BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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

POST-HEARING REPLY BRIEF OF HONDA OF AMERICA MFG., INC. AND THE CITY OF DAYTON

I. INTRODUCTION

The Amended Stipulation and Recommendation ("Amended Stipulation") provides an array of benefits to ***all*** customers in the service territory of the Dayton Power & Light Company ("DP&L"). If approved in its current form, the Amended Stipulation will modernize the distribution grid, protect the financial integrity of DP&L, ensure the delivery of safe, reliable electric service in the future, promote vital economic development in the DP&L service territory, and provide competitive retail enhancements for shopping customers. Not surprisingly, there is broad, diverse, and widespread support for the Amended Stipulation. Accordingly, the Commission should dismiss the objections of a handful of intervening parties opposing the Amended Stipulation, and approve it without modification.

II. ARGUMENT

A. The Ohio Consumers' Counsel Misstates the Commission's Standard of Review For Evaluating Stipulations in ESP Cases.

In its Initial Brief, the Ohio Consumers' Counsel ("OCC") mischaracterizes the appropriate standard of review for reviewing settlements in ESP cases. According to OCC, "[i]n evaluating settlements in ESP cases, the PUCO should recognize the parties' asymmetrical bargaining positions, where the utility possesses superior bargaining power."[1] In support of this dubious assertion, OCC cites to a ***dissenting*** opinion by a ***single*** Commissioner in a 2008 ESP Order.[2] This is not the controlling legal standard under which the Commission should review a stipulation in an ESP case. It is inaccurate and misleading for OCC to contend that any purported "asymmetry" in the bargaining positions of the parties should be considered by the Commission. There is simply no basis in law for that erroneous proposition; accordingly, the Commission should reject OCC's mischaracterization of the legal standard of review applicable in this case.[3]

Instead, the Commission should apply its longstanding three part test to evaluate the reasonableness of a stipulated ESP: (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?; and (3) Does the Settlement package violate any important regulatory principle or practice?[4] Despite their attempts to portray the Amended Stipulation as unjust and unreasonable, the Amended Stipulation satisfies all three prongs and, thus, should be approved by the Commission without modification.

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[1] OCC Initial Brief, p. 9.

[2] *Id.*, p. 10, fn 10.

[3] Even if the Commission suddenly decided to impose a new, heightened standard of review in this case based on some purported "asymmetry" in the parties' bargaining positions, there is simply no evidence or any specific facts to demonstrate there was any unequal bargaining power in this case. *See* Hearing Trans. Vol IV., p. 724 (Kahal).

[4] *Office of Consumers' Counsel v. Pub. Util. Com.*, 64 Ohio St.3d 123, 125, 1992-Ohio-122, 592 N.E.2d 1370 (affirming the Commission's three part test).

B. The Amended Stipulation is Reasonable Because It Is the Product of Serious Bargaining Among Capable Parties and There Are a Diversity of Interests Represented.

In the Initial Briefs filed with the Commission on May 5, 2017, only one intervening party opposing the Amended Stipulation appears to challenge the first prong of the Commission's three part test for evaluating settlements in ESP cases.[5] According to OCC, the Amended Stipulation "is not supported by a diversity of interests," "is only supported by a fraction of the many parties that intervened in this case," and is unsupported by the "vast majority of parties."[6] Once again, OCC is wrong.

The interests represented by the signatory parties and non-opposing parties include Commission Staff ("Staff"), the largest municipality in the DP&L service territory, three representatives of residential low-income customers, two large statewide organizations representing industrial customers in DP&L's service territory, a large industrial customer, a large statewide manufacturing association, a statewide organization representing hospitals in DP&L's service territory, one of the largest supermarket chains in the country, a retail supplier association, an individual retail supplier, and an environmental organization.[7] All intervening parties - with the sole exception of OCC - concede that this satisfies the first prong of the Commission's three-part test for evaluating stipulated ESPs.

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[5] *See* OCC Initial Brief, pp. 21-24. Other opposing intervening parties like Walmart, the Ohio Environmental Council, the Environmental Defense Fund, and Murray Energy Corporation only challenge the second and third prongs of the Commission's three part test.

[6] *Id*. at p. 22.

[7] Amended Stipulation, p. 39-41; DP&L Initial Brief, pp. 3-4.

Despite the broad swath of support for the Amended Stipulation, OCC somehow insists there is only "narrow support for the Settlement" which "does not include the bulk of DP&L's customers."[8] That is not true. In total, DP&L services about 515,000 customers in its service territory.[9] The overwhelming majority of these customers (i.e., approximately 459,000 customers) are residential.[10] Five separate intervenors representing residential customers (i.e., "the bulk of DP&L's customers") support the Amended Stipulation. Moreover, these five parties supporting the Amended Stipulation collectively represent residential customers at almost every income level. First, as the representative for ***all*** constituents in DP&L's service territory (residential customers included), Staff supports the Amended Stipulation.[11] In addition to Staff, the City of Dayton, which is the largest municipality in the DP&L service territory[12] representing residents across various income brackets,[13] including many low-income residents,[14] supports the Amended Stipulation. Further, three other intervenors supporting the Amended Stipulation represent low-income residential customers: (1) Edgemont Neighborhood Coalition; (2) People Working Cooperatively, Inc.; and (3) Ohio Partners for Affordable Energy.[15] Consequently, not

[8] OCC Initial Brief, p. 23.

[9] Hearing Trans. Vol. IV, p. 785 (Williams).

[10] *Id*.; *see also* OCC Initial Brief, p. 23.

[11] *See* Hearing Trans. Vol. IV, p. 721 (Kahal); Hearing Trans. Vol. IV, p. 764-65 (Williams); Staff Initial Brief, pp. 1-14.

[12] Hearing Trans. Vol. IV, p. 785 (Williams).

[13] Hearing Trans. Vol IV., p. 722 (Kahal); *see also* Hearing Trans. Vol. IV, p. 766 (Williams).

[14] Approximately 35.5% of the City of Dayton's population is low-income, many of whom are PIPP customers. *See* OCC Initial Brief, p. 33; Hearing Trans. Vol. IV, p. 786-89 (Williams).

[15] *See* Hearing Trans. Vol. IV, pp. 721-22 (Kahal); Hearing Trans. Vol. IV, p. 789 (Williams); *see also* Amended Stipulation, pp. 39-40.

only are "the bulk of DP&L's customers" (i.e., residential customers) represented by five different intervening parties supporting the Amended Stipulation, but also residential customers of different income levels are represented. OCC's blanket assertions to the contrary are simply wrong and unsupported by the evidence in this case.

In addition to residential customers, many commercial and industrial customers in DP&L's service territory either support or do not oppose the Amended Stipulation. In fact, the only commercial customer who has actively opposed the Amended Stipulation is Walmart Stores East, LP and Sam's East, Inc. ("Walmart").[16] Similarly, the only industrial customer actively opposing the Amended Stipulation is Murray Energy Corporation ("Murray"), who is opposing the Amended Stipulation solely to forestall plant closures at Stuart and Killen.[17] Other than those two intervening parties, there are no other active parties representing the 59,000[18] commercial and industrial customers in DP&L's service territory that oppose the Amended Stipulation.

In a seemingly desperate attempt to challenge the reasonableness of the Amended Stipulation (specifically the first prong), OCC submitted pre-filed supplemental testimony of witness James D. Williams, who stated that "there is hardly a diversity of interests represented in this Settlement when the interests of the vast majority of customers who pay DP&L electric bills

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[16] Hearing Trans. Vol. IV, p. 790 (Williams).

[17] *See generally* Murray Initial Brief.

[18] Hearing Trans. Vol. IV, p. 785 (Williams).

are not supporting the Settlement."[19] OCC witness Williams was then pressed at hearing to explain this statement:

> Q. Okay. So it is your position as the representative of the vast majority of DP&L customers, paying customers, OCC's support of the settlement would be required for there to be a diversity of interest that would be represented in this settlement; isn't that true?
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> ....
>
> A. My answer to that is that I would trust that the Commission would not approve a settlement that doesn't include the statutory representative of the vast majority of the DP&L customers.
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> EXAMINER PRICE: Actually, Mr. Williams, the Commission has rejected the premise before, has it not?
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> THE WITNESS. I believe that to be the case, although I believe each case speaks for itself. I would hope that the Commission --
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> EXAMINER PRICE: The Commission has on multiple occasions rejected the premise that any one party should be able to review [*sic*] a settlement and the Commission was upheld by the Ohio Supreme Court; is that correct?
>
> THE WITNESS: In terms of the court, I'm not sure, but I do know that the PUCO has in the past different times not supported that premise. I would hope that would not be the case with this settlement.
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> Q. (By Mr. Keaney) So I just have one more question. You are not aware of any Commission precedent that OCC's support of a stipulation is necessary to find that prong one of the stipulation assessment is satisfied; isn't that true?
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> A. I believe that to be true.[20]

As Attorney Examiner Price alluded to in the foregoing questioning at hearing, the Commission has resoundingly rejected OCC witness Williams' contention that there can be no diversity of

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[19] Supplemental Direct Testimony of James D. Williams (OCC Ex. 13) filed March 29, 2017 ("Williams Testimony") at 7:8-10.

[20] Hearing Trans. Vol. IV, pp. 793-95 (Williams).

interests represented where OCC does not support an ESP stipulation.[21] OCC's support (or lack thereof) is not, by itself, determinative of whether a proposed stipulated ESP satisfies the first prong of the Commission's three part-test.[22] As such, the Commission should reject OCC's imposition of a new, heightened standard for satisfying the first prong of the three-part test.

In sum, OCC's statements that "the vast majority of parties are not supporting the proposed Stipulation"[23] and that the "Settlement does not have support, as a package, from a diverse set of interests"[24] are simply untrue and belied by the uncontroverted record evidence in this case.

C. The Amended Stipulation, as a Package, Benefits Customers and the Public Interest.

Despite opposing intervenor arguments to the contrary, the Amended Stipulation satisfies the second prong of the Commission's three-part test for evaluating stipulated ESPs. The Amended Stipulation benefits customers and the public interest by allowing DP&L to modernize the distribution grid and facilitate desperately needed economic development through the deployment of incentives (e.g., Automaker Incentive and the Ohio Business Incentive), grants (e.g., Economic Development grant fund), sustainability projects/initiatives, residential energy

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[21] *See, e.g., In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO ("*FirstEnergy ESP4*"), Fifth Entry on Rehearing (October 12, 2016), ¶ 225; *Dominion Retail v. Dayton Power & Light Co*., Case No. 03-2405-EL-CSS, Opinion and Order (February 2, 2005) at p. 18.

[22] Although OCC witness Williams testified that diversity was lacking given OCC's opposition to the Amended Stipulation, Williams nevertheless conceded: "[i]f I look at the amended settlement, I see a number of different signatory parties." Hearing Trans., Vol. IV, p. 791 (Williams).

[23] OCC Initial Brief, p. 22.

[24] *Id*. at 23.

education and reduction programs, and job training programs. Further, the Amended Stipulation provides DP&L, through a Distribution Modernization Rider ("DMR"), the ability to access the capital market at a favorable rate to ensure investment in the distribution system. Accessing the capital market, on favorable terms, will enable DP&L to obtain the funds to jumpstart these distribution and modernization programs. Altogether, this represents a significant benefit to rate payers and the public interest. As such, the Commission should find that the Amended Stipulation satisfies the second prong of the Commission's three-part test.

D. The Amended Stipulation, Specifically the Rider TCRR-N Pilot Program and the Economic Development Rider, Do Not Violate Any Important Regulatory Principle or Practice.

As demonstrated in greater detail below, the Rider TCRR-N pilot program and the Economic Development Rider ("EDR") do not violate any important regulatory principle or practice as required by the third prong of the Commission's three-part test.

1. The Rider TCRR-N Pilot Program Will Benefit Rate Payers and the Public Interest, Does Not Violate Any Important Regulatory Principle or Practice, and Should Be Approved by the Commission Without Modification.

According to the terms of the Amended Stipulation, DP&L will deploy a "small-scale pilot program providing an alternative means for customers to obtain and pay for services otherwise provided by or through the TCRR-N."[25] The purpose of the pilot program is "to explore whether certain customers could benefit from opting out of DP&L's TCRR-N and obtaining, directly or indirectly, through a certified CRES provider, all transmission and ancillary services through the Open Access Transmission Tariff and other PJM governing

[25] Amended Stipulation, p. 14, ¶c.

documents ("OATT") approved by the Federal Energy Regulatory Commission ("FERC") . . ."[26] The transmission and ancillary services that are currently recovered under Rider TCRR-N include, but are not necessarily limited to, NERC and RFC costs, expansion cost recovery costs, load response charge allocation, and generation deactivation costs.[27] Prior to September of 2013, CRES providers billed shopping customers for these transmission and ancillary charges.[28] However, as part of the Commission's Opinion and Order approving DP&L's second ESP case (i.e., Case No. 12-426-EL-SSO), the Commission bifurcated market-based and nonmarket-based elements of these transmission and ancillary charges so that DP&L, instead of CRES providers, would bill non-market based transmission charges to customers.[29] The proposed TCRR-N pilot program would once again enable CRES providers (instead of DP&L) to bill a limited number of customers for non-market based transmission charges for a limited period of time.[30]

The small scale Rider TCRR-N pilot program is important to large industrial customers like Honda of America Mfg., Inc. ("Honda"). More specifically, the transmission and ancillary costs recovered under Rider TCRR-N often fluctuate, making it difficult for large industrial customers like Honda - who value rate stability - to appropriately budget for electric service.[31] The Rider TCRR-N pilot program would temporarily allow a finite number of participants to

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[26] *Id*.

[27] Hearing Trans. Vol. III, p. 601-02 (Haugh).

[28] *Id*. at 603-04.

[29] *In the Matter of the Application of The Dayton Power & Light Company for Approval of its Electric Security Plan*, Case No. 12-426-EL-SSO ("DP&L ESP2"), Opinion and Order (September 4, 2013), p. 36.

[30] *See* Amended Stipulation, pp. 14-16.

[31] Hearing Trans. Vol. III, p. 605-06 (Haugh).

explore whether they could achieve greater rate stability by negotiating a fixed price for these fluctuating transmission costs with CRES providers.[32]

Interestingly, OCC does not challenge the merits of the Rider TCRR-N pilot program itself;[33] rather, OCC challenges the lack of "any parameters" or "reasonable limitations" on the pilot program.[34] Again, OCC is mistaken. The Rider TCRR-N pilot program *is* limited in scope, size, and duration. Specifically, the TCRR-N pilot is limited to fifty (50) accounts, and is limited in duration to the term of the ESP.[35] OCC contends that a six year pilot program is too long.[36] But a six year pilot program is well within the acceptable range for a Commission approved pilot program. For example, the Commission recently approved a similar transmission based pilot program that will last for the entire eight years of an ESP term.[37] Thus, OCC's criticism that there are no reasonable parameters to the TCRR-N pilot program rings hollow.

Similarly, OCC also incorrectly contends that the Rider TCRR-N pilot program "does not have any parameters around which to judge its costs or efficacy . . ."[38] And OCC baldly asserts that the TCRR-N pilot program could "shift unnecessary costs to non-participants."[39] Yet when

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[32] Amended Stipulation, p. 14; *see also* Hearing Trans. Vol. III, p. 605-06 (Haugh).

[33] In fact, OCC witness Haugh, who provided testimony on OCC's opposition to the TCRR-N pilot program, does not even dispute that the pilot program could actually benefit eligible customers. *See* Hearing Trans. Vol. III, p. 611-12 (Haugh).

[34] OCC Initial Brief, p. 36; Hearing Trans. Vol. III, p. 613 (Haugh).

[35] Amended Stipulation, p. 15.

[36] OCC Initial Brief, p. 36.

[37] *FirstEnergy ESP IV*, Fifth Entry on Rehearing, p. 137-140; *see also* Hearing Trans. Vol. V, p. 872-73 (Donlon).

[38] OCC Initial Brief, p. 36.

[39] Supplemental Direct Testimony of Michael P. Haugh (OCC Ex. 11) filed March 29, 2017 ("Haugh Testimony") at 5:17; *see also* OCC Initial Brief, p. 36.

pressed to identify the basis for these assertions, OCC was unable to do so. Instead, OCC witness Haugh conceded that: (1) there is no provision in the Amended Stipulation which increases the cost to customers to pay for the pilot program; (2) there is no evidence suggesting that there are any implementation costs associated with the pilot program; and (3) there is no evidence suggesting that DP&L would seek recovery of implementation costs from customers for the pilot program.[40] OCC also takes issue with the fact that the TCRR-N pilot program does not require DP&L to file a report with the Commission.[41] But there is no Commission standard requiring the "report" OCC demands; instead, the Commission can evaluate the success of the pilot at the end of the ESP term. Additionally, filing a report on a transmission based pilot program is unnecessary as the Commission is very familiar with transmission costs being paid in alternative manners.[42] In fact, as referenced earlier, Rider TCRR-N only recently became effective on January 1, 2014.[43] As such, OCC's demand that DP&L file "reports" to the Commission about the TCRR-N pilot program are unwarranted and unnecessarily demanding on the Commission and Staff.

Overall, OCC fails to identify any record evidence and cannot articulate any credible argument showing that the TCRR-N pilot program violates any important regulatory principle or

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[40] Hearing Trans. Vol. III, p. 611-12 (Haugh).

[41] Haugh Testimony, p. 6:6-8.

[42] For example, as alluded to earlier, the Commission recently approved a very similar pilot program in the FirstEnergy ESP IV Case, which explored whether certain customers could benefit from opting out of the Non-Market-Based Services Rider ("Rider NMB") and obtaining, directly or indirectly through a CRES provider, all transmission and ancillary services through the Open Access Transmission Tariff or other governing PJM documents. *See FirstEnergy ESP IV*, Fifth Entry on Rehearing, p. 139-40.

[43] DP&L ESP 2, p. 36.

practice. Therefore, the Commission should approve the proposed TCRR-N pilot program in its current form without modification.

2. The EDR Benefits Rate Payers and the Public Interest, Does Not Violate Any Important Regulatory Principle or Practice, and Should Be Approved by the Commission Without Modification.

The Economic Development Rider ("EDR") encompasses numerous provisions that are designed to provide economic incentives to large Ohio employers who substantially contribute to the overall financial condition, jobs and growth in DP&L's service territory.[44] The EDR includes an Automaker Incentive, an Ohio Business Incentive, and an Economic Improvement Incentive.[45] OCC disapproves the EDR, in part, because it does not "meet the requirements of traditional economic development arrangements,"[46] and it purportedly "circumvents the law and the specific PUCO rules which govern economic development/reasonable arrangements."[47] OCC is wrong. The reasonable arrangement rules identified by OCC simply do not apply to the EDR. OCC admits that the term "reasonable arrangement" is a term of art under R.C. 4905.31 and that the rules governing reasonable arrangements are located in O.A.C. 4901:1-38.[48] Importantly, OCC has not and cannot identify *anything* showing that the EDR is, in fact, a reasonable arrangement as defined under R.C. 4905.31.[49] Further, OCC has not and cannot

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[44] *See* Direct Testimony of Sharon R. Schroder (DP&L Ex. 3) filed March 22, 2017 at 12:20-21, 13:1.

[45] Amended Stipulation, p. 9-10.

[46] OCC Initial Brief, p. 46.

[47] Haugh Testimony, p. 10:12-14.

[48] Hearing Trans. Vol. III, p. 613-14 (Haugh).

[49] *Id*. at 614-15.

establish that the EDR is subject to the dictates of O.A.C. 4901:1-38 (or any other provision in Ohio law for that matter) as the following exchange at hearing demonstrates:[50]

> Q. Now, as you cite in your testimony, a -- and here I am referring specifically to page 8, line 8, "a reasonable arrangement" is a term of art under Ohio law, specifically Section Revised Code 4905.31, correct?
>
> A. Yes.
>
> Q. And the rules governing reasonable arrangements are located in Ohio Administrative Code Section 4901:1-38, correct?
>
> A. Yes
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> ...
>
> Q. And your testimony identifies nothing in the Ohio Administrative Code which would establish the economic development rider is subject to the provisions of Section 4901:1-38, correct?
>
> A. Correct.
>
> Q. And you are not aware of any provision in Ohio law which would establish that the economic development rider is subject to the provisions governing reasonable arrangements, correct?
>
> A. Correct.[51]

The same OCC witness also confirmed that there is nothing in R.C. 4928.143 (i.e., the applicable statute governing ESPs) that discusses even references "reasonable arrangements."[52] And there is no Commission precedent for rejecting a proposed ESP provision for failure to

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[50] *Id*. at 615.

[51] Hearing Trans. Vol. III, p. 613-15 (Haugh).

[52] *Id*. at 619-20.

satisfy reasonable arrangement rules.[53] Simply stated, the reasonable arrangement rules do not apply to the EDR, and, as such, OCC's argument is baseless.

Similarly, Walmart and OCC also criticize the EDR because it does not impose explicit requirements to create new jobs.[54] In essence, OCC and Walmart are merely repackaging the foregoing "reasonable arrangement" argument. But there is no provision in Ohio law requiring that the Commission find that a specific guarantee of new/sustained jobs will result from any Commission approved economic development program in an ESP.[55] In fact, the Commission in ESP cases often takes into account the impact rates will have on economic growth and the state economy, but the Commission does not demand that a specific number of jobs will be created or retained before approving economic development related riders or similar ESP provisions.[56]

With that said, the EDR and other economic development related provisions (e.g., Economic Development Fund) will facilitate economic development and job growth. For example, by creating economic incentives via the EDR, eligible Ohio businesses will benefit

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[53] *Id*. at 620.

[54] OCC Initial Brief, p. 39; Walmart Initial Brief, p. 10.

[55] *See In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, Second Entry on Rehearing (November 3, 2016), 2016 Ohio PUC LEXIS 997, at *103 (rejecting intervenors' argument on rehearing that the Commission erred in finding that a rider and stipulation would promote economic development because the Commission ruled that it never committed or guaranteed "a particular level of jobs or other economic benefits").

[56] For example, in the *FirstEnergy ESP IV* case (i.e., Case No. 14-1297-EL-SSO), the Commission approved an ESP provision whereby FirstEnergy committed to maintaining its headquarters and nexus of operations in Akron, Ohio during the duration of Rider DMR. *See FirstEnergy ESP IV*, Fifth Entry on Rehearing, p. 96. In approving this provision, the Commission did not demand or require FirstEnergy to demonstrate that it would create a specific number of jobs in the future. *Id*. at 96-97.

from lower electricity rates, which in turn frees up money to hire more employees, expand the business, or make capital investments.[57]

Even assuming arguendo that the Commission would require some specific showing of job creation/retention (which it does not), there are numerous provisions in the Amended Stipulation that are expressly tied to or directed at promoting job growth/retention, including but not limited to the following:

- DP&L will maintain its operating headquarters in the City of Dayton;[58]
- DP&L in partnership with the City of Dayton will develop a job training program for Dayton residents;[59]
- DP&L will provide special hiring outreach for City of Dayton residents;[60]
- DP&L will contribute $200,000 annually to assist the City of Dayton in providing economic development;[61]
- DP&L will create an Economic Development grant fund of $1,000,000 annually;[62] and
- DP&L will provide $2,000,000 in economic development grants over the term of the ESP for economic development activities, workforce development, financial education assistance for job training in Adams and Brown Counties.[63]

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[57] Hearing Trans. Vol. III, p. 649 (Kahal).

[58] *See* Amended Stipulation, p. 29, ¶(f).

[59] *Id*. at p. 32, ¶(g).

[60] *Id*. at p. 32, ¶(h).

[61] *Id*. at p. 32, ¶(i).

[62] *Id*. at p. 11, ¶(a).

The Amended Stipulation provides substantive commitments - with significant financial backing - toward cultivating broad, lasting economic development, specifically in the areas of job training and workforce development. Walmart portrays many of these economic development incentives, grants, and projects merely as "carrot[s] used to secure the support of the Signatory and Non-Opposing Parties" or as "quid pro quo concessions that inure only to the benefit of Signatory Parties."[64] OCC similarly describes these economic development features as "inappropriate rebates to individual customers," "handouts," and "financial inducements."[65] But on closer reflection, the benefits that attend these economic development programs are widespread and ripple throughout DP&L's service territory without discrimination. Providing critically needed job training programs, financial education assistance programs, special hiring outreach, and investing millions of dollars into other local economic development programs will benefit the entire local economy and cannot fairly be characterized as a mere "handout" for a "small group of privileged customers."[66] These economic development programs are not merely special "rebates" for specific firms or corporations; rather, they constitute desperately needed economic incentives, investments, and grants that will spur job growth and facilitate economic prosperity, which benefits ***all*** stakeholders, not just the signatory or non-opposing parties.

Further, the Commission has routinely approved similar economic development related provisions in stipulated ESPs,[67] which even OCC and Walmart acknowledge.[68] Specifically, in

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[63] *Id*. at p. 11, ¶(b).

[64] Walmart Initial Brief, p. 4, 10.

[65] OCC Initial Brief, p. 47, 48.

[66] OCC Initial Brief, p. 39.

[67] *See, e.g., FirstEnergy ESP IV*, Fifth Entry on Rehearing, p.

terms of the Automaker Incentive (which is a provision of the EDR), the Commission twice approved a similar "Automaker Credit Provision" as part of FirstEnergy's Economic Development Rider in its last two ESP cases.[69] In addition, the Commission approved an "automaker credit provision" in an Economic Development Rider for AEP Ohio, specifically taking note of its important customer benefits: "[w]ith respect to specific customer benefits, the Commission notes that the automaker credit is intended to encourage economic development by creating an incentive to use or locate their manufacturing facilities within the state."[70]

Also, OCC and Walmart attack the Amended Stipulation for providing direct payments to parties,[71] payments which are intended to bolster economic growth.[72] For example, OCC insists that the Commission "has strongly disfavored direct payments to signatory and non-opposing parties."[73] But the Commission routinely approves stipulations that include provisions awarding direct payments to parties. For instance, the Commission recently approved a stipulation that included a $500,000 donation to a specific "Ohio public higher educational institution,"[74]

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[68] Walmart Initial Brief, p. 9 ("there may be instances where such arrangements have been deemed acceptable in the past . . ."); Hearing Trans. Vol. III, p. 627 (Haugh).

[69] *See In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO (August 25, 2010), Opinion and Order, p. 16, 46-47; *FirstEnergy ESP IV*, Opinion and Order (March 31, 2016), p. 14, 26, 94 (affirmed by Fifth Entry on Rehearing (April 5, 2017).

[70] *See In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR *et al*. ("*AEP PPA Rider*"), Opinion and Order (March 31, 2016), p. 28, 85, 107 (affirmed by Fifth Entry on Rehearing (April 5, 2017)).

[71] Walmart Initial Brief, p. 9; OCC Initial Brief, p. 47.

[72] Amended Stipulation, p. 9-11.

[73] OCC Initial Brief, p. 47.

[74] *AEP PPA Rider*, Opinion and Order, p. 30, 85, 107.

$400,000 per year in funding to the Ohio Hospital Association,[75] and $200,000 in direct assistance to the Ohio Partners for Affordable Energy.[76] Interestingly, the Commission's Opinion and Order in that case explicitly addressed and rejected the argument that these direct payments improperly induced intervenors to support the stipulation:

> "The Commission does not agree that certain provisions in the stipulation are nothing more than monetary inducements offered by AEP Ohio in exchange for the support of signatory parties. The stipulation's provisions directing specific payments to OHA and OPAE require these parties, on behalf of Ohio hospitals and low-income customers, respectively, to take a number of steps to implement specific energy efficiency programs, and, as discussed above, energy efficiency measures provide significant customer benefits (Joint Ex. 1 at 13-16). The payments are, therefore, to be made in exchange for specific services and programs that add value to the stipulation as a package."[77]

Likewise, several intervenors that opposed the FirstEnergy ESP IV Stipulation complained that some $19 million in various "monetary inducements" to signatory parties demonstrated mere "favor trading."[78] Over their objections, the Commission ultimately approved these so-called "monetary inducements," recognizing that the proposed stipulation, as a whole, benefited rate payers and the public interest and did not violate any regulatory principle or practice.[79]

Finally, in AEP Ohio's energy efficiency portfolio case, the Commission recently approved individual payments to fund various initiatives or programs specifically earmarked for

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[75] *Id*. at p. 30, 107.

[76] *Id*. at p. 31, 107.

[77] *Id.* at 91.

[78] *FirstEnergy ESP IV*, Opinion and Order (March 31, 2016), p. 41.

[79] *See FirstEnergy ESP IV*, Opinion and Order (March 31, 2016), p. 121 (affirmed by Fifth Entry on Rehearing (April 5, 2017).

the Ohio Partners for Affordable Energy, the Ohio Hospital Association, the Ohio Manufacturers Association, the Mid-Ohio Regional Planning Commission, and the Kroger Co.[80] These cases clearly illustrate that the Commission will analyze various payments to signatory or non-opposing parties, not in isolation and with disfavor, but as part of the broader value that these payments bring to the stipulation as a whole. Here, these incentives, grants, and other payments in the EDR confer substantial benefits by providing critically needed economic incentives to Ohio employers who substantially contribute to the overall financial condition, jobs and growth in DP&L's service territory.

III. CONCLUSION

The evidence presented in the proceeding clearly demonstrates that all three prongs regarding the approval of stipulations have been satisfied, and that the handful of parties opposing the Amended Stipulation have not advanced any legitimate arguments to reject or modify the Amended Stipulation in its current form. Thus, for the reasons set forth above, the Commission should approve the Amended Stipulation without modification.

[80] *See In the Matter of the Application of Ohio Power Company for Approval of Its Energy Efficiency/Peak Demand Reduction Portfolio Plan,* Case No. 16-0574-EL-POR, Stipulation and Recommendation (December 9, 2016), p. 9-12 (approved by Opinion and Order (January 18, 2017), p. 9).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 15th day of May, 2017. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ N. Trevor Alexander
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Summary: Reply Post-Hearing Reply Brief of Honda of America Mfg., Inc. and the City of Dayton electronically filed by Mr. Trevor Alexander on behalf of Honda of America Mfg., Inc. and City of Dayton