BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Plan to Modernize Its Distribution Grid	: : :	CASE NO. 18-1875-EL-GRD
In the Matter of the Application of The Dayton Power and Light Company for Approval of a Limited Waiver of Ohio Adm.Code 4901:1-18-06(A)(2)	: : :	CASE NO. 18-1876-EL-WVR
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Methods	: :	CASE NO. 18-1877-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for Administration of the Significantly Excessive Earnings Test Under R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2018	: : : :	CASE NO. 19-1121-EL-UNC
In the Matter of the Application of The Dayton Power and Light Company for Administration of the Significantly Excessive Earnings Test Under R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2019	: : :	CASE NO. 20-1041-EL-UNC
In the Matter of the Application of The Dayton Power and Light Company for a Finding That Its Current Electric Security Plan Passes the Significantly Excessive Earnings Test and More Favorable in the Aggregate Test in R.C. 4928.143(E)	: : : :	CASE NO. 20-0680-EL-UNC

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

PUBLIC VERSION

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I. <u>INTRODUCTION AND SUMMARY</u>

The Stipulation and Recommendation ("Stipulation" or "Stip. Parties Ex. 1") in this case resolves three matters for The Dayton Power and Light Company ("DP&L"): (1) the Smart Grid case (Case Nos. 18-1875-EL-GRD, et al.); (2) whether DP&L had significantly excessive earnings in 2018 and 2019 (Case Nos. 19-1121-EL-UNC and 20-1042-EL-UNC); and (3) whether DP&L passes the more favorable in the aggregate test and the significantly excessive earnings test for the 2020-2023 forecast period (Case No. 20-680-EL-UNC).

Each of those cases is complex, and the Stipulation resolves them in a manner that is supported by a broad range of DP&L's customers and other interested parties. The Stipulation passes the Commission's three-part test for the following reasons:

1. <u>Serious bargaining</u>: The Stipulation was signed by a broad group of experienced parties after extensive negotiations. Nov. 30, 2020 Direct Testimony of Sharon R. Schroder in Support of the Stipulation and Recommendation (DP&L Ex. 4), pp. 12-14. The interests of those parties include residential customers, industrial customers, commercial customers, and environmental advocates. <u>Id</u>. The Stipulation is thus the product of serious bargaining among knowledgeable, capable parties. <u>Id</u>.

2. <u>Benefits of the Stipulation</u>: The principal benefits of the Stipulation include:

   a. <u>Smart Grid Plan ("SGP")</u>: The SGP is expected to provide $413.3 million in net benefits to DP&L's customers. Stip. Parties Ex. 1, Ex. 4; DP&L Ex. 4, pp. 15-23 (Nov. 30, 2020 Schroder Test.).

b. Safe and reliable service: DP&L's financial integrity continues to be in jeopardy, and the Stipulation ensures that DP&L will be able to continue to provide safe and reliable service by continuing DP&L's current Electric Security Plan ("ESP I"). Stip. Parties Ex. 1, ¶ 19.c.i; Apr. 1, 2020 Direct Testimony of Gustavo Garavaglia M. (DP&L Ex. 6A), pp. 9-25; Apr. 1, 2020 Direct Testimony of R. Jeffrey Malinak (DP&L Ex. 1A), pp. 57-66.

c. Other customer benefits: The Stipulation provides a wide range of other benefits to DP&L's customers. DP&L Ex. 4, pp. 24-29 (Nov. 30, 2020 Schroder Test.). Among other commitments, the Stipulation requires DP&L to file an application for ESP IV by October 1, 2023, and that the application will not include certain nonbypassable charges. Stip. Parties Ex. 1, ¶ 20.a.

3. Regulatory principles: The Stipulation does not violate any important regulatory principles:

a. Retrospective Significantly Excessive Earnings Test ("SEET") cases: The evidence in this case shows that DP&L's earnings in 2018 and 2019 were not significantly excessive, and DP&L thus passes the Retrospective SEET in R.C. 4928.143(F). Dec. 23, 2020 Direct Testimony of Gustavo Garavaglia M. (DP&L Ex. 7), pp. 2-31; Dec. 23, 2020 Supplemental Direct Testimony of R. Jeffrey Malinak (DP&L Ex. 2), pp. 3-62.

b. More Favorable in the Aggregate ("MFA") Test: The evidence in the case demonstrates that ESP I is more favorable in the aggregate than the expected results under a market rate offer ("MRO"), and DP&L thus passes the MFA test under R.C. 4928.143(E) for the 2020-2023 forecast period. DP&L Ex. 6A, pp. 9-25 (Apr. 1, 2020 Garavaglia Test.); DP&L Ex. 1A, pp. 78-84 (Apr. 1, 2020 Malinak Test.).

c. Prospective SEET: The evidence shows that DP&L's earnings will not be excessive during the 2020-2023 forecast period, and DP&L thus passes the Prospective SEET under R.C. 4928.143(E). DP&L Ex. 6A, pp. 3-8 (Apr. 1, 2020 Garavaglia Test.); DP&L Ex. 1A, pp. 84-88 (Apr. 1, 2020 Malinak Test.).

d. Commission policies: The evidence shows that the Stipulation will promote many of Ohio's policies. DP&L Ex. 4, pp. 32-38 (Nov. 30, 2020 Schroder Test.).

II. THE TERMS OF THE STIPULATION

The principal terms of the Stipulation include:

1. Approval of DP&L's Smart Grid Plan ("SGP"), including the application, testimony, and schedules filed in Pub. Util. Comm. Case Nos. 18-1875-EL-GRD, et al., except as modified by the Stipulation. The Stipulation provides that the SGP shall be divided into phases and identifies the projects for the first phase ("SGP Phase 1") in Exhibit 1. Stip. Parties Ex. 1, ¶¶ 1-2.

2. Authorization to spend up to $267,600,000 on SGP Phase 1 capital investments and associated operational and maintenance expenses. DP&L's SGP Phase 1 will be four years from the date of the Commission Order approving the Stipulation, and DP&L plans to file an application for a second phase ("SGP Phase 2") on or before three years from the date of the Commission Order approving the Stipulation. Id. at ¶ 2.

3. DP&L will recover a return on and of its prudently-incurred capital investments and expenses associated with the SGP through the Infrastructure Investment Rider ("IIR"). Id. at ¶ 3.a.

4. Savings generated by SGP Phase 1 expenditures will be used to offset the IIR. Id. at ¶ 3.b.

5. DP&L's investments and expenses will be subject to an annual audit, which will review DP&L's expenditures. Id. at ¶ 5.a.

6. AMI meters will be installed on approximately 95% of DP&L's customers. Id. at ¶ 6.a.

7. Distribution Automation will be installed on approximately 20% (88) of DP&L's circuits. Id. at ¶ 6.b.

8. Substation Automation will be installed on approximately 30 substations. Id. at ¶ 6.c.

9. Acceleration of the implementation of Conservation Voltage Reduction/Voltage and VAR Optimization ("CVR/VVO"), which is expected to create significant cost savings for customers. Id. at ¶ 6.d.

10. Implementation of an Electric Vehicle ("EV") Rebate Program, which is expected to generate significant cost savings for customers while also reducing greenhouse gases. Id. at ¶ 8.

11. Implementation of a Smart Thermostat rebate program, which is expected to generate significant energy savings for customers, while reducing greenhouse

gasses. The Smart Thermostat rebate program will be paid for by DP&L's shareholders. Id. at ¶ 9.

12. Development of a new Customer Information System, which is necessary to implement DP&L's SGP, which costs will be recovered through a future base distribution rate case. Id. at ¶ 10.

13. Provisions regarding data access, which will:

    a. Allow DP&L's customers to access data regarding their usage and determine ways to save costs; Id. at ¶ 11.a;

    b. With a customer's approval, allow competitive retail electric service ("CRES") providers to access customer usage data, so that CRES providers can offer rates to customers that are tailored to the customer's usage; Id. at ¶ 11.b; and

    c. With a customer's approval, allow third parties to access customer usage data, so the third party can advise the customer on ways to reduce and/or maximize usage and save money. Id. at ¶ 11.b.

14. Additional Benefits for residential customers:

    a. DP&L shareholder contribution of $900,000 over two years with DP&L shareholder dollars to provide weatherization for customers at or below 200% of the federal poverty line. Id. at ¶ 12.a.

    b. DP&L shareholder contribution of $200,000 over the four years of Phase 1, toward the education of residential customers about the Smart Thermostat Rebate Program in conjunction with the deployment of residential AMI meters. Id. at ¶ 12.b.

    c. A water heater pilot program directed at low-income residential customers, designed to determine whether those customers can save money by lowering their aggregate peak load resulting in a better price for the PIPP auction. Id. at ¶ 12.c.

15. Additional Benefits for the City of Dayton and its residents, including:

    a. Prioritize the installation of the SGP in economically disadvantaged areas of the City, many of which were struck by the 2019 tornados. Id. at ¶ 13.a.i.

    b. "[E]xplore a joint partnership with the City of Dayton and the University of Dayton's Hanley Sustainability Institute for a program supporting mutual goals for all three organizations." Id. at ¶ 13.a.ii.

c. DP&L will make a financial contribution of $100,000 per year with DP&L shareholder dollars to the Property Assessed Clean Energy program ("PACE") for qualifying projects in the City. These contributions will benefit and support a portion of a property owner's escrowed reserve requirement. Additionally, DP&L will contribute $50,000 per year to support energy upgrades for small and micro businesses within the City that are not eligible for PACE funding. Id. at ¶ 13.a.iii.

d. Waiver of fees for alternative feed service for City of Dayton accounts that have redundant service. Id. at ¶ 13.a.iv.

e. Financial contribution of $200,000 per year with DP&L shareholder dollars to provide economic development programs and assist low-income City residents. Id. at ¶ 13.a.v.

f. Commitment by DP&L to provide non-financial technical support relating to an interconnection of net metering systems for two City of Dayton Solar Projects. Id. at ¶ 16.b.

16. Additional benefits for DP&L's commercial and industrial customers:

a. Waiver of fees for alternative feed service for hospitals. Id. at ¶ 14.a.

b. Continuation of DP&L's TCRR Opt Out Pilot Program. Id. at ¶ 14.b.

c. Dedication of a portion of the SGP Phase 1 customer education funds to certain business organizations and the City of Dayton to allow them to educate their members/residents about how to benefit from the SGP. Id. at ¶ 14.c.

d. Financial contribution of $150,000 in 2023 and 2024 with DP&L shareholder dollars to the Ohio Hospital Association as an education grant. Id. at ¶ 14.d.

17. Significant economic development incentives and grants for hospitals and manufacturers in DP&L's service territory, which are intended to assist those entities in responding to the financial consequences of COVID-19 and restarting Ohio's economy. The costs of the incentives and grants will be borne by DP&L and not recovered from customers. Id. at ¶¶ 15.a and b.

18. Support for developing an energy resiliency project in or near the Wright-Patterson Air Force Base, through $250,000 contributed by DP&L shareholders. Id. at ¶ 16.a.

19. Commitment by DP&L of $1 million to encourage solar development within its service territory. That amount will be paid by DP&L and not its customers, and will be applied toward the design, construction, and deployment of the solar project that IGS Solar, LLC shall own and operate. Id. at ¶ 16.c.

20. Agreement that the benefits of DP&L's SGP Phase 1 exceed the costs on both a nominal and net-present-value basis. Id. at ¶ 17 and Ex. 4.

21. Agreement that DP&L's ESP I passes the Prospective SEET and MFA test in R.C. 4928.143(E), which resolves Pub. Util. Comm. No. 20-0680-EL-UNC. Id. at ¶ 19.a.

22. Agreement that the Signatory Parties will not challenge DP&L's right to operate under ESP I. Id. at ¶ 19.c.i.

23. Agreement that the Commission shall approve DP&L's applications that it did not have significantly excessive earnings in 2018 and 2019 under R.C. 4928.143(F), which resolves Pub. Util. Case Nos. 19-1121-EL-UNC and 20-1041-EL-UNC. Id. at ¶ 19.c.iii.

24. Agreement that DP&L will file an application to implement its fourth electric security plan ("ESP IV") by October 1, 2023. That application shall not include a request for a nonbypassable charge to customers related to provider of last resort risks, stability, financial integrity, or any other charge that is substantially calculated based on the credit ratings, debt, or financial performance of any parent or affiliated company of DP&L. DP&L may, however, propose riders that recover actual costs that DP&L has incurred or will incur, distribution or transmission related revenue that DP&L has foregone or will forego, or distribution or transmission related investments (including a return on and of the investments) that DP&L has made or will make. Id. at ¶ 20.a.

III. THE COMMISSION'S THREE-PART TEST

Although not binding on the Commission, 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 (1992) (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?"

In re Columbus Southern Power Company, Case No. 09-872-EL-FAC, et al., Order on Global Settlement Stipulation (Feb. 23, 2017) at ¶ 101.

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

DP&L Witness Schroder demonstrated that the Stipulation was the product of serious bargaining among knowledgeable parties. DP&L Ex. 4, pp. 12-14 (Nov. 30, 2020 Schroder Test.). Specifically, eight bargaining sessions were held, and all parties were invited to participate in each session. Id. at 13. At or before each session, DP&L circulated either a term sheet or draft Stipulation. Id. at 14. Further, DP&L contacted each party individually to discuss their perspectives on the settlement. Id. Each of the parties was represented by experienced counsel. Id.

In addition, the Stipulation was signed by parties representing a broad range of interests:

> "The Stipulation is supported by parties representing a wide range of interests, including the interests of the City of Dayton , the largest municipality in DP&L's service territory (which represents itself and its residents), a representative of residential low-income customers, three state-wide organizations of large industrial customers, one large industrial customer, one of the largest supermarket chains in the country, a state-wide organization representing hospitals in DP&L's service territory, a large, local university, four environmental groups, a provider of competitive retail electric service, and four other parties that do business and represent interests in the smart grid field.

> In addition, the Commission's Staff signed the Stipulation. The Commission's Staff is charged with balancing the interests of all parties and the public."

Id. at 13.

The only witness who really challenged this element at the hearing was OCC Witness Hill, and his testimony should be rejected for a number of reasons, including that the Commission was unpersuaded by the very same position put forth in other cases. Dr. Hill asserts that the Commission should conclude that the Stipulation is not a product of serious bargaining because (according to him) the Stipulation is a product of a "redistributive coalition." Dec. 17, 2020 Testimony Opposing the Settlement and Making Consumer Recommendations of Edward W. Hill, Ph.D. (OCC Ex. 3), p. 6. He defines the term redistributive coalition as follows: "A redistributive coalition is a relatively small group that uses political or regulatory processes to secure benefits that cannot be earned in a competitive market." Id. He claims that the Signatory Parties form a redistributive coalition because the "signatories are essentially limited to those who regularly interact with the PUCO" and they "opportunistically form *redistributive coalitions* with slightly varying membership as each regulatory opportunity (i.e., a significant PUCO proceeding) presents itself." Id. at 10.

The Commission should reject his arguments for the following reasons:

1. The Commission proceedings are open: Dr. Hill claims that the Signatory Parties acted in their own self-interest, and the Stipulation places costs on parties that did not participate in the case. Id. at 13. There are two significant defects in that argument. First, Staff signed the Stipulation. Stip. Parties Ex. 1, p. 53. Staff is responsible for acting in the interests of all of DP&L's customers. Second, Dr. Hill admitted that (a) he is not aware of any party being

denied intervention; (b) Commission proceedings are open to the public; (c) the Commission's docket is available on-line; and (d) the Commission cannot force parties to intervene. Tr. Vol. IV at 584, 595.

2. Dr. Hill ignores the benefits of the Stipulation: Dr. Hill claims that the Stipulation benefits only the Signatory Parties. OCC Ex. 3, pp. 15 (Dec. 17, 2020 Hill Test.). However, in reaching that conclusion, he considered only the benefits that expressly mention specific parties. Tr. Vol. IV at 586. He did not consider the benefits of grid modernization or continued reliability. Id. at 587. As demonstrated below, those are benefits to all of DP&L's customers. Further, his definition of a redistributive coalition as a small group misses the mark here. Only one party, OCC, challenges the Stipulation. All of the other parties either support it or do not oppose it.

3. Concessions by DP&L: Dr. Hill claims that DP&L received everything that it wanted in the Stipulation. Id. at 588. However, in reaching that conclusion, he did not compare DP&L's Application to the Stipulation. Id. at 588-89. As demonstrated below, DP&L made significant concessions in the Stipulation. See DP&L Ex. 4, pp. 30-32 (Nov. 30, 2020 Schroder Test.).

4. No recommendations: He is critical of the settlement process that is typically used in Commission proceedings, but he does not make any recommendations on how to change that process. Tr. Vol. IV at 595.

Significantly, in FirstEnergy's latest ESP case, Dr. Hill criticized "redistributive coalitions" in his supplemental testimony. In re Ohio Edison Company, Case No. 14-1297-EL-SSO, Supplemental Testimony of Edward W. Hill on Behalf of the Ohio Manufacturers'

Association Energy Group, p. 14 (May 11, 2015) ("The addition of the Signatory Parties is merely the use of what Economist Mancur Olson calls a 'redistributive coalition,' pursuant to which the Companies assembled a small group to promote policies for their mutual financial benefit. The purpose of a redistributive coalition is to use political or regulatory processes to generate financial benefits that cannot be earned through the marketplace."). The Commission rejected that argument:

> "With respect to the claims that the Stipulations represent mere 'favor trading' and a lack of serious bargaining among the parties, the Commission notes that, while many signatory parties receive benefits under the Stipulations, we will not conclude that these benefits are the sole motivation of any party in supporting the Stipulations. We expect that parties to a stipulation will bargain in support of their own interests in deciding whether to support a stipulation. Further, we believe that parties themselves are best positioned to determine their own best interests and whether any potential benefits outweigh any potential costs. The claim that benefits for low-income customers and for small businesses reflect mere 'favor trading' and a lack of serious bargaining flies directly in the face of Ohio policy, which calls upon the Commission to protect at-risk populations and to encourage the education of small business owners regarding the use of, and to encourage the use of, energy efficiency programs. R.C. 4928.02(L), (M).
>
> Moreover, the Commission notes that nothing in the Stipulations can be construed to represent "favor trading" with Staff. Staff receives no benefits whatsoever under the Stipulations."

In re Ohio Edison Co., et al., Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) at p. 44. The Commission also rejected that argument in a recent AEP case. In re Ohio Power Co., Case No. 14-1693-EL-RDR, et al. Direct Testimony of Edward W. Hill in Opposition to AEP-Ohio's Settlement Agreement on Behalf of the Ohio Manufacturers' Association Energy Group (Dec. 28, 2015) at pp. 16-20; In re Ohio Power Co., Case No. 14-1693-EL-RDR, et al. Opinion and Order (Mar. 31, 2016) at ¶¶ 52-53.

V. THE STIPULATION BENEFITS CUSTOMERS AND THE PUBLIC INTEREST

As demonstrated below, the principal benefits of the Stipulation include:

a. Smart Grid Benefits: Smart Grid will provide $413.3 million in net benefits for DP&L's customers.

b. Safe and Reliable Service: DP&L could not maintain its financial integrity during the 2020-2023 forecast period without a continuation of the terms of DP&L's ESP I. The Stipulation allows for a continuation of ESP I, which is a significant benefit for customers.

c. Additional Customer Benefits: The Stipulation contains a wide range of additional customer benefits. Many of those benefits will be funded by DP&L and their costs will not be recovered from customers.

A. Smart Grid Will Provide Net Benefits to Customers

1. The Smart Grid Plan will provide $413.3 million in net benefits to customers

The Stipulation (Stip. Parties Ex. 1, p. 4) provides that DP&L's SGP is approved.

The principal components of DP&L's SGP Phase 1 are:

"1. Smart Meters – DP&L will invest $77.6 million in the installation of smart meters, also known as Advanced Metering Infrastructure ("AMI").

2. Self-Healing Grid – DP&L will invest $109 million in self-healing grid technologies, including but not limited to distribution automation, substation automation, advanced distribution management system, and conservation voltage reduction and Volt/Var Optimization.

3. Customer Engagement – DP&L's SGP Phase 1 will enable its customers to interact with the utility and the grid in new and improved ways and provide education regarding all of its SGP components.

4. Telecommunications – Expansion of DP&L's telecommunications capabilities will ensure reliable and robust communication with all of the field devices that are proposed as part of SGP Phase 1.

5. Cyber Security – Implementing and improving cybersecurity will ensure the appropriate security measures and upgrades necessary to protect customer data.

6. Governance and Analytics –Rigorous systems and integration and testing that links the various systems and software that will be necessary for successful execution of the SGP."

DP&L Ex. 4, pp. 15-16 (Nov. 30, 2020 Schroder Test.).

Those components will provide significant benefits to all customers. Id. pp. 16-20. Those benefits include: reduced energy costs, more reliable service, reduced utility costs, reduced line losses, improved customer engagement, reduced greenhouse gasses, economic multiplier effects due to DP&L's investments, and improved safety. Id.

The Stipulation includes the following summary of the cost/benefit analysis ("CBA") performed in support of DP&L's SGP:

Exhibit 4

DP&L SGP Cost Benefit Summary

Figure 1
(in Millions)

BENEFITS & COSTS	NOMINAL	NPV
BENEFITS *(20yr)*:	**$813.8**	**$347.0**
Utility	**$207.7**	**$97.0**
O&M Savings	$115.6	$52.7
Avoided Capital	$27.5	$13.2
Billing Process Efficiency	$64.6	$31.1
Customer	**$606.1**	**$250.0**
Energy & Demand Savings	$183.3	$75.7
Improved Reliability	$193.0	$90.6
Customer EV Savings	$229.8	$83.6
COSTS *(20yr)*:	**$387.9**	**$284.0**
Capital	$243.7	$205.1
AFUDC	$5.3	$4.4
Cost of Existing Equipment	$18.3	$15.0
O&M	$120.7	$59.5
Net Benefit:	**$425.9**	**$63.0**
Benefit/Cost Ratio:	**2.1**	**1.2**

Figure 2
(in Millions)

BENEFITS & COSTS	NOMINAL	NPV
BENEFITS *(20yr)*:	**$1,255.3**	**$697.3**
Utility	**$207.7**	**$97.0**
O&M Savings	$115.6	$52.7
Avoided Capital	$27.5	$13.2
Billing Process Efficiency	$64.6	$31.1
Customer	**$606.1**	**$250.0**
Energy & Demand Savings	$183.3	$75.7
Improved Reliability	$193.0	$90.6
Customer EV Savings	$229.8	$83.6
Societal Benefits	**$441.5**	**$350.3**
Reduced GHG	$41.3	$13.5
Economic Impact	$400.1	$336.8
COSTS *(20yr)*:	**$387.9**	**$284.0**
Capital	$243.7	$205.1
AFUDC	$5.3	$4.4
Cost of Existing Equipment	$18.3	$15.0
O&M	$120.7	$59.5
Net Benefit:	**$867.3**	**$413.3**
Benefit/Cost Ratio:	**3.2**	**2.5**

Stip. Parties Ex. 1, Ex. 4.

The SGP is thus expected to generate $413.3 million in net benefits to customers (on a net-present value basis). Id. DP&L Witness Schroder described how the CBA was prepared. DP&L Ex. 4, pp. 20-23 (Nov. 30, 2020 Schroder Test.). Accord: DP&L Ex. 5 (detailed support for CBA).

2. The Commission should reject the arguments of OCC witness Alvarez

OCC Witness Alvarez is critical of the CBA, but the Commission should reject his arguments for the following reasons:

First, Mr. Alvarez admitted that a well-designed Smart Grid plan can provide net benefits to customers. Tr. Vol. III at 477. He also admitted that the benefits of a Smart Grid plan could include: utility cost savings, energy and demand savings, reliability improvements, reduced greenhouse gases, and stimulus for the economy. Id. at 478. He further admitted that the equipment that DP&L plans to install is not novel, and similar equipment has been installed by other utilities. Id. at 483. He also admitted that utilities and customers have significant future needs that can be satisfied only through Smart Grid. Id. at 479-82; see also June 30, 2011 Duke Energy Ohio Smart Grid Audit and Assessment (DP&L Ex. 9). Those admissions demonstrate that Smart Grid can have significant benefits for customers.

Second, an obvious defect in Mr. Alvarez's testimony is that he never inspected DP&L's distribution system. Tr. Vol. III at 485. Nor did he review any documentation regarding the technical specification of DP&L's system. Id. Mr. Alvarez conceded that every utility system was "unique." Id. at 484. Given the unique nature of DP&L's system and his failure to review any technical information about the system, he has no basis to opine on the costs or benefits of DP&L's system.

Third, cross-examination of Mr. Alvarez revealed that his specific criticisms of DP&L's CBA were littered with flaws. The principal flaws in his criticisms include:

1. Customer Information System ("CIS"): To implement Smart Grid, DP&L needs a new CIS. The Stipulation (Stip. Parties Ex. 1, ¶ 10.g) provides that DP&L will not recover the costs of the CIS through the IIR, but instead, will recover the cost through a future distribution rate case. DP&L's CBA thus removed the costs and the benefits associated with the CIS from the CBA. Tr. Vol. III at 494.

Mr. Alvarez adds back the costs of the CIS (Dec. 17, 2020 Direct Testimony of Paul J. Alvarez (OCC Ex. 7C), p. 34), but failed to add back the benefits. Tr. Vol. III at 495-96. Adding back the costs of the CIS but not the benefits makes no sense. The amount of those benefits is shown on page 43, line 15 of his confidential testimony. Id.

2. Operational benefit offset: Smart Grid is expected to significantly reduce DP&L's costs to provide service to customers, and the Stipulation (Stip. Parties Ex. 1, ¶ 3) provides that the IIR will be reduced by the amounts of those cost reductions. DP&L's CBA shows that offset extending for the full 20-year period over which benefits were estimated. Tr. Vol. III at 498.

Mr. Alvarez opines that the offset will last only four years, since the IIR will last for only four years. OCC Ex. 7C, p. 16 (Dec. 17, 2020 Alvarez Test.). He thus concludes that there will be $60 million (net-present value) in additional costs associated with eliminating the offset, and an additional $36.2 million (net-present value) in costs due to a rate case timing effect. Id. at 34. He admits that these two items would not exist if the offset was continued. Id. at 16-22, 34; Tr. Vol. III at 500-01.

The obvious defect in his analysis is his assertion that the Commission will discontinue the operational benefit offset after four years. One of the principal benefits of Smart Grid is reducing utility costs over the long term, and Mr. Alvarez's assertion that the Commission would not ensure that that benefit flows through to customers is not realistic.

3. Electric vehicles ("EV"): The CBA shows $83.6 million in benefits from the electric vehicle rebate program established in the Stipulation. Stip. Parties Ex. 1, Ex. 4. The increased usage of electric vehicles will reduce customer fuel costs. DP&L Ex. 5, WP B Customer Benefits, Lines 163-71. DP&L estimates that its EV charging station program will lead to a 7.2% increase in EV purchases. Id. at Lines 170-71.

Mr. Alvarez eliminated that benefit from his CBA because he believes "that DP&L's charger rebate program is not likely to be a significant driver of EV adoption." OCC Ex. 7C, p. 25, 34 (Dec. 17, 2020 Alvarez Test). However, he admitted that prospective electric vehicle owners may be reluctant to buy electric vehicles due to a lack of publicly-available charging stations. Tr. Vol. III at 505. He also admitted that there was a "chicken and egg problem," because businesses may be reluctant to install charging stations when customers do not own electric vehicles. Id. at 505-06. DP&L's rebate program – which will encourage the installation of publicly-available charging stations – will thus help to alleviate that issue.

4. Economic benefits: The CBA also shows $336 million in benefits due to the economic impact that DP&L's SGP expenditures will have on the economy. Stip. Parties Ex 1, Ex. 4.

Mr. Alvarez criticizes that benefit because DP&L did not also include purported "economic detriments" of the Smart Grid plan. Tr. Vol. III at 507. However, Mr. Alvarez made no attempt to calculate those purported economic detriments. Id. Further, despite the fact that Mr. Alvarez has repeatedly raised the same argument before other state commissions, he could not identify any other commission that agreed that purported economic detriments should be included in a CBA. Id.

5. Greenhouse gases: The Stipulation shows $13.5 million in benefits associated with reduced greenhouse gases resulting from reduced energy consumption. Stip. Parties Ex. 1, Ex. 4. Despite admitting that reducing greenhouse gases is a real benefit (Tr. Vol. II at 508), Mr. Alvarez eliminated that benefit from the CBA because he claims (OCC Ex. 7C, p. 27 (Dec. 17, 2020 Alvarez Test.)) that the forecasts are "unreliable," and the actual results could be higher or lower than the forecasts. However, that is true of every forecast. Performing a CBA requires forecasts of future events, and the fact that actual events may not match the forecasts is no reason to refuse to use a forecast.

6. Additional errors: Cross-examination revealed that there were significant additional errors in Mr. Alvarez's testimony regarding cost allocation (Tr. Vol. III at 486), carrying charges (id. at 489-93), useful life of meters (id. at 501-02), value of a GIS system (id. at 502-04), remote disconnect waivers (id. at 504-05), distribution automation reliability improvements (id. at 509-10), substation automation reliability improvements (id. at 510), reliability improvements from smart meters (id. at 510-12), and DP&L's use of the U.S. Department of Energy's "ICE" model (id. at 512-14, 519-20).

Fourth, Mr. Alvarez was critical of the Stipulation because it does not include specific requirements that DP&L deliver the benefits of grid modernization, but requires customers to bear the costs. OCC Ex. 7C, pp. 35-45 (Dec. 17, 2020 Alvarez Test.). However, he admitted that the process used to arrive at a Stipulation in this case was much better for customers than what would have happened if DP&L had made its planned $866 million investments from its application, and then sought recovery of those expenses through a distribution rate case. Tr. Vol. III at 521-26. Specifically, he admitted that in negotiations in this case, customers were able to significantly reduce the size of DP&L's SGP, while adding significant benefits for customers. Id.

B. The Stipulation will allow DP&L to continue to provide safe and reliable service

Another significant benefit of the Stipulation is that it allows DP&L to continue to provide safe and reliable service to its customers. Specifically, as demonstrated below, DP&L continues to be in financial distress and could not provide safe and reliable service to its customers without the RSC. The Stipulation thus benefits customers by allowing DP&L to continue to provide safe and reliable service.

1. DP&L'S projected ROE is low

During the 2020-2023 forecast period, DP&L is projected to earn an ROE of [redacted]. DP&L Ex. 1A, p. 88 (Apr. 1, 2020 Malinak Test.). [redacted]

It is also important that the [redacted] figure significantly overstates the actual return that DP&L's shareholders will earn on their investments in DP&L. Specifically, DP&L has written off large amounts from the book value of its assets; DP&L's shareholders invested that money in DP&L and will not recover those investments; a return calculation should thus include those write offs to more accurately reflect the actual return earned by DP&L's shareholders. Id. at 89 n.134; DP&L Ex. 2, RJM-29 (Dec. 23, 2020 Malinak Test.). DP&L's ROE over the 2020-2023 forecast period is [redacted] after those write offs are added back to DP&L's equity balance. Id.

2. DP&L has aging infrastructure and deteriorating reliability metrics

Due to its poor financial condition, DP&L has been making lower capital expenditures than its peer utilities. DP&L Ex. 1A, pp. 47-48, RJM-25 (Apr. 1, 2020 Malinak Test.). As a result, much of DP&L's infrastructure is very old: "45% of DP&L's substation assets are over 30 years old, while 24% of those assets are over 50 years old. Over 45% of DP&L's distribution poles are more than 40 years old, 35% are over 50 years old, and almost 20% of the distribution poles on the system are over 60 years old." DP&L Ex. 6A, p. 3 (Apr. 1, 2020 Garavaglia Test.).

Although DP&L has managed to maintain acceptable reliability metrics during its financial crisis, those metrics have been deteriorating:

YEAR	SAIDI	SAIFI	CAIDI
2016	82.15	.69	119.08
2017	90.40	.68	133.07
2018	97.74	.83	118.41
2019	117.83	.88	133.29

The Stipulation will enable DP&L to invest in infrastructure and improve reliability.

3. <u>The credit ratings for DP&L and DPL Inc. are poor</u>

Credit ratings are an excellent measure of a firm's financial integrity, since those ratings are provided by a neutral third party. DP&L Ex. 6A, p. 4 (Apr. 1, 2020 Garavaglia Test.); Tr. Vol. III at 426 (Kahal); Tr. Vol. V at 902 (Duann). The issuer credit ratings for DP&L and DPL Inc. are as follows:

"**<u>DP&L</u>**

S & P:	BB (two notches below investment grade), negative outlook
Fitch:	BBB- (lowest investment grade rating), negative outlook
Moody's:	Baa2 (one notch above investment grade), negative outlook

<u>DPL Inc.</u>

S & P:	BB (two notches below investment grade), negative outlook
Fitch:	BB+ (one notch below investment grade), negative outlook
Moody's:	Ba1 (one notch below investment grade), negative outlook"

DP&L Ex. 6A, p. 10 (Apr. 1, 2020 Garavaglia Test.). DP&L and DPL Inc. are among the lowest-rated utility and utility holding companies in the United States. DP&L Ex. 1A, pp. 69-70 (Apr. 1, 2020 Malinak Test.).

Additionally, the credit rating agencies have indicated that they would lower DP&L's credit rating even further if the RSC were to be eliminated. <u>See</u> <u>Id</u>. at 33-34.

OCC Witness Kahal agreed that it was important that DP&L have investment grade credit ratings. Tr. Vol. III at 427. He also acknowledged that lower credit ratings would, all else equal, lead to higher costs of debt, and thus higher rates for customers. <u>Id</u>. at 427-28. The Stipulation should result in higher credit ratings.

4. DP&L's financial integrity is linked to the financial integrity of DPL Inc.

DP&L's Chief Financial Officer, Gustavo Garavaglia M. explained that DPL Inc.'s financial integrity in linked directly to DP&L's financial integrity:

> "**Q. Does the financial integrity of DPL Inc. have an impact on DP&L?**
>
> A. Yes. DP&L must maintain its financial integrity to ensure that it can (a) make the necessary capital investment and operating expenses that are required in the normal course of business; (b) access debt markets to refinance existing debt obligations; (c) attract debt and equity to finance the investments required to maintain reliability and modernize its transmission and distribution infrastructure; and (d) maintain reasonably priced debt and equity capital to ensure reasonable rates to customers.
>
> If DPL Inc. cannot maintain its financial integrity, it will (a) need to minimize capital and operating expenditures at DP&L (that otherwise would be necessary to ensure safe and reliable service) in order to ensure that its own financial obligations can be met; (b) not have funds, or access to funds, that may be required to invest in DP&L and to ensure that DP&L can maintain its existing infrastructure; (c) not have funds, or access to funds, that will be required to invest in DP&L to provide the ability to modernize DP&L's distribution grid and the associated benefits for DP&L's customers and society as a whole; and (d) adversely affect its own credit ratings and the credit ratings of DP&L (all of the major credit ratings agencies "notch" the utility and the utility holding company, so that the utility credit ratings are directly linked to that of the utility holding company), which will increase the borrowing costs for DP&L and DPL Inc. and decrease cash available to operate and maintain DP&L's assets, or to invest in infrastructure modernization projects."

DP&L Ex. 6A, pp. 13 -14 (Apr. 1, 2020 Garavaglia Test.).

Credit rating agencies have stated that they will downgrade DP&L, if DPL Inc. experiences additional financial distress:

> "S & P Global: S & P Global gives the same credit rating to DP&L that it gives to DPL Inc. Thus, any downgrade of DPL Inc. will downgrade DP&L.
>
> Fitch: In its December 23, 2019 rating report, Fitch stated as to DPL Inc. that '[d]eteriorating regulatory relationship or successful challenges from stakeholders over approved rate plans in the future will result in negative rating actions.' Fitch further stated that as to DP&L, '[a] downgrade at DPL [Inc.] could potentially lead to negative rating actions at DP&L.'
>
> Moody's: In its December 30, 2019 credit opinion, Moody's stated that 'DP&L's credit quality is constrained by the significant amount of holding company debt that DPL . . . .'"

Id. at 14.

Further, as explained in detail by DP&L Witness Garavaglia, a failure by DPL Inc. to pay its debts would likely lead to lenders declaring all of DP&L's debt to be immediately due. Id. at 17-21. DP&L could not pay those amounts if they became immediately due, and DP&L could not provide safe and reliable service if that occurred. Id.

OCC Witness Kahal admitted that DP&L and DPL Inc. are financially intertwined, that it is important that DPL Inc. be able to pay its approximately $800 million in debts, and DP&L would suffer adverse consequences if DPL Inc. could not pay that debt. Tr. Vol. III at 432-33.

5. AES, DPL Inc. and DP&L have made significant efforts to improve DP&L's financial integrity

As discussed in detail by DP&L Witness Garavaglia, AES, DPL Inc. and DP&L have taken significant steps to improve the financial integrity of DP&L. Those steps include:

1. AES has invested $150 million in DP&L in 2020, and announced plans to invest another $150 million in 2021;

2. No dividend payments have been made to AES since 2012;

3. No contractually-required tax-sharing payments have been made to AES since 2012;

4. DP&L has implemented significant cost and workforce reductions;

5. DP&L and DPL Inc. have sold over [redacted] million in assets, and used the net proceeds to pay down debt.

DP&L Ex. 6A, pp. 22-25 (Apr. 1, 2020 Garavaglia Test.).

OCC Witness Kahal agreed that AES' equity investments, the lack of payments to AES and the asset sales were all positive steps for DP&L. Tr. Vol. III at 435-37.

As a result of the actions described above, debt at DP&L and DPL Inc. has been reduced by approximately $1.1 billion between 2012 to 2019. DP&L Ex. 6A, p. 25 (Apr. 1, 2020 Garavaglia Test.).

6. <u>DP&L could not provide stable service without the RSC</u>

The testimony of DP&L Witness Malinak demonstrates that DP&L would be in a dire financial situation if the RSC was terminated, even if DP&L made no dividend payments to DPL Inc.:

"Q. Please describe the projected financial condition of DP&L under ESP I without the RSC.

A. This scenario is very similar to the MRO with no FIC. As in that scenario, DP&L would be in a dire financial position absent the RSC. In order to bridge the [redacted] gap in financing, DP&L would [redacted]. By [redacted], the DP&L revolver balance would be [redacted] DP&L would have a capital structure that is far more levered than the targeted 52.5 percent debt capital structure, reaching [redacted] by [redacted].

The financial condition and integrity of DP&L in this scenario would also suffer further due to the strained financial position of DPL, which is [redacted]

> [redacted]."

DP&L Ex. 1A, p. 61 (Apr. 1, 2020 Malinak Test.) (footnotes omitted). Accord: Id. at RJM-18A (showing zero dividend payments under this scenario).

DP&L Witness Garavaglia demonstrated that DP&L could not provide safe and reliable service without the RSC:

> "Q. **Would DP&L be able to provide safe and reliable service without a financial integrity charge under an MRO or if the RSC was invalidated in this proceeding?**
>
> A. No, without a financial integrity charge in the MRO or the RSC under the ESP, DP&L would not have sufficient funds to pay its operating expenses, make needed capital expenditures and make required debt payments. DP&L would need to make deep and distressing cuts to its operating expenses and capital investments. Without a financial integrity charge or the RSC, the cash flows at DP&L and DPL Inc. would be insufficient to both meet debt obligations and maintain normal operations.
>
> Specifically, DP&L needs to spend between [redacted] in operating expenses per year, and make approximately [redacted] in capital expenditures each year. This includes maintaining the base capital investments of approximately [redacted] per year as well as incremental grid modernization investments. As previously mentioned, DP&L's system is in desperate need of updates and investment to prevent service degradation and its customers languishing behind the rest of the state's investment in 'modern technologies' that have become mainstream. DP&L's customers are suffering from the Company's inability to upgrade its grid. The dramatic COVID-19 pandemic has highlighted the limited capabilities of DP&L's system where the absence of advanced meter infrastructure limits the ability to remote read meters in a time when it is not safe for meter reading to take place, which could have significant negative

> consequences for customers impacted by the current economic shutdown.
>
> * * *
>
> DP&L would need to cut those amounts without a financial integrity charge under an MRO or the RSC under and ESP. Without those expenditures, DP&L could not operate its system, meaning that it would not be able to provide safe and reliable service. Alternatively, DP&L would have to cut debt payments, which as explained below, results in a threat to DP&L's ability to provide safe and reliable service."

DP&L Ex. 6A, pp. 15-16 (Apr. 1, 2020 Garavaglia Test.).

Without an RSC, DP&L's indicated credit rating for the 2020-2023 forecast period from Moody's would be Ba1, [redacted]. DP&L Ex. 1A, RJM-19A (Apr. 1, 2020 Malinak Test.). DP&L's current credit rating from Moody's is Baa2, which is one notch above investment grade. DP&L Ex. 6A, p. 10 (Apr. 1, 2020 Garavaglia Test.). DP&L's credit rating under Moody's would thus fall [redacted] without the RSC. DP&L currently is two notches below investment grade for S&P, and has the lowest investment grade for Fitch. Id. Eliminating the RSC would likely cause DP&L's credit rating for S&P and Fitch to decline further below investment grade (S&P) or below investment grade (Fitch). DP&L witness Garavaglia explains that it is critical that DP&L have an investment grade credit rating. Id. at 11-13. OCC Witness Kahal agreed. Tr. Vol. III at 427.

Further, as mentioned above, DP&L witness Malinak modeled this scenario [redacted] DP&L Ex. 1A, RJM-18A (Apr. 1, 2020 Malinak Test.). [redacted] DP&L Ex. 6A, pp. 17-21 (Apr. 1, 2020 Garavaglia Test.). As mentioned above, OCC Witness Kahal agreed that it was important that DPL Inc. be able to pay its debts and that a default by DPL Inc. on those debts would have adverse consequences for DP&L. Tr. Vol. III at 432-33.

By continuing ESP I (Stipulation, p. 44), the Stipulation thus allows DP&L to continue to provide safe and reliable service to customers, which is a significant benefit of the Stipulation.

C. Other Benefits

As demonstrated in the testimony of DP&L Witness Schroder (DP&L Ex. 4, pp. 24-38 (Nov. 30, 2020 Schroder Test.)), other benefits of the Stipulation include:

1. DP&L's Application in Pub. Util. Case Nos. 18-1875-EL-GRD, et al. ("SmartGrid Application") sought Commission approval to make investments and operations and maintenance expenditures associated with its SGP totaling $866.9 million over 20 years. SmartGrid Application, ¶ 9. In the interest of minimizing customer impacts and expediting the benefits of the initial benefits of grid modernization, DP&L reached a broad-based compromise with a diverse group of Signatory Parties to cap those expenditures at $267.6 million over four years and to propose an SGP Phase 2. Stip. Parties Ex. 1, ¶ 2, 4.

2. DP&L's SmartGrid Application proposed that a portion of estimated cost savings associated with grid modernization would be passed through to customers when DP&L filed future rate cases. The Stipulation now guarantees that the updated estimated amount of total savings, which includes all categories of operational savings, will be passed back to customers through the IIR, which will allow customers to benefit from those savings more quickly. Id. at ¶ 3.b.

3. The Stipulation establishes stringent procedures for the auditing of DP&L's SGP Phase 1 investments and expenditures. Id. at ¶ 5.a. There was no such requirement in DP&L's SmartGrid Application.

4. The Stipulation establishes procedures for DP&L to update the Commission and interested parties regarding the status of grid modernization. Id. at ¶¶ 5.b & 5.c. There were no such procedures in DP&L's SmartGrid Application.

5. The Stipulation establishes a Smart Thermostat Program, which will be funded by DP&L with shareholder dollars. Id. at ¶ 9. There were no such provisions in DP&L's SmartGrid Application.

6. DP&L's SmartGrid Application provided for recovery of investments and expenditures associated with a new CIS. SmartGrid Application, ¶¶ 2.c and 13. The Stipulation provides that investments and expenditures associated with the CIS will be recovered through base rates instead of through the IIR like other SGP Phase 1 components. Stip. Parties Ex. 1, ¶ 10.g. That provision will benefit customers because it will ensure that the CIS system is fully functional, including the numerous functionality commitments, prior to DP&L seeking recovery of invested dollars.

7. The Stipulation contains detailed provisions regarding the appropriate and timely access of customer data to customers, CRES providers and third parties. Id. ¶ 11.

8. The Stipulation contains the additional benefits for residential customers, including but not limited to funding a weatherization program for low-income customers, and a water heater pilot program directed at low-income residential customers. Id. at ¶ 12. These provisions will encourage residential customers to lower their energy usage and reduce their risk of disconnection.

9. The Stipulation contains additional benefits for the City of Dayton, including but not limited to prioritization of the installation of the SGP in economically disadvantaged areas of the City; $350,000 in annual financial contributions of DP&L shareholder dollars to the PACE program, economic development, and low-income residents; and a commitment to provide support relating to an interconnection of net metering systems for two City of Dayton Solar Projects. Id. at ¶¶ 13 and 16.b. In addition, the Stipulation contains a waiver of fees for alternative feed service for City of Dayton accounts that have redundant service. Id. at ¶ 13.a.iv. These provisions lend significant

support to the largest municipality in DP&L's service territory and its residents.

10. The Stipulation contains additional benefits for DP&L's commercial and industrial customers, including but not limited to a waiver of fees for alternative feed service for hospitals, the dedication of SGP Phase 1 customer education funds to certain business organizations and the City of Dayton to allow them to educate their members and residents about the benefits of SGP, and $300,000 in DP&L shareholder funding directed to the Ohio Hospital Association as an education grant. Id. at ¶ 14. These provisions support hospitals and local businesses in DP&L's service territory as they face a global pandemic and ensure they and other Ohio businesses are equipped to take full advantage of the benefits of SGP Phase 1.

11. The Stipulation contains additional economic development incentives and grants for hospitals and manufacturers in DP&L's service territory. These benefits are intended to assist those organizations in responding to the financial consequences of COVID-19 and restarting Ohio's economy by supporting large employers that are key drivers of economic development in the region, thereby benefiting the region and State more broadly. Id. at ¶ 15. Moreover, DP&L will bear the cost of these incentives and grants and will not recover that cost from customers. Id.

12. The Stipulation further provides $250,000 of support toward analyzing the technical aspects of an energy resiliency project in or near the Wright-Patterson Air Force Base. The project may include renewable energy and distributed energy resources, energy storage, advanced control systems, and reduction of energy consumption through lighting and water upgrades, and HVAC improvements. Id. at ¶ 16.a. DP&L will also bear this cost and will not recover that cost from customers. Id.

13. The Stipulation further provides that DP&L will provide $1 million in shareholder dollars toward a solar project owned by IGS. Id. at ¶ 16.c. This provision will benefit customers by increasing the availability of clean and renewable energy in DP&L's service territory and provide important data regarding any distribution or transmissions costs saved or avoided as a result of the project.

14. SGP Phase 1 will provide benefits that exceed their costs on both a nominal and net-present-value basis. Id. at ¶ 17 and Ex. 4.

15. The Stipulation further provides that DP&L's ESP I passes the SEET and MFA test in R.C. 4928.143(E) and the SEET in R.C. 4928.143(F), and the Signatory Parties agree not to challenge DP&L's right to operate under ESP I. Id. at ¶¶ 19.a, 19.c.i., and 19.c.iii. These provisions reduce regulatory uncertainty, and as Witness Malinak explains, bolster DP&L's financial integrity and ability to provide safe and reliable service. The Stipulation further reduces litigation expense by consolidating these proceedings and narrowing the contested issues before the Commission.

16. The Stipulation further benefits customers by providing that DP&L will file an application for approval of ESP IV by October 1, 2023, which will create a period of rate stability for DP&L. Id. at ¶ 20. DP&L's rate plans and associated rates have been subject to significant changes in recent years: DP&L implemented ESP II in 2013; reverted to ESP I in 2016; implemented ESP III in 2017; and again reverted to ESP I in 2019. The Stipulation benefits customers and DP&L by creating a period of rate certainty until ESP IV is approved.

17. The Stipulation also benefits customers by providing that DP&L will file an application for an ESP, not an MRO, in 2023. Id. at ¶ 20. The Commission repeatedly has found that ESPs were more favorable in the aggregate than MROs, so DP&L's commitment to file for an ESP benefits customers.

18. The Stipulation further benefits customers by prohibiting DP&L from proposing in ESP IV a nonbypassable charge related to provider of last resort risks, stability, financial integrity, or any other charge that is substantially calculated based on the credit ratings, debt, or financial performance of any parent or affiliated company of DP&L, thus eliminating customer exposure to such charges in DP&L's next electric security plan. Id. at ¶ 20.

DP&L Ex. 4, pp. 24-29 (Nov. 30, 2020 Schroder Test.).

D. DP&L Will Have the Lowest Rates in the State

Significantly, under the Stipulation, DP&L will continue to have the lowest rates in the state for a typical residential customer. DP&L Ex. 4, p. 30 (Nov. 30, 2020 Schroder Test.).

E. DP&L Made Significant Concessions in the Stipulation

The Stipulation was the product of negotiation, resulting in a compromise, and no parties received everything that they wanted. Significant concessions by DP&L include:

1. DP&L's SmartGrid Application proposed capital and O&M expenditures totaling $678,400,000 over 10 years. DP&L agreed to significantly reduce the scope of the program to $267,600,000 over four years. Stip. Parties Ex. 1, ¶ 2. That reduction in scope will significantly reduce the customer bill impacts, while still allowing them to receive tremendous benefits of Smart Grid.

2. DP&L agreed to use its own funds to pay for the following programs:

    a. The Smart Thermostat program described in Stipulation, ¶ 9;

    b. The low-income weatherization program described in Stipulation, ¶ 12.a;

    c. The PIPP water heater pilot program described in Stipulation, ¶ 12.c.;

    d. The PACE program and similar programs described in Stipulation, ¶ 13.a.iii;

    e. The City of Dayton economic development programs described in Stipulation, ¶ 13.a.v;

    f. The hospital education grant described in Stipulation, ¶ 14.d;

    g. The economic development grants and incentives described in Stipulation, ¶ 15;

    h. The resiliency projects described in Stipulation, ¶ 16.a; and

    i. The solar project described in Stipulation, ¶ 16.c.

3. DP&L agreed that the costs of its CIS and related components, a significant component of its SGP, would be recovered through distribution rates instead of the IIR.

4. DP&L agreed not to own EV charging stations, but instead will implement a rebate program to promote the installation of such stations.

5. DP&L agreed to file for ESP IV by October 1, 2023, and that its ESP IV Application will not include a request for a nonbypassable charge to customers related to provider of last resort risks, stability, financial integrity, or any other charge that is substantially calculated based on the credit ratings, debt, or financial performance of any parent or affiliated company of DP&L.

DP&L Ex. 4, pp. 30-32 (Nov. 30, 2020 Schroder Test.).

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

This section of this brief demonstrates that the Stipulation does not violate any important regulatory principle or practice and it summarizes the evidence showing that:

a. DP&L did not have significantly excessive earnings under R.C. 4928.143(F) for 2018 and 2019;

b. ESP I passes the MFA test under R.C. 4928.143(E);

c. ESP I passes the Prospective SEET under R.C. 4928.143(E);

d. The Stipulation promotes the policies of the State of Ohio, as identified in R.C. 4928.02.

A. DP&L did not have significantly excessive earnings in 2018 or 2019

R.C. 4928.143(F) requires the Commission to determine whether DP&L had significantly excessive earnings in 2018 and 2019. The Stipulation (Stip. Parties Ex. 1, ¶ 20) provides that DP&L passes that Retrospective SEET. This section of this brief demonstrates that:

1. In conducting the Retrospective SEET, the Commission should make certain adjustments to DP&L's earnings and equity balance;

2. The Commission should adopt the SEET thresholds sponsored by DP&L Witness Malinak (which vary by year and scenario), and conclude that DP&L did not have significantly excessive earnings in 2018 or 2019; and

3. If the Commission were to conclude that DP&L had significantly excessive earnings in 2018 or 2019, then the Commission should consider DP&L's future committed capital investments in this state and should not order DP&L to issue a refund.

1. The Commission should make the following adjustments in the Retrospective SEET

As demonstrated below, in conducting the Retrospective SEET for 2018 and 2019, the Commission should make the following adjustments to DP&L's earnings and equity balance:

a. proceeds from DP&L's DMR should be excluded from DP&L's earnings for 2018 and 2019;

b. the Commission should recognize in DP&L's equity balance amounts that were written off in prior periods associated with DP&L's generation assets;

c. the Commission should include in DP&L's equity balance $300 million in capital investments that AES made or committed to making in DP&L;

d. the Commission should make adjustments to the Retrospective SEET calculation associated with the Tax Cuts and Jobs Act ("TCJA") and certain property taxes; and

e. if the Commission were to include DP&L's DMR proceeds in the Retrospective SEET calculation (it should not), then the Commission should subtract from DP&L's earnings the revenue that DP&L would have earned if the RSC had been in effect.

DP&L's "base case" for 2018 and 2019 is shown on Schedules 1 and 6 of DP&L's Exhibits, respectively. DP&L Ex. 3. Those schedules make the first four adjustments listed above (as explained below, the fifth adjustment is an alternative to adjustment 1) and show that

DP&L's ROE was 0.7% in 2018 and 2.0% in 2019, which ROEs are well below the Retrospective SEET thresholds. DP&L Ex. 2, pp. 25-26 (Dec. 23, 2020 Malinak Test.).

The remaining Schedules in DP&L Ex. 3 show that DP&L would pass the Retrospective SEET even if only certain adjustments (or combinations of adjustments) were made. DP&L Ex. 3, Schedules 2-5, 7-10; DP&L Ex. 2, pp. 25-26 (Dec. 23, 2020 Malinak Test.).

a. <u>The DMR should be excluded from the Retrospective SEET</u>

As shown below, DP&L's DMR revenue should be excluded from earnings considered in the Retrospective SEET analysis for three separate and independent reasons. If just that adjustment was made, DP&L Ex. 3 shows that DP&L's ROE was 3.3% in 2018 (Schedule 2) and 11.7% in 2019 (Schedule 7). Those ROEs are below the applicable SEET thresholds. DP&L Ex. 2, pp. 25-26 (Dec. 23, 2020 Malinak Test.).

i. <u>The DMR was not an "earned return"</u>

DP&L Witness Garavaglia explained that the ESP III Stipulation included significant restrictions on DP&L's use of its revenue. DP&L Ex. 7, p. 7 (Dec. 23, 2020 Garavaglia Test.). Specifically, DP&L was required to use <u>all</u> of its DMR revenue to make debt payments at DP&L and DPL Inc., to position DP&L to implement Smart Grid. <u>Id</u>. Further, to ensure that DP&L did not use the DMR revenue to pay debt, but then use other revenue to pay dividends to AES, the ESP III Stipulation prohibited DP&L Inc. from making dividend or tax sharing payments to AES. <u>Id</u>. at 8.

DP&L Witness Garavaglia demonstrated that the DMR should not be considered "earned return" under R.C. 4928.143(F) because of those restrictions:

> **"Q. Were the DMR proceeds similar to other revenue that is typically earned by utilities?**
>
> A. No. Utilities are typically free to use the revenue that they earn for any lawful purpose. Utilities can dividend their revenue to shareholders; utilities can use their revenue to invest in infrastructure or to pay expenses. The DP&L DMR however, had restrictions on its use such that it could not be used for these purposes; instead, it was restricted to be used only to pay and reduce debt obligations. ESP III Stipulation at pp. 3-4. Therefore, the DMR proceeds were not similar to revenue that is typically earned by utilities.
>
> **Q. Was the DMR an 'earned return on common equity' (R.C. 4928.143(F)?**
>
> A. No. As discussed above, DP&L could not dividend or otherwise provide the DMR proceeds to AES or its shareholders. Instead, DP&L was required to use the DMR proceeds to make interest and principal payments at DP&L and DPL Inc. The DMR proceeds thus were not an 'earned return' because DP&L's use of those funds was significantly restricted, and those proceeds could not be provided to AES or its shareholders.
>
> **Q. Do the restrictions in the ESP III Stipulation on making dividend or tax sharing payments to AES affect whether the DMR was an earned return?**
>
> A. Yes. The provisions in ESP III Stipulation, pp. 3-4 that precluded DP&L and DPL Inc. from making dividend or tax sharing payments to AES further confirm that the DMR was not an earned return. Specifically, the purpose of those provisions was to prevent DP&L from using DMR proceeds to pay debt while using other proceeds to make payments to AES. The prohibitions against making payments to AES thus reinforced the prohibition against providing DMR proceeds to AES, further confirming that the DMR proceeds were not an 'earned return.'"

DP&L Ex. 7, pp. 10-11 (Dec. 23, 2020 Garavaglia Test.).

Similarly, DP&L Witness Malinak agreed that DMR revenue should be excluded:

"**Q. What do you conclude regarding the merits of including or excluding the DMR when calculating DP&L's earnings for purposes of the SEET in 2018 and 2019?**

A. I conclude that it should be excluded in order to be consistent with the underlying economics of the SEET, as I understand the meaning of the Ohio Revised Code and the Commission's 2010 Order.

Q. Why?

A. There are several reasons. First and foremost, the net proceeds from DP&L's DMR were not equity earnings from an economic perspective. Specifically, a firm's equity earnings are the amount of unrestricted operating profits that it earns for its shareholders from the conduct of its business, meaning that the firm's shareholders have the full and unrestricted right to determine the use of those funds, including whether to retain them for investment or pay them out in dividends.

More specifically, from an economic perspective, a firm's operating income 'will accrue to investors either as debt interest or equity income (dividends or capital gains)' and the 'firm's capital structure determines whether operating income is paid out as interest or equity income.' Indeed, it is axiomatic in financial economics that the 'value of equity is obtained by discounting expected cash flows to equity (i.e., the residual cash flows after meeting all expenses, reinvestment needs, tax obligations, and interest and principal payments) at the cost of equity (i.e., the rate of return required by equity investors in the firm).' If there were any economic restrictions on the expected residual cash flows to equity (shareholders), then this fundamental principle of equity valuation would not be true.

The proceeds from DP&L's DMR clearly do not meet this economic definition because they were explicitly restricted to be used for debt service and to encourage future equity investment in grid modernization. Therefore, the after-tax proceeds from DP&L's DMR were not actual earnings in economic substance, but a form of capital or financing charge.

Because the SEET statute explicitly requires the measurement of a utility's 'earned' return on equity, and the

> DMR was not part of DP&L's earned return, it should be excluded in calculating earnings for SEET purposes."

DP&L Ex. 2, pp. 11-13 (Dec. 23, 2020 Malinak Test.) (footnotes omitted). Accord: Tr. Vol. V at 876 (Duann) (a utility is generally free to use its revenue for any purpose).

OCC's Witness Duann asserts that DP&L's DMR revenue should be included in the Retrospective SEET because the Supreme Court held that FirstEnergy's DMR revenue should be included in the SEET. Dec. 17, 2020 Direct Testimony of Daniel J. Duann, Ph.D. (OCC Ex. 4), p. 12. However, Dr. Duann ignores evidence that DP&L's use of the DMR funds was very different from FirstEnergy's DMR.

Specifically, in 2019, a Supreme Court plurality held that FirstEnergy's DMR was not lawful because there were no "real requirements, restrictions, or conditions imposed by the commission for use of DMR funds." In re Application of Ohio Edison Co., Cleveland Elec. Illuminating Co., and Toledo Edison Co. for Authority to Provide for a Standard Service Offer Pursuant to 4928.143 in the Form of an Electric Security Plan ("In re FirstEnergy"), 157 Ohio St.3d 73, 2019-Ohio-2401, 131 N.E.3d 906, ¶ 19. FirstEnergy's DMR proceeds were audited, and the auditor concluded that those proceeds were placed in a pool so that the funds could "benefit[] non-Ohio regulated companies" and be "used to pay dividends." In re Audit of FirstEnergy's DMR, Case No. 17-2474-EL-RDR, Oxford Advisory Mid-Term Report (June 14, 2019), p. 19. FirstEnergy increased its dividend to its shareholders while receiving its DMR. Id. at 36-37.

In contrast, as demonstrated above, DP&L's DMR funds were used exclusively to make debt payments for DP&L and DPL Inc., and AES has received no dividends from DP&L or DPL Inc. since 2012. DP&L Ex. 7, p. 8 (Dec. 23, 2020 Garavaglia Test.). The audit of

DP&L's DMR confirmed those points. In re Review of DP&L's DMR, Case No. 18-264-EL-RDR, Oxford Advisors Mid-Term Report (June 14, 2019), pp. 11-14 .[1]

Thus, unlike DP&L, FirstEnergy could not and did not argue to the Supreme Court that its use of its DMR proceeds was restricted and the DMR therefore did not constitute an "earned return." The Supreme Court's ruling that FirstEnergy's DMR proceeds should be included in the SEET does not address the issue presented here, so the Commission is free to find that DP&L's DMR revenue is not an earned return due to significant restrictions placed upon that revenue.

ii. The DMR should be excluded from DP&L's earned return as an extraordinary and one-time item

The Commission has held that "for the SEET calculation, the earned return will . . . exclud[e] any non-recurring, special, and extraordinary items." In the Matter of the Investigation of the Development of the Significantly Excessive Earnings Test, Case No. 09-786-EL-ENC, Finding and Order (June 30, 2010), p. 18. Accord: Tr. Vol. V at 880 (Duann) (one-time events can be removed from the SEET).

The DMR constitutes a "non-recurring" item that should be excluded from DP&L's earned return because the DMR was in place for only a limited amount of time. DP&L Ex. 7, p. 12 (Dec. 23, 2020 Garavaglia Test.). Specifically, the DMR was scheduled to last for three years. Id. The Commission terminated the DMR before those three years had passed. Id.

[1] Dr. Duann believes that FirstEnergy's DMR proceeds were restricted. Tr. Vol. V at 879. His opinion that DP&L's DMR was similar to FirstEnergy's DMR is wrong based upon a misunderstanding of the facts.

The DMR was thus a non-recurring item that should be excluded from DP&L's earned return. Id.

The DMR also constitutes a "special" and "extraordinary" item that should be excluded from DP&L's earned return. The DMR was approved under R.C. 4928.143(B)(2)(h), and was intended to allow DP&L to improve its financial integrity to incentivize DP&L to implement grid modernization. In re The Dayton Power and Light Company, Case No. 16-0395-EL-SSO, et al. ("ESP III Case"), Opinion and Order (Oct. 20, 2017) at ¶¶ 36-38, 100.

The only other utility in the state that has had a similar charge was FirstEnergy. However, DP&L's DMR was materially different from FirstEnergy's DMR, for two reasons:

1. As demonstrated above, DP&L's use of its DMR funds was significantly restricted. DP&L Ex. 7, p. 7 (Dec. 23, 2020 Garavaglia Test.). As also demonstrated above, the Supreme Court plurality held that FirstEnergy's DMR was not lawful because there were no "real requirements, restrictions, or conditions imposed by the Commission for the use of DMR funds." In re FirstEnergy, 2019-Ohio-2401 at ¶ 19.

2. In addition, the Court's plurality explained that the "critical problem" with FirstEnergy's DMR was that FirstEnergy was not "required" to make any investment to modernize the distribution grid. Id. at ¶ 18 (emphasis is original). In contrast, the Commission specifically held that DP&L was "required to implement the modernization plan." ESP III Case, Third Entry on Rehearing (Sept. 19, 2018) at ¶ 22 (emphasis in original).

DP&L's DMR was thus unique in the state of Ohio.

Further, Dr. Duann admitted that he was not aware of any similar rider for any other utility in the country. Tr. Vol. V at 882. Accord: DP&L Ex. 2, p. 38 (Dec. 23, 2020 Malinak Test.).

Significantly, FirstEnergy argued to the Supreme Court that its DMR was an extraordinary item that should be excluded from the SEET, but the Court declined to consider that issue because the Commission did not expressly address that issue in its order. In re Determination of Existence of Significantly Excessive Earnings for 2017 under Elec. Sec. Plan of Ohio Edison Co., ("In re FirstEnergy SEET Application"), 2020-Ohio-5450, ¶ 39-50. Whether DP&L's DMR is an "extraordinary" item that should be excluded from the Retrospective SEET is thus an open issue that this Commission may decide without violating any important regulatory principle or practice. This Commission should conclude that the DMR was an extraordinary item that should be excluded from the SEET.

iii. The DMR was a capital charge that should be excluded from DP&L's earned return

DP&L Witness Garavaglia further demonstrated that the DMR should also be excluded from DP&L's earned return because it was a capital charge:

> **"Q. Do you consider the DMR to be a capital charge?**
>
> A. Yes. As discussed above, the DMR proceeds were restricted to being used to pay and reduce debt, so that DP&L could borrow under reasonable terms to fund grid modernization. The DMR was thus targeted at altering DP&L's capital structure and was therefore a capital charge.
>
> **Q. What conclusions do you draw from that fact?**
>
> A. I understand that the SEET statute allows the Commission to make appropriate adjustments related to a utility's capital structure. R.C. 4928.143(F). Since the DMR was a capital charge, it should not be treated as revenue and should be excluded from the SEET."

DP&L Ex. 7, pp. 12-13 (Dec. 23, 2020 Garavaglia Test.).

Similarly, DP&L Witness Malinak agreed the DMR was a form of capital charge:

> "**Q. Why do you say that the proceeds from DP&L's DMR were in substance a form of capital or financing charge, when the charge was paid by customers?**
>
> A. From an economic perspective, regulated utilities are private-public corporations overseen by regulators for the benefit of all of the direct stakeholders, including the utility's customers, employees and investors, and indirect stakeholders that includes all who benefit from the favorable impact on the economy from the high-quality service that a strong utility is able to offer at reasonable prices. Indeed, as I have testified previously, all of these stakeholders, including customers, benefit from a financially strong utility. Specifically, customers benefit when the utility develops an optimal capital structure that minimizes its cost of capital, leading to both lower rates and optimal levels of investment in fixed assets, which leads to safe and reliable service provided at reasonable rates. Thus, when DP&L's customers pay rates that include a DMR that is earmarked and restricted to be used to pay down debt, the customers receive a 'return benefit' in the form of lower capital costs that are passed through in future rates, as well as high quality service. The money bypasses the equity shareholders of the firm and goes straight to adjusting DP&L's capital structure. In economic substance, therefore, the DMR was a form of capital or financing charge that was paid by customers, and for which they received value in return, but that fundamentally was not part of DP&L's equity earnings."

DP&L Ex. 2, p. 13 (Dec. 23, 2020 Malinak Test.).

The plurality in the FirstEnergy SEET case expressly refused to decide the merits of this issue (In re FirstEnergy SEET Application, 2020-Ohio-5450, ¶ 33-36), so it is an open issue for the Commission. See also id. ¶ 112-13 (Kennedy, J., dissenting in part) (stating that the FirstEnergy DMR related to its capital structure, and the Commission had discretion to exclude the DMR revenue from earned return on that basis). The Commission is thus free to decide this issue and should exclude the DMR revenue from the SEET since the DMR was a capital charge.

b. DP&L's asset impairments should be included in its equity balance

As the Commission knows, DP&L's shareholders have invested billions of dollars in DP&L over the years. As the Commission also knows, due to a decline in the fair value of DP&L's generation assets, DP&L has written off over $1 billion of the value of those assets. DP&L Ex. 3, Schedule 3, Line 19; DP&L Ex. 3, Schedule 8, Line 21. That is money that DP&L's shareholders invested in DP&L that they will not be able to recover or earn a return on.

R.C. 4928.143(F) allows the Commission to make "adjustments for capital structure as may be appropriate." DP&L Witness Malinak explained that it would be "appropriate" for the Commission to include those write offs in DP&L's equity balance for the Retrospective SEET to reflect the return that DP&L's shareholders actually earned or their investments:

> "**Q. Do you recommend any adjustments to equity for purposes of calculating DP&L's ROE for SEET purposes in 2018 and 2019?**
>
> A. Yes. I recommend that asset impairments associated with DP&L's generation assets be added back to DP&L's equity for purposes of conducting the SEET.
>
> **Q. Why?**
>
> A. In this case, calculating DP&L's ROE for SEET purposes based on reported book values overstates DP&L's 'economic' ROE due to the large write-offs that DP&L has had to take in the past. Specifically, in the years leading up to 2018 and 2019, DP&L wrote off most of its generation asset investments, totaling roughly $1.0 billion on an after-tax basis. These write-offs reflected losses in asset value that reduced the book value of equity. Importantly, even though they were written off, it does not change the fact that these investments were made and had real economic impact for DP&L's equity investors. If one uses the unadjusted book-value of equity to calculate ROE after a

firm has taken a write-off, ROE will artificially increase, suggesting that the firm was highly profitable when in fact the nature of the asset did not change at all.

As stated by NY Finance Professor Aswath Damodaran:

> 'Extraordinary and one-time charges and income often skew both earnings and invested capital measures at firms. As a general rule, the income that is used to compute returns on equity and capital should reflect continuing operations and should not include any items that are one-time or extraordinary. <u>Extraordinary charges also reduce invested capital and throw off return on capital computations. In fact, firms with mediocre investments can report healthy returns on capital by writing off significant amounts of the capital over time.'</u>"

DP&L Ex. 2, pp. 15-16 (Dec. 23, 2020 Malinak Test.) (emphasis in original) (footnotes omitted).

Indeed, in 2014, the Commission held that DP&L's divestiture of its generation assets constituted an "extraordinary event" and that the financial impact of that event should be excluded from the SEET:

> "Further, we agree that the <u>sale of the divestiture of the generation assets constitutes an extraordinary event</u>. Consistent with our past practice, the <u>financial impact of the divestiture should be excluded from the SEET test</u>."

<u>In re Application of DP&L to Transfer Generation Assets</u>, Case No. 13-2420-EL-UNC, Finding and Order (Sept. 17, 2014) at p. 9 (emphasis added).

Significantly, OCC Witness Duann testified:

"Q. Okay. I want to ask you a hypothetical. Suppose a shareholder makes an equity infusion of a million dollars into a utility, and the utility uses that million dollars to invest in the generation asset. If a utility then has – that's its only asset and it has $50,000 in earnings, my math is that would be a 5 percent ROE; is that right?

A. Okay. Let – let's come back a little bit. Say for a particular year when a utility has $1 million you say in equity?

Q. $1 million in equity and $50,000 in earnings.

A. Yes. And for that particular year that utility has return on equity of 5 percent.

* * *

Q. Second hypothetical, the utility has written off $900,000, taken an impairment on the assets, so there is $100,000 left in equity. The utility has the same asset, and in the year in question it again has $50,000 in earnings. In that situation, the utility's ROE would be 50 percent, right?

A. Well, it is – it – if that utility has written off that – that $900,000 so it's left will $100,000, yes, your rate of return would be 50 percent and that's what the accounting standards say.

* * *

Q. . . . Well, in this hypothetical question, <u>the utility's ROE increased significantly simply because the utility had written of $900,000 worth of the equity</u> associated with that asset, correct?

A. Yes. That's correct."

Tr. Vol. V at 889, 891-93 (emphasis added).

Dr. Duann conceded that one of the purposes of the SEET is to ensure that DP&L's shareholders do not receive an excessive return. <u>Id</u>. at 888. It makes no sense that a utility would be found to have excessive returns simply because the value of its assets declined in a prior period.

The impairment adjustment is shown on Schedules 3 and 8, which reflect that after just this adjustment is made, DP&L's ROE was 6.8% in 2018 and 8.5% in 2019. DP&L Ex. 3. Those ROEs are well below the applicable SEET thresholds. DP&L Ex. 2, pp. 25-26 (Dec. 23, 2020 Malinak Test.).

c. The Commission should make adjustments associated with AES equity investments and tax law changes

This section demonstrates that the Commission should make the following adjustments in conducting the Retrospective SEET:

i. The Commission should include in DP&L's equity balance $300 million in investments that AES has made or plans to make in DP&L;

ii. The Commission should make adjustments to DP&L's earnings and equity balance associated with changes to certain tax laws.

Schedules 4 and 9 show that after just these adjustments are made, DP&L's ROE was 13.2% in 2018 and 13.9% in 2019. DP&L Ex. 3. Those ROEs are well below the applicable SEET thresholds. DP&L Ex. 2, pp. 25-26 (Dec. 23, 2020 Malinak Test.).

i. The Commission should adjust DP&L's equity balance to include $300 million in AES equity investments

R.C. 4928.143(F) provides that in conducting the Retrospective SEET, the Commission must "[c]onsider[]" any "capital requirements of future committed investments in this state." The testimony of DP&L Witness Garavaglia shows that DP&L has committed capital investments in this state totaling $939 million over the next five years. DP&L Ex. 7, p. 14 (Dec.

23, 2020 Garavaglia Test.). Those investments consist of $249 million for Smart Grid, $510 million in distribution investment, and $180 million in transmission investments. Id.

To allow DP&L to make those capital investments, AES invested $150 million in DP&L in 2020, and plans to invest another $150 million in 2021. Id. at 8-9, 14-15. Mr. Garavaglia's testimony shows that the Commission should include that $300 million in DP&L's equity balance:

> "**Q. Do you have a proposal regarding how the Commission should '[c]onsider[] . . . the capital requirements of future committed investments in this state' when conducting the SEET (R.C. 4928.143(F))?**
>
> A. Yes. The Commission should include the $300 million in AES equity investments in DP&L's equity balances for 2018 and 2019.
>
> **Q. Why is that proposal reasonable?**
>
> A. As an initial matter, that $300 million is a capital requirement necessary to support the investments to which DP&L was committed in 2018-2019 (and remains committed to today). Further, given that the Commission is required to 'consider[]' capital requirements associated with 'future committed investments' when conducting the SEET, it is reasonable to include the equity investments associated with those capital requirements.
>
> The Commission should thus 'consider[] . . . future committed investments in this state' by including AES' equity contribution to DP&L's equity balances in 2018 and 2019 in the SEET."

Id. at 17.

The Commission should thus "[c]onsider[]" DP&L's "future committed capital investments" and conclude that the $300 million in AES equity investments in DP&L should be included in DP&L's equity balance for 2018 and 2019.

ii. The Commission should make tax adjustments in conducting the SEET

DP&L experienced a one-time $18 million tax event in 2019 associated with the TCJA. DP&L Ex. 7, pp. 18-19 (Dec. 23, 2020 Garavaglia Test.). DP&L Witness Garavaglia explains that the $18 million amount should be excluded from the SEET because: (1) it was a one-time extraordinary event; and (2) the earnings were caused by a change in tax laws, and thus were not caused by DP&L's ESP (see R.C. 4928.143(F) (Commission should consider whether "adjustments" to ESP caused earnings). OCC Witness Duann conceded that he was not aware of any tax cut similar to the TCJA, and the TCJA effects on DP&L's earnings were not caused by the ESP statute. Tr. Vol. V at 894-95.

d. The Commission should exclude the RSC from DP&L's earnings

Schedules 5 and 10 include DP&L's DMR revenue for 2018 and 2019, but exclude revenue that DP&L would have earned if the RSC had been in place in those years. DP&L Ex. 3. Those Schedules show that after just that adjustment is made, DP&L's ROE was 8.1% in 2018 and 13.5% in 2019. Those ROEs are below the applicable SEET thresholds. DP&L Ex. 2, pp. 25-26 (Dec. 23, 2020 Malinak Test.).

DP&L Witness Garavaglia explains why that adjustment is appropriate:

> "**Q. Why is that adjustment appropriate?**
>
> A. I understand that R.C. 4928.143(F) requires the Commission to determine whether any 'adjustments' made under the then-governing ESP resulted in significantly excessive earnings. I further understand that when determining the amount of such adjustments, the Supreme Court has stated that the Commission must determine whether significantly excessive earnings resulted from '"any change in rates when compared to the rates in the

> electric utility's preceding rate plan.'" In re The SEET of Ohio Edison, 2020-Ohio-5450, ¶ 26 (quoting In re Investigation into the Development of the Significantly Excessive Earning Test, Pub. Util. Comm. No. 09-786-EL-UNC, at 15 (June 30, 2010)).
>
> Before the DMR was approved, DP&L was operating under ESP I, which included the RSC. In re DP&L's ESP I, Aug. 26, 2016 Finding and Order, ¶ 23 (Case No. 08-1094-EL-SSO). The elimination of the RSC from ESP I and the implementation of the DMR in ESP III thus constituted a 'change in rates when compared to the rates in [DP&L's] preceding rate plan,' so the difference between the DMR and the RSC is what should be included in the SEET."

DP&L Ex. 7, pp. 20-21 (Dec. 23, 2020 Garavaglia Test.).

If the Commission were to include the DMR in DP&L's earnings (it should not), then the Commission should exclude the RSC from DP&L's earnings because that was a "change in rates" when DP&L changed from ESP I to ESP III.

2. DP&L's ROE is below the Retrospective SEET thresholds

To establish a Retrospective SEET threshold, R.C. 4928.143(F) provides that the Commission should consider the returns earned by businesses that "face comparable business and financial risk." DP&L Witness Malinak described why there should be different SEET thresholds depending upon whether or not the DMR is included in the SEET:

> "**Q. How did you calculate the SEET Threshold for Scenarios 1 (All Adjustments) and 2 (DMR Excluded)?**
>
> A. In past annual SEET proceedings, I understand that the Commission has relied on a sample of companies from the Utilities Select Sector SPDR exchange traded fund ("XLU"), which consists of utilities and other energy firms that have been deemed to have business and financial risk comparable to a T&D utility such as DP&L. Thus, an appropriate SEET Threshold in this case that fits with

Commission precedent can be calculated based on this sample.

To calculate the SEET Threshold, I calculate the average ROEs for the XLU companies in 2018 and 2019. Then, based on approaches that I understand have been favored by the Commission in past proceedings, I apply adjustments to the average ROEs. The first approach multiplies the average ROE for the peer companies by 1.5. The second approach adds to the average ROE of the peer companies the standard deviation of peer ROEs multiplied by 1.64. To the results using either of these approaches, I add 100 basis points (1 percent) for DP&L-specific risks as discussed by DP&L witness Garavaglia. The results of these calculations are shown in Table RJM-3, below.

In addition, I analyze two alternative samples to the XLU sample that also include companies with business and financial risk comparable to DP&L. The first alternative sample consists of firms (24 firms in 2018 and 25 firms in 2019) that are in Value Line Investment Survey's ('Value Line') electric utility index and have debt ratings of BBB+, BBB, and BBB- (*i.e.*, a similar credit rating to that of DP&L around the period at issue). The second alternative sample consists of the firms that are in one or both of the first two samples. The larger size of this latter sample provides more statistical certainty, all else equal. The SEET Thresholds based on these alternative samples are shown in Table RJM-3.

* * *

Q. How did you calculate the SEET Threshold for Scenarios 3-5?

A. As noted previously, these scenarios include the DMR in DP&L's earnings. If the DMR were included in DP&L's earnings for SEET purposes, then DP&L's risks in 2018 and 2019 would have been significantly greater, and it is highly likely that its credit ratings would have been downgraded to below investment grade if credit rating agencies at the time had known that the DMR was going to be included in earnings in future SEET cases. This increase in risk requires a different SEET Threshold because, all else equal, financial economic theory would predict that firms with such increased risk should have a higher expected ROE. To adjust my SEET Threshold for

> this higher risk, I first tried to find utilities with below investment grade ratings in my XLU and Value Line samples to obtain a relevant subsample. However, there was only one such firm, which is too small a sample to provide statistically meaningful results.
>
> I therefore developed a new methodology that would allow me to make a more statistically valid estimate of the difference in ROEs between investment grade and non-investment grade utilities. Under this methodology, I compute adjustment factors to apply to the ROEs and standard deviations determined for Scenarios 1 and 2 using my base XLU and Value Line samples. These factors account for the difference in risk between a non-investment grade utility and an investment grade utility.
>
> The first step was to identify a larger set of firms with generally comparable business and financial risk to DP&L from which to draw my rating subsamples. Following a sampling methodology that has been presented in previous SEET proceedings, I started with over 1,000 firms in Value Line and identified firms that are comparable to DP&L in terms of business risk (using unlevered beta) and financial risk (based on book equity to book assets). Then, within this set of firms, I computed the adjustment factors as the ratio of the average (or standard deviation) ROE of firms with BBB+, BBB, and BBB- credit ratings (mid-point BBB) to the average (or standard deviation) ROE of firms with BBB-, BB+, and BB credit ratings (mid-point is BB+)."

DP&L Ex. 2, pp. 19-22 (Dec. 23, 2020 Malinak Test.) (footnotes omitted).

Instead of calculating a SEET threshold, OCC Witness Duann asserts that the Commission should use the 12% SEET threshold that was included in ESP III. Jan. 11, 2021 Supplemental Testimony of Daniel J. Duann, Ph.D. (OCC Ex. 5), pp. 28-29. The Commission should reject that argument for two reasons:

First, the ESP III Stipulation has been terminated pursuant to R.C. 4928.143(C)(2)(a). ESP III Case, Finding and Order (Dec. 18, 2019) at ¶ 1. That 12%

threshold thus is no longer applicable. Dr. Duann nonetheless asserts that the Commission should enforce the 12% threshold in the ESP III Stipulation, but should modify the ESP III Stipulation by eliminating the clause in that same Stipulation that excludes DMR revenue from the Retrospective SEET. Tr. Vol. V at 900. Dr. Duann's suggestion that the Commission enforce and modify the ESP III Stipulation leads to absurd results.

Specifically, assuming for the sake of argument that there is some remaining remnant of the ESP III Stipulation that could still be enforced for purposes of the 2018-2019 Retrospective SEET, DP&L would have the right to terminate that remnant when the Commission modified that remnant by eliminating the DMR exclusion. R.C. 4928.143(C)(2)(a). The notion of DP&L terminating a remnant of a terminated Stipulation is plainly absurd, demonstrating that the ESP III Stipulation simply can no longer be enforced.

Indeed, the Supreme Court has held that the Commission cannot modify an ESP that is no longer in effect, since doing so would be inconsistent with the utility's right to terminate that ESP after the Commission modified it. In re Ohio Power Co., 144 Ohio St.3d, 2015-Ohio-2056, 40 N.E.3d 1060, ¶ 24-26.

Second, DP&L's agreement to that 12% threshold in ESP III was plainly contingent upon the DMR being excluded from the SEET. DP&L Ex. 7, pp. 21-22 (Dec. 23, 2020 Garavaglia Test.). If the Commission were to include DP&L's DMR revenue in the SEET, then the 12% threshold would not be applicable. Id.

3. DP&L's Future Committed Capital shows that no refund should be required

Even if the Commission were to conclude that DP&L had significantly excessive earnings in 2018 and 2019, the Commission should not order DP&L to make a refund to customers due to DP&L's planned capital investments and AES' actual and planned equity investments in DP&L. DP&L Ex. 7, pp. 26-30 (Dec. 23, 2020 Garavaglia Test.). Significantly, OCC Witness Duann agreed that "the Commission can consider future committed capital investments in deciding whether to require a utility to issue a refund." Tr. Vol. V at 904.

R.C. 4928.143(F) states that in conducting the Retrospective SEET, the Commission must "[c]onsider[]" any "capital requirements of future committed investments in this state." DP&L Witness Garavaglia explains that DP&L has future committed investments in this state over the next five years of $939 million. DP&L Ex. 7, p. 26 (Dec. 23, 2020 Garavaglia Test.).

Further, as demonstrated above, Smart Grid is projected to provide $413.3 million in net benefits to customers. Stip. Parties Ex. 1, Ex. 4. However, if the Commission were to order DP&L to make a refund to customers, then DP&L would not be able to pursue Smart Grid. DP&L Ex. 7, pp. 29-30 (Dec. 23, 2020 Garavaglia Test.).

Therefore, even if the Commission were to conclude that DP&L had significantly excessive earnings in 2018 or 2019, the Commission should exercise the discretion that it has to "[c]onsider[] . . . future committed capital investments," and should decline to order DP&L to provide a refund so that DP&L can provide the benefits of Smart Grid to its customers. Id.

This conclusion is consistent with Staff Witness Buckley's testimony:

"**Q. What is Staff's recommendation?**

A. Based on the AES Corporation's commitment to provide a capital contribution of $300 million to DP&L to improve its infrastructure and modernize its grid, Staff believes that DP&L has made a substantial commitment to invest in Ohio. The investment exceeds what would be customary to maintain its system and therefore Staff believes that DP&L has satisfied the criteria of the SEET test and recommends that no refund is appropriate at this time."

Jan. 4, 2021 Testimony in Support of the Stipulation of Joseph P. Buckley (Staff Ex. 1), p. 11.

B. ESP I Passes the MFA Test and the Prospective SEET

R.C. 4928.143(E) provides that if an ESP is scheduled to last more than three years, then the Commission shall test that ESP in the fourth year to determine whether it (1) continues to be "more favorable in the aggregate . . . during the remaining term of the plan" ("MFA Test"); and (2) "is substantially likely" to result in earnings that are "significantly in excess" of the earnings of comparable companies ("Prospective SEET"). Since ESP I will be in effect for over three years, the Commission ordered DP&L to file an application showing that ESP I passes the MFA Test and Prospective SEET in subsection (E). In re DP&L's ESP I, Case No. 08-1094-EL-SSO, et al., Second Finding and Order (Dec. 18, 2019) at ¶ 41.

DP&L made that filing on April 1, 2020 in Case No. 20-680-EL-UNC. That application showed that: (1) ESP I passed the MFA Test; (2) ESP I passed the Prospective SEET; and (3) even if ESP I failed either test, the Commission should not invalidate the RSC.

The Stipulation (Stip. Parties Ex. 1, ¶ 19.a) in this case provides that DP&L passes both tests. As demonstrated below, the evidence shows that ESP I passes both tests.

1. <u>ESP I passes the MFA Test</u>

This section of this brief demonstrates that ESP I passes the MFA Test in R.C. 4928.143(E) for the following reasons:

a. Under an MRO, DP&L could recover a financial integrity charge ("FIC") between [redacted] and [redacted]. Those amounts exceed the $79 million RSC that DP&L will recover under ESP I.

b. It is now impractical or impossible to comply with the blending requirements in the MRO statute.

c. Generation-related environmental expenses would be recoverable under an MRO, but not under ESP I.

d. ESP I has qualitative benefits that are not available under an MRO.

a. <u>An FIC under an MRO would exceed the RSC</u>

The MRO statute allows the Commission to adjust a utility's rates to "address any emergency that threatens the utility's financial integrity." R.C. 4928.142(D)(4). In evaluating whether DP&L's ESP III was more favorable in the aggregate as compared to an MRO, the Commission stated that it would have approved an FIC for DP&L if DP&L had filed an application for an MRO:

> "<u>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</u>. Under an MRO, pursuant to R.C. 4928.142 the Commission may assess such charges as the Commission <u>'determines necessary to address any emergency that threatens the utility's financial integrity</u> 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.
>
> 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 <u>a utility on the 'ragged edge' of investment grade would qualify</u> 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 <u>DP&L and DPL Inc.'s credit ratings were respectively, at and even below the 'ragged edge' of investment grade</u> (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."

<u>ESP III Case</u>, Opinion and Order (Oct. 10, 2017) at ¶¶ 90-91 (emphasis added).

DP&L Witness Garavaglia confirmed that DP&L remains at or below the "ragged edge" of investment grade, and that the Commission would thus approve an FIC under an MRO. DP&L Ex. 6A, p. 10 (Apr. 1, 2020 Garavaglia Test.).

The testimony of DP&L Witness Malinak demonstrated that DP&L would experience a financial emergency during the 2020-2023 forecast period under an MRO without an FIC:

> **"Q. Please describe the projected financial condition and integrity of DP&L under the hypothetical MRO without an FIC.**

A. Under an MRO without an FIC, DP&L would face serious and imminent financial distress. In order to preserve its capital, I assume that DP&L would not pay any dividends to DPL under this scenario and is able to refinance $140 million of debt in 2020.

In 2020, DP&L would generate approximately [redacted] in operating cash flow, which is well below projected capital expenditures of [redacted] in that year, as well as DP&L's capital expenditures of $167 million in 2019. Despite this shortfall and the financial distress that DP&L and DPL would be experiencing, this scenario still assumes that AES would contribute $150 million in equity. Even with this equity contribution, the [redacted] operating cash flow would fall well short of the [redacted] of capital expenditures. In 2021, operating cash flow of [redacted] would fall well short of the [redacted] capital expenditures. The problems continue in the following years, as operating cash flow remains significantly below capital expenditures necessary to maintain safe and reliable service and implement grid modernization.

Without equity infusions, DP&L would need to resort to its revolver to bridge the cash shortfall. However, even assuming AES would still inject the first $150 million of equity in 2020 (which would no longer be economic)[2] DP&L would need to increase its borrowing on the revolver to [redacted] DP&L would face rising leverage. *Debt / Capital* would reach [redacted] percent by 2023, well above the [redacted] percent target.

The model-based indicated credit ratings fall from the current Baa2 to [redacted], below investment grade, for the four-year projection period. As shown … below, the yield on non-investment grade is significantly higher than for investment grade debt. This scenario demonstrates a clear financial emergency for DP&L."

DP&L Ex. 1A, pp. 50-51 (Apr. 1, 2020 Malinak Test.) (footnotes omitted).

[2] The $150 million equity investment for 2020 by AES has now been made.

DP&L Witness Malinak showed that an FIC under an MRO should range between [redacted] and [redacted]. Id. at 53-57; RJM-8A; RJM-8B. An FIC of [redacted] would place DP&L in the same financial situation it would be in under ESP I, but accounts for the fact that AES would not make a $150 million investment in DP&L in 2021 under an MRO. Id. at 53; RJM-8A; DP&L Ex. 6A, pp. 25-26 (Apr. 1, 2020 Garavaglia Test.). A [redacted] FIC would allow DP&L to make all of its planned capital expenditures, service the debt at DP&L, and pay interest expenses at DPL Inc. DP&L Ex. 1A, pp. 54-55; RJM-8B (Apr. 1, 2020 Malinak Test.). Both methods are reasonable, so an FIC for DP&L under an MRO should range between [redacted] and [redacted]. Id. at 55-57.

In either case, ESP I is less expensive for customers than an MRO because the RSC averages $79 million over the 2020-2023 forecast period, and is thus more favorable. Id. at 79-80.

OCC Witness Kahal conceded that ESP I would pass the MFA Test if the Commission approved an FIC of [redacted] under an MRO. Tr. Vol. III at 421. He further conceded that ESP I would pass the MFA Test if the Commission were to approve an FIC under an MRO equal to the $105 million DMR that the Commission approved under ESP III. Id. at 421-22.

b. MRO blending is no longer feasible

Under the MRO statute, DP&L's ESP rates would be blended with rates bid under the MRO, so that in year one of an MRO, 90% of DP&L's SSO rate would be DP&L's prior ESP rate, and 10% would be rates bid in an MRO auction. R.C. 4928.142(D). That structure was viable when Ohio utilities owned generation assets and supplied generation to customers during an ESP through their SSO. However, MRO blending is no longer feasible since DP&L does not own generation assets and the ESP SSO is supplied via a competitive bidding process.

Specifically, suppose prices increase between the last bidding process for an ESP and the first bidding process for an MRO. The MRO statute requires that the MRO SSO price be 90% based on that lower ESP price. R.C. 4928.142(D). However, OCC Witness Kahal conceded that generation suppliers would not be willing to sell power to DP&L's customers at the statutorily-mandated lower price from the ESP. Tr. Vol. II at 423-24. Under an MRO, there would thus be a real risk that nobody would sell power to DP&L's customers if prices increased after the last ESP auction.

On the other hand, if prices fell between the last ESP bidding session and the first MRO bidding session, then the MRO statute would require that 90% of the SSO price be made of that higher ESP price. R.C. 4928.143(D). Customers thus could not get the benefit of the fallen prices.

OCC Witness Kahal agreed that prices in the generation market can be volatile (Tr. Vol. II at 422), so the risks identified above are significant. Those risks do not exist in an ESP, making the ESP more favorable.

c. <u>**DP&L could recover environmental expenses under an MRO**</u>

The MRO statute allows utilities to recover "costs prudently incurred to comply with environmental laws and regulations." R.C. 4928.142(D)(4). The ESP statute does not allow the recovery of similar costs. R.C. 4928.143.

DP&L projects that it will spend [redacted] on environmental remediation at Hutchings Station. DP&L Ex. 1A, p. 80 (Apr. 1, 2020 Malinak Test.). That amount would be recoverable under an MRO, and is another quantifiable benefit of ESP I to customers.

d. ESP I has non-quantifiable benefits that an MRO lacks

ESP I has at least five non-quantifiable benefits over an MRO.

First, AES has invested $150 million of new equity into DP&L under the ESP during 2020, and plans to invest another $150 million in 2021, but AES would not make the 2021 investment under an MRO. DP&L Ex. 6A, pp. 26-27 (Apr. 1, 2020 Garavaglia Test.). The reason that AES plans to make that 2021 investment under ESP I but not under an MRO is that the Infrastructure Investment Rider ("IIR") in ESP I would allow an accelerated recovery of that investment, a benefit that is not available under an MRO. Id. at 26-27. "This additional equity would improve the financial condition and integrity of DP&L and DPL Inc. at a reduced cost to customers." DP&L Ex. 1A, p. 81 (Apr. 1, 2020 Malinak Test.).

Second, the ESP statute would require DP&L to issue refunds to customers if its actual ROE exceeded a SEET threshold, and there is no such SEET protection for customers under an MRO. R.C. 4928.143(F); R.C. 4928.142. "Customers under an MRO thus lose the benefit afforded by that protection." DP&L Ex. 1A, p. 81 (Apr. 1, 2020 Malinak Test.).

Third, once the Commission has approved an MRO for a utility, then that utility will never be able to implement an ESP in the future. R.C. 4928.142(F). The Commission has repeatedly found that ESPs are more favorable in the aggregate than MROs. E.g., In re Ohio Power Co., Case No. 16-1852-EL-SSO, et al., Opinion and Order (Apr. 25, 2018) at ¶ 270; In re Duke Energy Ohio, Inc., Case No. 14-841-El-SSO, et al., Opinion and Order (Apr. 2, 2015) at pp. 96-97. The Commission would thus lose the option of approving future beneficial ESPs if it approved an MRO for DP&L. DP&L Ex. 1A, p. 81 (Apr. 1, 2020 Malinak Test.).

Fourth, any FIC under an MRO would be bypassable. R.C. 4928.142(D). "Customers would have an incentive to switch to competitive providers to avoid the charge." DP&L Ex. 1A, p. 82 (Apr. 1, 2020 Malinak Test.). "The departure of those customers would not lessen DP&L's financial needs, which means the FIC would need to stay the same, but be collected from fewer SSO customers." Id. "The remaining customers would then each face a higher [FIC], which would further increase the incentive for those remaining customers to switch providers." Id. "That process would repeat until there are no customers left to pay the charge." Id.

Fifth, any rate increases will be more gradual under ESP I than under a hypothetical MRO. The reason that rate increases would be more gradual is that ESP I includes the IIR, which allows grid modernization investments to be included in rates on a near-real-time basis. In re The Dayton Power and Light Company, Case No. 08-1094-EL-SSO, et al., Stipulation and Recommendation (Feb. 24, 2009) at ¶ 4. The MRO statute does not authorize incremental charges like the IIR. R.C. 4928.142. Under an MRO, any "grid modernization investments would be included in rates only through distribution rate case[s], which would result in infrequent and lumpy increases." DP&L Ex. 1A, p. 82 (Apr. 1, 2020 Malinak Test.). "ESP I provides for gradualism and thus minimizes rate shock." Id.

Further, if the Commission were to conclude that an FIC would not be available under an MRO, then ESP I would still be more favorable due to qualitative benefits of ESP I. Specifically, as demonstrated above, DP&L would not be able to provide safe and reliable service to customers under an MRO without an FIC. Id. at 50-51. The Commission has previously held that an ESP was more favorable than an MRO when the utility could not provide safe and reliable service under an MRO. In re DP&L ESP II, Case No. 12-0426-EL-SSO, et al., Opinion and Order (Sept. 4, 2013) at p. 51 ("although there is a quantifiable cost to the SSR, the SSR will ensure that DP&L can provide adequate, reliable and safe retail electric service").

In summary, the Commission should thus conclude that ESP I is more favorable in the aggregate than an MRO, because: (a) an FIC under an MRO would exceed the RSC; (b) blending under the MRO statute is no longer feasible; (c) there are environmental expenditures that are recoverable under an MRO that are not recoverable under an ESP; and (d) the ESP has qualitative benefits over an MRO.

2. ESP I passes the Prospective SEET

This section demonstrates that ESP I passes the Prospective SEET in R.C. 4928.143(E).

a. DP&L's ROE averages [redacted] over the 2020-2023 forecast period. The testimony of DP&L Witness Malinak shows that DP&L's ROE averages [redacted] over the 2020-2023 forecast period. DP&L Ex. 1A, p. 84 (Apr. 1, 2020 Malinak Test.).

b. The Average ROE Earned by the Comparable Group is 10.4%: The next step in conducting a SEET is to determine a group of companies that face comparable risks to the utility. R.C. 4928.143(E). DP&L witness Malinak identified utilities that were included in the XLU Exchange as comparable to DP&L. DP&L Ex. 1A, p. 85 (Apr. 1, 2020 Malinak Test.). The Commission has repeatedly approved the use of that method to identify comparable companies as part of a SEET. In re Columbus Southern Power, Case No. 11-4571-EL-UNC, et al., Opinion and Order (Oct. 23, 2013) at pp. 21, 23-24; In re Ohio Power Company, Case No. 17-1230-EL-UNC, Opinion and Order (Feb. 27, 2019) at ¶ 33 (citing cases). The mean ROE for that group of companies is 10.4%. DP&L Ex. 1A, p. 85 (Apr. 1, 2020 Malinak Test.).

c. The Applicable SEET Threshold is 16.6%: The next step in a SEET is to determine the ROE threshold that would be considered "significantly in excess" of the ROEs earned by the comparable companies. R.C. 4928.143(E). Methods that the Commission has used to determine that threshold include:

First, the Commission has established a "safe harbor" of 200 basis points above the mean ROE earned by the comparable companies. In re Investigation into Development of SEET Test, Case No. 09-786-EL-UNC, Finding and Order (June 30, 2010) at p. 29. That safe harbor amount would be 12.4% for ESP I during the 2020-2023 forecast period, and the [redacted] ROE that DP&L is projected to earn during that period falls below that safe harbor. DP&L Ex. 1A, p. 91 (Apr. 1, 2020 Malinak Test.).

Second, the Commission has multiplied the mean ROE earned by the comparable group by 1.5 to establish the SEET threshold. In re Columbus Southern Power Co., Case No. 10-1261-EL-UNC, Opinion and Order (Jan. 11, 2011) at p. 25. Multiplying the 10.4% ROE earned by the comparable group of companies by 1.5 results in a SEET threshold for DP&L of 15.6%, which exceeds the [redacted] ROE that DP&L is projected to earn during the forecast period. DP&L Ex. 1A, p. 85 (Apr. 1, 2020 Malinak Test.).

Further, the Commission has approved an increase to the ROE threshold based upon an evaluation of the plans of the utility to make future investments and the risks that the utility faces. In re Columbus Southern Power Co., Case No. 10-1261-EL-UNC, Opinion and

Order (Jan. 11, 2011) at pp. 25-27. The testimony of DP&L witness Garavaglia shows that the mean ROE should be increased by 100 basis points for the following reasons:

a. DP&L plans to invest $914 million during the 2020-2023 forecast period to improve its aging infrastructure and implement smart grid.

b. AES has invested $150 million in DP&L, and plans to invest another $150 million in 2021.

c. DP&L's credit ratings show that DP&L is more risky than a typical utility.

d. DP&L faces risks that other Ohio utilities do not face, since it is not currently collecting a Distribution Investment Rider, a Decoupling Rider, or an Uncollectable Rider.

e. The termination of ESP III has resulted in a loss of approximately $60 million in annual cash flow for DP&L.

f. Cost containment measures at DP&L mean that DP&L is already very lean, and subject to greater operational risks than a typical utility.

DP&L Ex. 6A, pp. 3-8 (Apr. 1, 2020 Garavaglia Test.).

The SEET threshold using the 1.5 multiplier method and the 100 basis point adjustment is thus 16.6%. DP&L Ex. 1A, p. 85 (Apr. 1, 2020 Malinak Test.). DP&L's projected ROE averages [redacted] over the 2020-2023 forecast period, so ESP I passes the SEET using this methodology as well. Id. at 88.

d. The Commission should reject the arguments by OCC witness Kahal.

OCC Witness Kahal asserts that the Commission should conclude that DP&L fails the Prospective SEET. Oct. 22, 2020 Direct Testimony of Matthew I. Kahal (OCC Ex. 1C), pp. 47-52. His principal basis for that assertion is his belief that DP&L's projections do not include a distribution rate case during the 2020 to 2023 forecast period. Id. at 51. He states that the fact that DP&L filed for a distribution rate case in 2020 shows that there was a "fatal flaw" in DP&L's projections. Tr. Vol. III at 409.

However, Mr. Kahal's claim that DP&L's projections do not include a distribution rate case is simply false. DP&L's Witness Garavaglia's testimony states that DP&L's projections include "future distribution and transmission rate increases." DP&L Ex. 6A, p. 28 (Apr. 1, 2020 Garavaglia Test.). (The reason for Mr. Kahal's error is that he misquotes Mr. Garavaglia's testimony. Specifically, Mr. Kahal quotes Mr. Garavaglia's testimony as stating that there will be no rate increase in 2020. OCC Ex. 1C, p. 39 (Oct. 22, 2020 Kahal Test.). However, in the portion of Mr. Garavaglia's testimony that Mr. Kahal is purporting to quote, 2020 is not mentioned. DP&L Ex. 6A, p. 26. (Apr. 1, 2020 Garavaglia Test.))

OCC Witness Kahal also asserts that the SEET threshold should be 12%, given that was the threshold established in DP&L's ESP III Stipulation. OCC Ex. 1C, pp. 49-50 (Oct. 22, 2020 Kahal Test.). As demonstrated above, the Commission should reject that argument for the following separate and independent reasons:

1. ESP III – including the ESP III Stipulation – has been terminated. ESP III Case, Finding and Order (Dec. 18, 2019) at ¶ 1. DP&L will be operating under ESP I during the 2020-2023 forecast period; ESP I does not contain a SEET threshold.

2. The statute requires the Commission to identify companies that are comparable to DP&L. R.C. 4928.143(E). However, Mr. Kahal did not identify a group of comparable companies (and admitted that he did not contest the group of comparable companies identified by DP&L Witness Malinak). Tr. Vol. III at 442.

3. The Commission should continue the RSC even if ESP I fails either test

If the Commission were to conclude that DP&L's ESP I failed either the MFA Test or the Prospective SEET, this section demonstrates that the Commission should not eliminate the RSC.

Specifically, as demonstrated at length above (see supra pp. 23-26), DP&L could not provide safe and reliable service without the RSC. DP&L Ex. 6A, pp. 15-16 (Apr. 1, 2020 Garavaglia Test.); DP&L Ex. 1A, pp. 60-66 (Apr. 1, 2020 Malinak Test.). That point is alone sufficient to demonstrate that the Commission should not terminate the RSC even if the Commission were to conclude that DP&L fails the MFA Test or the Prospective SEET.

Further, it is undisputed that an order eliminating the RSC would have a significant negative effect on DP&L's credit rating. Tr. Vol. III at 429 (Kahal). The testimony of DP&L Witness Malinak shows that utilities with lower credit ratings make smaller investments in their system. DP&L Ex. 1A, p. 70-73 (Apr. 1, 2020 Malinak Test.). Further, regression analysis shows that utilities that make smaller investments in their systems have worse reliability metrics. Id. at 75.

OCC Witness Kahal repeatedly asserts that DP&L does not need the RSC because (according to him) DP&L's projections do not include a distribution rate case. OCC Ex. 1C, pp. 15, 39-40, 43, 51 (Oct. 22, 2020 Kahal Test.); Dec. 17, 2020 Supplemental Testimony of Matthew I. Kahal (OCC Ex. 2), pp. 7-8, 30-31. He states that DP&L's failure to include a distribution rate increase was a "key reason" that DP&L did not need an RSC, that the failure "greatly weakens" DP&L's claim that it needs an RSC and that the failure was a "fatal flaw" in DP&L's case. Id. at 30-31; Tr. Vol. III at 409.

However, as demonstrated above, what Mr. Kahal claims to be a “fatal flaw” in DP&L’s case is simply not there - DP&L's projections in this case do include a distribution rate case. DP&L Ex. 6A, p. 28 (Apr. 1, 2020 Garavaglia Test.). Mr. Kahal's principal attack on DP&L's need for the RSC is thus without basis. (Mr. Kahal also criticizes DP&L's projections on the ground that they do not include lower projected interest rates. However, he admitted that DP&L's interest rate projections were reasonable when made, and that they were a smaller issue. Tr. Vol. III at 418-19.)

The Commission therefore should not eliminate the RSC, even if the Commission were to find that DP&L failed either the MFA Test or the SEET.

C. **The Stipulation Promotes the Policies of the State**

DP&L Witness Schroder described how the Stipulation promotes the following policies of the state:

> "[e]nsure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service," as set forth in R.C. 4928.02(A);
>
> "[e]nsure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities," as set forth in R.C. 4928.02(C);
>
> "[e]ncourage 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, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure," as set forth in R.C. 4928.02(D);
>
> "[e]ncourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language," as set forth in R.C. 4928.02(E);
>
> "[p]rotect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource," as set forth in R.C. 4928.02(L);

> "[e]ncourage the education of small business owners in this state regarding the use of, and encourage the use of, energy efficiency programs and alternative energy resources in their businesses," as set forth in R.C. 4928.02(M);
>
> "[f]acilitate the state's effectiveness in the global economy," as set forth in R.C. 4928.02(N);
>
> "[e]ncourage cost-effective, timely, and efficient access to and sharing of customer usage data with customers and competitive suppliers to promote customer choice and grid modernization," as set forth in R.C. 4928.02(O);
>
> "[e]nsure that a customer's data is provided in a standard format and provided to third parties in as close to real time as is economically justifiable in order to spur economic investment and improve the energy options of individual customers," as set forth in R.C. 4928.02(P).

DP&L Ex. 4, pp. 32-38 (Nov. 30, 2020 Schroder Test.).

D. The Commission Should Reject the Testimony of OCC Witness Williams

The testimony of OCC Witness Williams is directed at the third prong of the Commission's test. Tr. Vol. V at 748. The Commission should reject his arguments for the following reasons:

1. SGP terms: Mr. Williams' testimony lists items that he describes as "tangentially related" or unrelated to DP&L's SGP, including the electric vehicle rebate program, Smart Thermostat rebate program, and a new CIS. Dec. 17, 2020 Direct Testimony of James D. Williams (OCC Ex. 6), pp. 6-8. However, on cross-examination, he admitted that those items were related to Smart Grid. Tr. Vol. V at 752-60. He also admitted that most of the other items on his list benefited customers. Id. at 761-64.

2. ESP I includes the Infrastructure Investment Rider ("IIR"): The Stipulation (Stip. Parties Ex. 1, ¶ 3.b) provides that DP&L will recover costs of DP&L's SGP

through the IIR. OCC Witness Williams makes the puzzling assertion that "[r]ider IIR is an ESP III provision and not an ESP I provision." OCC Ex. 6, p. 15 (Dec. 17, 2020 Williams Test.). However, the ESP I Stipulation does include an IIR. In re The Dayton Power and Light Company, Case No. 08-1094-EL-SSO, et al., ("ESP Case I"), Stipulation and Recommendation (Feb. 24, 2009) at ¶ 4 (OCC Ex. 8).

Mr. Williams (OCC Ex. 6, pp. 20-21 (Dec. 17, 2020 Williams Test.)) claims that DP&L misled the Commission when it said that the "following riders and tariffs" would be implemented in 2017 in a filing that DP&L made at the Commission; he asserts that the IIR did not exist in 2017, and that DP&L thus misled the Commission. However, as demonstrated above, the IIR was included in ESP I; there simply was not a zero-placeholder tariff filed at that time. DP&L's statement that it was implementing "riders and tariffs" as they existed in 2017 was accurate. Further, given that the IIR was authorized by the ESP I Stipulation, Mr. Williams does not identify any prejudice that OCC suffered as a result of the Commission's order approving the IIR as a zero-placeholder rider in its ESP I; and to the extent that OCC did suffer prejudice, it failed to file an application for rehearing on that issue in ESP I. Tr. Vol. V at 770-71.

3. Separate CBAs: Mr. Williams claims that DP&L was required to file a separate CBA for Smart Grid and AMI. OCC Ex. 6, pp. 24-25 (Dec. 17, 2020 Williams Test.). Not so. The ESP Stipulation states that DP&L's filing will have "AMI and Smart Grid business cases that demonstrate a positive benefit cost analysis." OCC Ex. 8, ¶ 4 (ESP I Case, Stipulation and Recommendation). The Stipulation thus required separate business "cases" (plural) but just one "benefit cost analysis" (singular). Separate business cases for Smart Grid and AMI were filed with Application and revised as part of the Stipulation; and there was thus no requirement to file separate CBAs for Smart Grid and AMI.

4. Collection of costs: Mr. Williams also criticized the Stipulation because it allows DP&L to recover costs through the IIR that were incurred before a Commission order approving the SGP; he claims that the ESP I Stipulation barred recovery of cost that were incurred before a Commission Order approving an SGP. OCC Ex. 6, p. 26 (Dec. 17, 2020 Williams Test.). However, the ESP I Stipulation says that costs cannot be collected before a Commission order; the ESP I Stipulation is silent on when costs could be incurred. OCC Ex. 8, ¶ 4 (ESP I Case, Stipulation and Recommendation).

5. Electric Vehicle jurisdiction: Mr. Williams claims that the Commission has decided that "it does not have jurisdiction over [EVs] Charging Services." OCC Ex. 6, p. 29 (Dec. 17, 2020 Williams Test.). On cross, he admitted that statement was false as to utilities providing EV charging services. Tr. Vol. V at 831.

6. Economic Development Incentives: Mr. Williams is also critical of economic development incentives in the Stipulation. OCC Ex. 6, pp. 32-33 (Dec. 17, 2020 Williams Test.). However, Ohio law expressly authorizes economic development incentives to customers. R.C. 4928.143(I); R.C. 4905.31(E).

VII. CONCLUSION

The Stipulation has broad-based support and provides significant benefits to customers while promoting state policy. The Commission should thus approve it without modification.

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 12th day of February, 2021:

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