission should thus reject IGS' challenges to those three provisions.

2. RESA Signed the Stipulation

IGS complains that DP&L did not submit evidence showing how the switching fees and interval data fees were calculated, and that the collateral requirements are unreasonable. The Commission should reject that argument for two reasons.

First, this is an ESP case. DP&L did not propose any changes to those fees in this case. There is no requirement in the ESP statute (R.C. 4928.143) or in the Commission's Rules (Ohio Adm.Code Chapter 4901:1-35) that DP&L file cost support for the fees that it charges to marketers in an ESP case. IGS is trying to impose a legal burden on DP&L that does not exist.

Second, there is evidence in the record that those fees are reasonable -- RESA signed the Stipulation and agreed to them. Stipulation, p. 40. IGS' witnesses conceded that prices can be set via either cost-based mechanisms or market-based mechanisms. Trans. Vol. VIII, p. 1458 (Hess); Trans. Vol. VIII, p. 1486 (Crist). The Stipulation was a negotiated agreement, and the fact that RESA remains a signatory shows that those fees were established via a market-based mechanism and are thus reasonable.

3. The Commission Should Not Alter DP&L's Collateral Requirement

To protect DP&L from risks of default, DP&L's tariffs require CRES suppliers to post collateral. DP&L Ex. 1002. IGS witness Crist asserts that DP&L's collateral requirements treat privately-held companies less favorably than public companies, and advocates for changes to DP&L's collateral calculation. Crist Test., pp. 3, 7-11 (IGS Ex. 1017). The Commission should reject his proposal for the following reasons:

1. DP&L's Tariff Treats Privately-Held Companies the Same as Public Companies: DP&L's Tariff makes no distinction between private companies and public companies (DP&L Ex. 1002), a fact that Mr. Crist conceded at the hearing. Trans. Vol. VIII, p. 1478. In any event, public companies are subject to greater oversight than private companies (Trans. Vol. VIII, pp. 1479-81), so public companies are less risky.

2. No Supporting Calculations: Mr. Crist admitted at the hearing that he does not sponsor any calculation of the risks to which DP&L would be exposed if IGS defaulted. Trans. Vol. VIII, p. 1474. IGS thus has no support for its proposal to amend the collateral requirements set forth in the tariffs that are supported by RESA.

4. The Commission Should Not Allocate Additional Costs to SSO Customers

IGS witness White testified that the Commission should allocate "$12 million in SSO-related costs" to SSO customers. White Test., p. 10 (IGS Ex. 1014). The Commission should reject that argument for the following reasons:

1. IGS failed to submit evidence: IGS has not submitted any evidence to support that $12 million figure. Mr. White's testimony does not contain any calculation of that figure or provide any supporting quantification.

2. The SSO is a distribution company function: Providing an SSO is a distribution company function. R.C. 4928.141. All customers benefit from the SSO – whether or not they shop. Trans. Vol. VIII, p. 1404 (White); Trans. Vol. IX, p. 1574 (Willis). It is thus reasonable that the costs that DP&L incurs to provide SSO service be recovered through distribution rates. Trans. Vol. IX, p. 1572 (Willis); Willis Test., pp. 11-14 (OCC Ex. 1000).

3. Allocation to shopping customers: If the Commission were to make an allocation of SSO costs to SSO customers, then it should also allocate costs that DP&L incurs to support shopping to shopping customers. IGS failed to make any showing of that amount in this case.

4. No customers have raised the issue: No DP&L customers have raised the issue, and OCC opposes it. Willis Test., pp. 11-14 (OCC Ex. 1000). IGS' request that costs be allocated to the SSO is just a self-serving attempt to inflate the costs of the SSO so that more customers would switch, irrespective if there is any factual basis upon which to do so.

VI. THE STIPULATION DOES NOT VIOLATE ANY IMPORTANT REGULATORY PRINCIPLE

Pursuant to Ohio Rev. Code § 4928.143(C)(1), "the commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, 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 section 4928.142 of the Revised Code." The Commission has considered three factors to determine whether an ESP is "more favorable in the aggregate" ("MFA") as compared to a market rate offer ("MRO"): (1) quantifiable differences in the prices to be charged to customers, (2) other quantifiable differences in customer charges, and (3) non-quantifiable differences.[5]

[5] August 8, 2012 Opinion and Order, Case No. 11-346-EL-SSO, p. 73; July 18, 2012 Opinion and Order, Case No. 12-1230-EL-SSO, pp. 56-57.

A. QUANTIFIABLE DIFFERENCES IN PRICE

The evidence at the hearing showed that SSO customers would pay the same prices under either an ESP or an MRO. Donlon Test. (Staff Ex. 2), p. 5; Malinak Test. (DP&L Ex. 2B), p. 11. Kahal Dir. Test. (OCC Ex. 12A), p. 42. The SSO rates are thus a "wash" for purposes of the MFA test.[6]

IGS witness Hess asserts that the DMR would not be available in an MRO. Hess Test., p. 34 (IGS Ex. 1016C). However, Commission precedent and the evidence at the hearing established that a DMR or similar charge would be available under either an ESP or MRO. Oct. 12, 2016 Fifth Entry on Rehearing, ¶ 357 (Case No. 14-1297-EL-SSO); Donlon Test. (Staff Ex. 2), p. 5; Malinak Test. (DP&L Ex. 2B), p. 12.

B. OTHER QUANTIFIABLE DIFFERENCES

The Stipulation includes numerous benefits that are funded by shareholders, including economic development payments, energy education payments, and payments to assist low-income customers. Stipulation, ¶¶ IV (pp. 10-12), X.2.b. (p. 27), X.3.a. (p. 33), and X.6.a. (p. 36). There are no provisions in the MRO statute that require those benefits. Ohio Rev. Code § 4928.142. Depending upon whether one assumes that the DMR lasts for three years or five years, those benefits will provide between $9 and $11.5 million in direct customer benefits that are not required to be provided in an MRO. Donlon Test. (Staff Ex. 2), pp. 5-6 ($9 million in

[6] The evidence at the hearing established that customers actually may pay lower prices for SSO service under an ESP than under an MRO. Specifically, it is undisputed that DP&L owned generation assets as of July 31, 2008. Trans. Vol. IV, p. 726 (Kahal). It is also undisputed that SSO rates in DP&L's competitive auction were projected to be lower than DP&L's current SSO rates. Trans. Vol. IV, pp. 727-28 (Kahal); Schroder Test. (DP&L Ex. 3), p. 20 and Ex. A, pp. 1-36, Column G. Under the MRO statute, in year one, 90% of the rate that an SSO customer would pay would be based upon DP&L's existing rates and 10% would be based on competitive bidding. Ohio Rev. Code § 4928.142(D). OCC witness Kahal conceded that customers may thus pay higher prices under an MRO. Trans. Vol. IV, p. 728. DP&L nevertheless assumes for purposes of this brief that SSO rates would be the same under either an ESP or an MRO.

benefits, assuming 3-year DMR); Malinak Test. (DP&L Ex. 2B), pp. 15-17 ($11.5 million in benefits, assuming 5-year DMR).

As for other riders established in the Stipulation, the evidence at the hearing demonstrated that the riders also would be available if DP&L had filed for an MRO. Trans. Vol. V, pp. 888-89 (Donlon); Malinak Test. (DP&L Ex. 2B), p. 14. No opposing witnesses disputed that point. Those other riders are thus a "wash" under the MFA test.

There are between $9 and $11.5 million in quantifiable benefits provided by the Stipulation that DP&L would not be available under an MRO.

C. NON-QUANTIFIABLE BENEFITS

The Stipulation also includes significant non-quantifiable benefits that would not be required under an MRO. Those benefits are discussed at length on pages 64-70 in the testimony of DP&L witness Malinak (DP&L Ex. 2B). In summary, his testimony shows that the Stipulation would provide the following non-quantifiable benefits:

1. Accelerated implementation of grid modernization (pp. 64-66);

2. Commitments by AES to not collect dividends from DPL Inc. during the ESP term, and to forego collection of tax-sharing payments during the DMR term and convert those liabilities into equity (pp. 66-67);

3. DP&L remains subject to the significantly excessive earnings test (p. 67);

4. Future opportunity to file an ESP or an MRO (pp. 67-68);

5. Transfer of DP&L's generation assets to an affiliate (p. 68);

6. A sale process of certain DP&L generation assets with proceeds to be used to make discretionary debt repayments (pp. 68-69);

7. Numerous benefits to customers and Signatory Parties, including maintaining DP&L's headquarters in the City of Dayton (pp. 69-70); and

8. Competitive market enhancements including supplier consolidated billing and non-commodity services.

The Commission cited to similar nonquantifiable benefits in concluding that FirstEnergy's ESP passed the MFA test. Oct. 12, 2016 Fifth Entry on Rehearing, ¶ 358 (Case No. 14-1297-EL-SSO).

Mr. Malinak also addresses whether the Stipulation would pass the MFA test if the DMR was not available under an MRO. He explains that the MRO would then be approximately $ 401-477 million more favorable than an ESP on a price basis; however, DP&L would not be able to maintain its financial integrity and provide safe and stable service under an MRO without the DMR. Malinak Test. (DP&L Ex. 2B), pp. 13, 18. The inability of DP&L to provide safe and reliable service under an MRO would impose significant non-quantifiable costs upon customers in DP&L's service territory, and those costs greatly exceed any quantifiable benefits under an MRO without a DMR. Malinak Test. (DP&L Ex. 2B), pp. 18-19. OCC witness Kahal conceded that (1) the economy in DP&L's service territory could be adversely affected if DP&L could not provide safe and reliable service; and (2) if DP&L cannot provide safe and reliable service, that would impose costs on customers that would be difficult to quantify. Trans. Vol. IV, pp. 708, 731. Commission precedent establishes that an ESP passes the MFA test if the utility could not provide safe and reliable service under an MRO. Aug. 8,

2012 Opinion and Order, p. 76 (Case No. 11-346-EL-SSO). The Stipulation would thus pass the MFA test even if the DMR were not available under an MRO.

In summary, the Stipulation provides $9 to $11.5 million in quantifiable benefits and numerous non-quantifiable benefits to customers that would not be required under an MRO. The Stipulation thus easily passes the MFA test.

VII. CONCLUSION

The Commission should conclude that the Stipulation as modified passes the Commission's three-part test, and should reject IGS' challenges to the Stipulation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Initial Post-Hearing Brief of The Dayton Power and Light Company, PUBLIC VERSION, has been served via electronic mail upon the following counsel of record, this 15th day of May, 2019:

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