

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the)
Application of Dayton Power and Light) Case No. 18-1875-EL-GRD
Company for Approval of Its Plan to)
Modernize Its Distribution Grid.)

In the Matter of the Application of the)
Dayton Power and Light Company for) Case No. 18-1876-EL-WVR
Approval of A Limited Waiver of Ohio)
Adm. Code 4901:1-18-06(A)(2).)

In the Matter of the Application of the)
Dayton Power and Light Company for) Case No. 18-1877-EL-AAM
Approval of Certain Accounting Methods.)

In the Matter of the Application of the)
Dayton Power and Light Company for)
Administration of the Significantly) Case No. 19-1121-EL-UNC
Excessive Earnings Test under R.C.)
4928.143(F) and Ohio Adm. Code 4901:1-)
35-10 for 2018.)

In the Matter of the Application of the)
Dayton Power and Light Company for A)
Finding That Its Current Electric Security) Case No. 20-680-EL-UNC
Plan Passes the Significantly Excessive)
Earnings Test and More Favorable in the)
Aggregate Test in R.C. 4928.143(E).)

In the Matter of the Application of the)
Dayton Power and Light Company for)
Administration of the Significantly) Case No. 20-1041-EL-UNC
Excessive Earnings Test under R.C.)
4928.143(F) and Ohio Adm. Code 4901:1-)
35-10 for 2019.)

**SUPPLEMENTAL DIRECT TESTIMONY
OF
MATTHEW I. KAHAL**

**On Behalf of the
Office of the Ohio Consumers' Counsel**
*65 East State Street, 7th Floor
Columbus, Ohio 43215*

DECEMBER 17, 2020

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I. OVERVIEW OF STIPULATION

Q1. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A1. My name is Matthew I. Kahal. I am employed as an independent consultant retained by the Office of the Ohio Consumers' Counsel ("OCC") to address certain issues in this case. My business address is 1108 Pheasant Crossing, Charlottesville, VA 22901.

Q2. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS PROCEEDING?

A2. Yes. On October 22, 2020, OCC submitted testimony that I prepared in Case No. 20-680-EL-UNC. That docket was initiated by a filing by Dayton Power and Light Company ("DP&L" or "Utility") to determine whether it can continue its Electric Security Plan I ("ESP I"). To do so, the Utility is required to demonstrate (1) that ESP I going forward is "more favorable in the aggregate" (the statutory "MFA" test) for consumers than the alternative of a Market Rate Offer ("MRO"); and (2) that the ESP I is not likely to lead to significantly excessive earnings. The Utility's filing asserts that ESP I passes these two statutory tests, while my October 22 Direct Testimony demonstrates that it does not and would harm customers. Therefore, the Public Utilities Commission of Ohio ("PUCO") should reject DP&L's request to continue ESP I under the PUCO's quadrennial review (more favorable in the aggregate test). Because DP&L fails this statutory test, the PUCO need not even evaluate it in the context of the Settlement or the three-prong test and can order the immediate transition from ESP I to the more advantageous alternative, a market rate offer. However, if the PUCO decides it is necessary to review the Settlement under

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1 its three-prong standard, my Supplemental Direct Testimony (and other OCC testimony)
2 explains why the Settlement fails the PUCO's three-prong test.

3
4 My Direct Testimony includes a statement of my qualifications and list of prior
5 testimony.

6
7 ***Q3. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY?***

8 ***A3.*** On October 23, 2020, DP&L submitted a Stipulation and Recommendation
9 ("Settlement") that it entered into with the PUCO Staff and some intervening parties
10 covering several pending DP&L dockets, principally including the ESP I continuation in
11 which my direct testimony was submitted (mentioned above), the Utility's proposed
12 Smart Grid Plan ("SGP"), and dockets pertaining to the potential for customer refunds in
13 2018 and 2019 for too high profits DP&L earned under its electric security plan.

14
15 On November 30, 2020, the Utility filed testimony in support of the Settlement of witness
16 Sharon Schroder, explaining the terms of the Settlement and recommending its approval,
17 as filed.¹ And despite the number of other parties signing the Settlement, other than the
18 utility, just one other party (the Mission: Data Coalition) filed testimony in support of the
19 Settlement.

¹ Testimony of Sharon R. Schroder In Support of the Settlement and Recommendation (Nov. 30, 2020) ("Schroder Testimony").

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1 At issue in this proceeding is whether under the PUCO's standard for reviewing
2 settlements, the PUCO should approve or reject this Settlement that DP&L reached with
3 parties to the case or in the alternative reject or modify the settlement. To protect Ohio's
4 consumers, I recommend that the PUCO reject the Settlement.

5
6 The Settlement will allow DP&L to needlessly charge customers at least \$300 million for
7 what are unlawful stability charges to customers. Since the PUCO approved DP&L's
8 stability charge in its ESP I (2009), the Ohio Supreme Court has struck down (in a
9 number of cases) stability or financial integrity charges that various utilities sought to
10 charge customers through their electric security plans. For instance the Court struck down
11 DP&L's successor stability charge in 2016, called the "service stability rider," based on a
12 similar ruling the Court had made with respect to AEP's "retail stability rider."² The
13 Court later overturned another financial integrity charge, this time the so-called
14 "distribution modernization charge" that the PUCO approved for FirstEnergy.³ The
15 PUCO then ruled that the Court's FirstEnergy ruling applied to DP&L's own so-called
16 "distribution modernization rider" and ordered it removed from DP&L's ESP III.⁴

17
18 It has become quite clear that regardless of the name, non-cost-based charges that are
19 designed as mere financial support for utilities are not allowed in Ohio. The "rate

² *In re Dayton Power & Light Co.*, 147 Ohio St.3d 166 (2016) ("The decision of the Public Utilities Commission is reversed on the authority of *In re Application of Columbus Southern Power Co.*, 147 Ohio St.3d 439..."). *In re Application of Columbus S. Power Co.*, 147 Ohio St.3d 439 (2016) (reversing the PUCO's approval of a similar "stability" charge for AEP).

³ *In re Application of Ohio Edison Co.*, 157 Ohio St.3d 73 (2019).

⁴ Case No. 16-395-EL-SSO, Supplemental Opinion & Order (Nov. 21, 2019).

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1 stabilization charge” approved long ago (2009) as part of DP&L’s ESP I—and explicitly
2 being allowed to continue under the Settlement—is no different than the stability charges
3 consistently ruled unlawful by the Court and the PUCO. That alone makes be believe that
4 the Settlement is unlawful.

5
6 Another problem with the Settlement is that it will cause customers to be denied
7 approximately \$150 million in refunds from DP&L’s too high profits earned in 2018 and
8 2019 under its electric security plan.⁵ If the Settlement is approved, DP&L’s 530,00
9 customer, on average, will have to pay nearly \$900 per year more than they should
10 otherwise pay. In other words, the Settlement does not benefit ratepayers and the public
11 interest under the PUCO’s settlement criteria.

12
13 But there are more problems for customers under the Settlement. The Settlement departs
14 from fundamental regulatory principles and practices by improperly and unlawfully
15 subsidizing AES Corporation (DP&L’s owner). Because of the subsidy, the Settlement
16 fails to meet the PUCO’s settlement criteria that the Settlement does not violate important
17 regulatory policies and practices.

⁵ See generally Direct Testimony of Daniel J. Duann, Ph.D. on Behalf of the Office of the Ohio Consumers’ Counsel (Dec. 17, 2020).

1 ***Q4. ARE OTHER OCC WITNESSES SUBMITTING TESTIMONY CONCERNING***
2 ***VARIOUS ASPECTS OF THE SETTLEMENT AND WHY THE SETTLEMENT***
3 ***FAILS THE THREE PRONG STANDARD AND IS HARMFUL TO CUSTOMERS?***

4 ***A4.*** Yes. Dr. Daniel Duann's testimony provides calculations of the appropriate refunds that
5 are owed to customers for 2018 and 2019 due to DP&L earning too high profits under its
6 electric security plan. OCC witness Dr. Ned Hill evaluates the appropriateness of the cash
7 or cash equivalent payments to specific customers or parties, as incentives for parties to
8 support the Settlement. Note these payments have not been made available to all
9 residential customers. Mr. James Williams addresses the issue of service reliability as
10 Utility witnesses argue that provisions in the Settlement (including the continuation of
11 ESP I) are needed so that high levels of infrastructure investment and service reliability
12 can continue to be funded by customers in the future. OCC witness Mr. Paul Alvarez
13 presents testimony evaluating and critiquing the Smart Grid Plan ("SGP") set forth in the
14 Settlement, including the claimed net benefits to consumers. I note that a very large
15 portion of the Settlement and witness Schroder's testimony are devoted to the smart grid
16 plan agreed to by the signatory parties, yet funded in large part by residential customers,
17 who did not join the settlement.

18
19 ***Q5. BEFORE TURNING TO THE SETTLEMENT, PLEASE SUMMARIZE THE***
20 ***UTILITY'S REQUEST TO CONTINUE CHARGING CUSTOMERS UNDER ITS***
21 ***ESP I.***

22 ***A5.*** DP&L's April 1, 2020 filing seeking to continue charging customers under rates
23 approved in its ESP I consists of the testimony of its witnesses Mr. Garavaglia and Mr.

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1 Malinak. These two DP&L witnesses focus on the alleged financial needs and credit
2 quality of DP&L and its parent, DPL, Inc.

3
4 DPL, Inc. is wholly-owned by the massive and diversified energy company AES
5 Corporation, making DP&L an indirect, wholly-owned subsidiary of AES Corporation.
6 Mr. Malinak presents financial projections of DP&L and DPL, Inc. through 2023 that
7 attempt to demonstrate that the \$79 million Rate Stability Charge (“RSC”) to customers
8 should continue. This is a charge that over the four-year term of his study will collect
9 from utility customers an estimated \$314 million that is unrelated to any utility cost.⁶ The
10 rate stability charge is a charge that dates back to at least 2009, when DP&L was
11 providing provider of last resort (“POLR”) service to customers who shopped for their
12 generation service with a marketer. However, today, DP&L is no longer providing POLR
13 service to customers who shop for their generation service. So, authorizing DP&L to
14 charge its customers the Rate Stability Charge would allow the Utility to collect \$79
15 million per year from its customers for nothing that could be characterized as a covering
16 cost or risk for DP&L or a benefit for its consumers.

17
18 Mr. Malinak argues that this charge is needed to maintain acceptable credit ratings and
19 access to capital for investment purposes. He proceeds to argue that ESP I, with its \$314
20 million stability charge, passes the statutory MFA test because under a market rate offer
21 (with no stability charge) the PUCO would approve a “Financial Integrity Charge”

⁶ Direct Testimony of R. Jeffrey Malinak at 10, 12 (Apr. 1, 2020).

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1 (“FIC”), which would be substantially larger than the stability charge allowed through the
2 electric security plan. He therefore concludes that ESP I (with the RSC) is significantly
3 less expensive for utility customers than the market rate offer with assumed added
4 financial integrity charge. Additionally, when he is comparing the electric security plan
5 rates to the market rate, he identifies certain non-quantified benefits that add to the value
6 of the electric security plan. Finally, Mr. Malinak, citing to his financial projections,
7 asserts that ESP I is not likely in the future to produce significantly excessive earnings,
8 particularly with his recommendation that refunds to customers should not be made
9 unless DP&L’s profits are above 16%.

10
11 ***Q6. HOW DOES YOUR DIRECT TESTIMONY RESPOND TO THE UTILITY’S FILING***
12 ***AND MORE FAVORABLE IN THE AGGREGATE TEST RESULTS?***

13 ***A6.*** My testimony recognizes that DPL, Inc. (not DP&L the utility) does have a massive
14 amount of non-utility debt (more than \$800 million) that is not supported by any
15 productive non-utility assets or revenue stream. However, I find that it is improper and
16 unnecessary to impose this debt obligation problem on DP&L utility customers—a
17 burden of about \$1,500 per customer—as DP&L seeks to do under the Settlement.

18
19 My testimony also disputes Mr. Malinak’s analysis and financial projections concerning
20 DP&L/DPL, Inc. I determined that his projections are far too pessimistic because the
21 assumed interest expense in his projections is too high (as it does not account for the
22 recent interest rate declines). In addition, he inexplicably assumes that over the four-year
23 study period the Utility would not file for an increase in distribution base rates to cover

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1 its cost of service and to maintain earnings at reasonable levels. However, on November
2 30, 2020, DP&L did file a distribution rate increase seeking a \$120.8 million increase in
3 those rates.

4
5 My testimony also disputes Mr. Malinak's assertion that under a market rate offer, the
6 PUCO would find that there is a financial emergency that threatens DP&L's financial
7 integrity so as to allow DP&L to adjust its standard offer price by adding on a financial
8 integrity charge, let alone a charge that is even larger than the stability charge currently
9 paid by customers. This assertion not only is at best speculation but is highly implausible
10 because the only purpose of DP&L's financial integrity charge (even assuming such a
11 charge to be lawful) would be to subsidize the Utility's non-utility affiliate, DPL Inc.

12
13 My October direct testimony and the evidence demonstrate that DP&L—the utility—on a
14 stand-alone basis does not need customer funding of either a stability charge or a
15 financial integrity charge as its own financial statements (*e.g.*, cash flow, balance sheet,
16 earnings) and secured debt credit ratings are quite strong. The Utility can maintain a
17 reasonable financial strength and performance by filing distribution base rate cases, if
18 needed, to cover its cost of service. The DPL, Inc. "debt problem" should be addressed
19 by AES Corporation, which has both the financial means and responsibility to do so.

20
21 In addition, Mr. Malinak relies on his flawed financial projections to support his assertion
22 that DP&L under ESP I is not likely to experience significantly excessive earnings. This

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1 finding, however, is unlikely to be correct if he were to relax his assumption of “no base
2 rate case” during the study period.

3
4 As discussed below, the Settlement does not change anything about DP&L’s litigation
5 position regarding the more favorable in the aggregate test and prospective SEET test.
6 And DP&L continues to rely on the same Malinak testimony that it filed in early 2020.
7 Thus, my October 22, 2020 testimony, which rebuts Mr. Malinak’s testimony in its
8 entirety, applies equally in showing that the PUCO should not approve the Settlement. I
9 have reiterated parts of my original testimony throughout this supplemental testimony,
10 and I incorporate that testimony by reference in its entirety.

11
12 ***Q7. WHAT ARE THE MAIN PROVISIONS OF THE SETTLEMENT?***

13 ***A7.*** The provisions of the Settlement are described in detail in the testimony of DP&L
14 witness Schroder and are summarized in the Utility’s most recent SEC Form 10-Q.⁷

15
16 The Settlement provides for approval of the Utility’s smart grid plan for an initial four-
17 year period (Phase I), subject to the modifications of that plan in the Settlement. This
18 includes total Phase I plan expenditures of \$267.6 million (inclusive of capital investment
19 of \$249 million). Customers will pay more than \$108 million over four years for DP&L’s
20 smart grid plan, with residential customers paying more than \$71 million. The smart grid
21 plan cost collection from customers on a cost-of-service basis is provided for during the

⁷ DPL, Inc. and DP&L SEC Form 10-Q for the period ending September 30, 2020, at 17-18.

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1 four-year Phase I period through the Infrastructure Investment Rider (“IIR”). However,
2 DP&L’s reliance on this rider for the collection of smart grid plan costs from customers
3 is challenged in the testimony of OCC witnesses Williams and Alvarez.

- 4 • DP&L will develop and implement a new customer information system (“CIS”)
5 charged to customers in a future base rate proceeding.
- 6 • ESP I will continue with a PUCO finding that it continues to be more favorable in
7 the aggregate than a market rate offer. Additionally, the Settlement provides that
8 “DP&L’s ESP I as currently implemented passes the more favorable in the
9 aggregate test and the prospective significantly excessive earnings test in R.C.
10 4928.143(E).”⁸ Although the Settlement does not mention the Rate Stabilization
11 Charge and its \$314 million cost to customers, the signatory parties, by agreeing
12 that ESP passes the more favorable in the aggregate and SEET tests, are agreeing
13 to allow DP&L to continue charging the Rate Stabilization Charge for at least
14 three to four more years.
- 15 • The Settlement includes a recommendation by the parties that DP&L’s
16 applications in Case Nos. 19-1121-EL-UNC and 20-1041-EL-UNC be approved
17 as filed. The effect of this is that customer would receive no refunds associated
18 with the 2018 and 2019 earnings.
- 19 • The Utility will file for a new ESP no later than October 1, 2023, and such filing
20 will not allow DP&L to not to seek a nonbypassable stability RSC or FIC (*i.e.*,

⁸ Settlement at 43.

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non-cost of service) type of charge. (This seemingly would allow DP&L to seek a bypassable RSC, however.)

- The Settlement provides for a variety of shareholder-funded grants, subsidies, rate discounts and other financial or technical benefits to individual customers or signatory parties. The Utility in its SEC 10-Q estimates that these shareholder-funded benefits total to about \$30 million over four years.
- Witness Schroder describes the demand side programs (*e.g.*, electric vehicle, and low-income weatherization) related to the SGP identified in the Settlement.

Q8. WHAT ARE YOUR FINDINGS AND RECOMMENDATION CONCERNING THIS SETTLEMENT?

A8. Witness Schroder describes the PUCO's three-prong test and argues that the Settlement meets this test due to the various benefits that it provides. Importantly, her testimony does not provide any analysis or evidence that the current existing pricing under ESP I will continue to be more favorable in the aggregate than a market rate offer. Additionally, she does not provide analysis or evidence showing that the prospective effect of the current existing electric security plan is not substantially likely to provide the utility with significantly excessive profits.

Instead, the Utility appears to be relying entirely on the Malinak testimony from April 1, 2020 and his supporting financial projections. While the Settlement may express agreements among the signatory parties that ESP I passes the statutory tests, merely stating such does not make it so. The Utility has a burden of proof of actually

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1 demonstrating that the current ESP provides greater benefits to customers than a market
2 rate offer. Including ESP I in a Settlement does not alter that explicit obligation. That
3 burden has not been met.

4
5 Contrary to witness Schroder, I find that the Settlement, as filed, fails to pass the PUCO's
6 three-prong test and therefore should be rejected. While the Settlement provides \$30
7 million in shareholder subsidies to some individual customers and/or signatory parties, it
8 imposes an unwarranted cost penalty on utility customers on the order of roughly \$450
9 million over four years. This \$450 million customer penalty (nearly \$900 per customer
10 for DP&L's 530,000 retail customers)⁹ constitutes (pre-tax) excess profits for DP&L and
11 its ultimate parent, AES Corporation. The roughly \$450 million utility customer penalty
12 under this Settlement consists of at least \$300 million for the Rate Stabilization Charge
13 payments over four year term of the Settlement plus approximately \$150 million in
14 foregone SEET refunds calculated by Dr. Duann, to which customers are entitled.¹⁰
15 Imposing this additional onerous cost on customers is entirely unnecessary as well as
16 improper since the purpose of the Rate Stabilization Charge and foregone refunds is to
17 provide a massive profit subsidy to unregulated entities—DPL, Inc. and AES
18 Corporation. While some of the signatory parties may appreciate the shareholder-funded
19 subsidies they receive under the Settlement, the \$450 million cost to consumers
20 outweighs those asserted customer/party-specific benefits by a ratio of about 15 to 1.

⁹ *Id.* at 25.

¹⁰ Direct Testimony of Dr. Daniel Duann at 4.

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1 Witness Schroder does not mention this massive customer cost penalty but instead
2 advocates for the Settlement mainly based on provisions related to the Smart Grid Plan
3 and \$30 million of shareholder-funded subsidies to signatory parties. Under the
4 Settlement, the Utility will be compensated for its actual Phase I SGP expenditures
5 through the IIR mechanism. Her testimony appears to assume that the benefits of the
6 Smart Grid Plan cannot be achieved absent this Settlement.¹¹ There is no justification for
7 that assumption, and the Smart Grid provisions cannot be used to support imposing cost
8 penalties on customers or subsidizing AES Corporation.

9
10 ***Q9. WHAT DOES THE REMAINDER OF YOUR TESTIMONY COVER?***

11 ***A9.*** Section II of my testimony discusses the PUCO's three-prong test and why I find that the
12 Settlement does not meet that test. Section III of my testimony provides my analysis of
13 the issues pertaining to the ESP I issues.

¹¹ My testimony does not take a position on the merits of the SGP provisions in the Settlement, and this is instead addressed by OCC witnesses Alvarez and Williams.

II. THE PUCO'S THREE-PRONG TEST FOR SETTLEMENTS

***Q10. HAS THE PUCO ESTABLISHED STANDARDS OF REVIEW FOR THE
EVALUATION OF PROPOSED SETTLEMENTS?***

A10. Yes, it has. The PUCO considers three criteria, all of which must be satisfied to approve a settlement:

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?¹²

In addition to these three criteria, the PUCO also routinely considers whether the parties to a settlement represent diverse interests.

My testimony applies these three PUCO criteria to the proposed Settlement, and in doing so I respond to DP&L witness Schroder's testimony on the three-prong test. I find that the proposed Settlement does not pass the three-prong test in that it departs in a fundamental way from accepted regulatory principles, improperly subsidizes the profits

¹² *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company for Authority to Provide a Standard Service Offer Pursuant to Section 4928.143, Revised Code in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order, at 24 (June 18, 2012).

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1 of AES Corporation and unnecessarily imposes large and burdensome cost penalties on
2 customers. In addition to failing the three-prong test, the Settlement is improper because
3 it fails to demonstrate that the ESP I continuation (which is recommended under
4 provisions of the Settlement) passes the statutory More Favorable in the Aggregate test
5 and prospective SEET test.
6

7 ***Q11. DOES WITNESS SCHRODER MAINTAIN THAT THE SETTLEMENT***
8 ***COMPORTS WITH THE FIRST PRONG OF THE PUCO'S TEST?***

9 ***A11.*** The first prong asks whether the Settlement is the product of serious bargaining among
10 capable and diverse parties. Witness Schroder observes that there are 20 parties
11 supporting the Settlement, which includes DP&L, the PUCO Staff and intervening parties
12 representing “a wide range of interests.”¹³ She further states that the Settlement resulted
13 from an extensive and inclusive bargaining process over numerous settlement meetings.
14 The settling parties are represented by knowledgeable and experienced counsel, and the
15 bargaining process results in a compromise in positions. She states that the Settlement
16 “strikes a reasonable balance that benefits customers and the public interest.”¹⁴
17 Consequently, she argues that the Settlement satisfies the first prong.
18

19 ***Q12. YOU DISPUTE HER ASSERTIONS ON THE FIRST PRONG?***

20 ***A12.*** I did not participate in the settlement process and do not contest her factual assertions
21 concerning the capabilities of the settling parties and the bargaining process that

¹³ Schroder Testimony at 12-13.

¹⁴ *Id.* at 14.

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1 culminated in the Settlement. While I do not take issue with her statement that numerous
2 parties representing a range of interests are signatories to the settlement, in many cases
3 their support may be due to very narrow and customer-specific provisions in the
4 Settlement such as substantial rate discounts available to a small group of large
5 customers. Given these potential narrow interests, the PUCO should take note of the
6 active opposition to this settlement of the OCC, the party explicitly charged with
7 representing the interests of DP&L residential customers who are the majority of the
8 Utility's retail customers and account for a very large percentage of the total distribution
9 revenue, and who bear the burden of paying the proposed unjust and unreasonable
10 charges included in the Settlement.

11
12 Finally, while it may be correct, as witness Schroder argues, that the Settlement in fact is
13 the product of bargaining by a diverse group of highly capable parties, I do not agree that
14 this means the Settlement necessarily represents a balanced compromise or on balance
15 benefits customers and the public interest, as she asserts on page 14. While it may be true
16 that the Settlement modifies what DP&L was seeking in its filed Smart Grid Plan docket,
17 under the Settlement the Utility will receive full and timely collection of the Smart Grid
18 Plan revenue requirements for appropriate SGP costs through the IIR. Even with the
19 referenced modifications, this is a very favorable outcome for DP&L.

20
21 Moreover, two other key portions of the Settlement pertain to the ESP I continuation case
22 and the SEET 2018 and 2019 review dockets. It is hard to see in these two areas of the
23 Settlement where there is any compromise or DP&L conceding on anything. It appears

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1 for these dockets that the Utility will receive every dollar that it is requesting, with the
2 dollars at issue in these cases much larger than the Phase I Smart Grid Plan. The only
3 “concession” that DP&L seems to make is that it will file for a new ESP in October 2023
4 (which will provide the Utility an opportunity to request additional riders and collect
5 additional charges from consumers), and it agrees not to seek in the successor ESP a
6 nonbypassable rate stabilization-type charge mechanism. I would hardly consider this a
7 concession because (i) it allows DP&L to charge customers \$79 million a year for four
8 more years under the RSC, and (ii) the agreement not to include a Rate Stabilization-type
9 charge has little value, given that the Supreme Court of Ohio¹⁵ and PUCO¹⁶ have already
10 ruled that those types of charges are unlawful. Further, the Settlement provides only that
11 DP&L cannot seek a nonbypassable financial integrity charge. Apparently, the signatory
12 parties have agreed that DP&L’s next ESP application can include *another* unlawful
13 financial integrity charge, as long as it is paid only by standard service offer customers.
14 Far from being a balanced compromise, the Settlement is not balanced at all and gives
15 DP&L the vast majority of what it has been seeking—but which it absolutely should not
16 receive

¹⁵ *In re Application of Ohio Edison Co.*, 157 Ohio St.3d 73 (2019).

¹⁶ Case No. 16-395-EL-SSO, Supplemental Opinion & Order (Nov. 21, 2019).

**Q13. HOW DOES WITNESS SCHRODER ADDRESS THE SECOND PRONG
PERTAINING TO WHETHER THE STIPULATION BENEFITS CUSTOMERS
AND THE PUBLIC INTEREST?**

A13. Witness Schroder claims that the Settlement meets the second prong of the test by accomplishing the following: (1) enabling DP&L to proceed with a grid modernization plan and thereby providing an extensive range of benefits for customers, (2) ensuring that DP&L's financial integrity needs are addressed, thereby ensuring that the Utility has the financial capability to provide reliable service, and (3) providing numerous other benefits such as low-income assistance, renewable resource investment, promotion of economic recovery, and customers discounts.¹⁷ In particular, she cites to the Smart Grid Plan study results of \$63 million customer net present value ("NPV") benefits over 20 years and \$400 million (nominal 20-year) benefits from increased economic activity.¹⁸ Moreover, she states that the Smart Grid Plan in the Settlement benefits customers (as compared to the as-filed plan) by approving the investments in phases, committing to implementing a new CIS with costs to be recovered in a future base rate case, and including Smart Grid Plan operations and maintenance savings in the IIR mechanism.¹⁹

The second category of public interest benefits that the Settlement provides, safeguarding DP&L's financial integrity and therefore service reliability, is addressed in Mr. Malinak's April 2020 testimony, not by witness Schroder who simply references his testimony and

¹⁷ Schroder Testimony at 15.

¹⁸ *Id.* at 20, 23.

¹⁹ *Id.* at 24-25.

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1 conclusions. The third category of benefits refers to the various and miscellaneous
2 provisions in the Settlement that provide for individual customer concessions, funding or
3 discounts, with in many instances the benefit funded by shareholders.

4
5 ***Q14. BASED ON YOUR REVIEW, DOES THE SETTLEMENT MEET THE PUCO'S***
6 ***SECOND PRONG OF PUBLIC INTEREST AND CUSTOMER BENEFITS?***

7 ***A14.*** No, it does not. I defer to OCC witness Alvarez concerning the design, attributes and net
8 benefits of the Smart Grid Plan provisions in the Settlement and whether it properly
9 benefits the public interest. That said, witness Schroder in addressing the second prong
10 appears to be assuming that absent this Settlement, as filed, it would not be able to
11 proceed with a PUCO-approved SGP. That is not true. DP&L could file a new electric
12 security plan case and propose smart grid investments there. Alternatively, DP&L could
13 invest in smart grid and collect the costs from customers through a base rate case to the
14 extent the assets are used and useful on date certain and the costs were necessary to
15 provide utility service and prudently incurred. Witness Schroeder cites to the \$63 million
16 in SGP NPV benefits, but it is not clear that these benefits (assuming the estimation is
17 valid) depend on this Settlement. And in any event, they are a small fraction of the
18 roughly \$450 million in unwarranted customer charges through the continuation of the
19 unlawful stability charge (and foregone refunds to customers from the 2018 and 2019
20 profits review) provided under this Settlement. The Settlement therefore fails the PUCO's
21 second prong and should be rejected.

1 ***Q15. PLEASE ADDRESS WITNESS SHRODER'S THIRD CATEGORY OF PUBLIC***
2 ***INTEREST BENEFITS, THE SHAREHOLDER FUNDING AND DISCOUNTS FOR***
3 ***INDIVIDUAL CUSTOMERS AND CUSTOMER GROUPS.***

4 ***A15.*** Witness Schroder cites to a long list of miscellaneous customer benefits such as the
5 funding of pilot programs, grants and customer discounts which are funded by
6 shareholders.²⁰ While her testimony provides only a very partial quantification of the
7 shareholder contribution, the Utility's SEC Form 10-Q at September 30, 2020 places the
8 value of total shareholder contributions at about \$30 million over four years.

9
10 While the list of beneficiaries of this largesse is lengthy, and \$30 million seems quite
11 substantial, in fact it pales in comparison with the roughly \$300 million that DP&L
12 customers will pay under the Settlement from the unlawful stability charge. Additionally,
13 DP&L will be keeping \$150 million of profits that they otherwise would have to refund
14 to customers for their electric security plan earnings during 2018 and 2019. Note that the
15 vast majority of utility customers are not receiving shareholder funding or discounts and
16 yet these very customers are stuck with the bill. As noted above, these extra customer
17 charges exceed shareholder-provided subsidies by a ratio of costs to benefits on the order
18 of 15 to 1. The shareholder funding, while sounding beneficial, comes at a huge price and
19 this relatively miniscule (by comparison) benefit goes mostly to just a handful of large
20 commercial and industrial customers represented by the Settlement signatories.

²⁰ *Id.* at 26-28.

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1 In fact, calling it “shareholder funding” at all is misleading. The Settlement, if approved,
2 would result in customers paying DP&L more than \$300 million under the stability
3 charge over the next four years. The \$30 million in “shareholder funding” is effectively a
4 redistribution of stability charge revenue, paid by all customers, for the benefit of the few
5 customers who signed the Settlement.

6
7 Based on witness Schroder’s testimony and the text of the Settlement, it appears that the
8 funding for low-income customers, special pilot programs, and even the renewable
9 energy subsidy total to less than \$5 million over four years. Hence, about 80 to 90% of
10 the shareholder contribution provided in the Settlement in the form of discounts is
11 directed to those few fortunate large commercial/industrial customers. The price
12 residential customers must pay through the Settlement for those discounts to just a few
13 select customers and other shareholder provided subsidies is simply too high and is not in
14 the public interest.

15
16 I conclude that the Settlement, taken as a whole, does not pass the second prong of the
17 PUCO test, it does not benefit customers, and it fails to provide other material public
18 interest benefits that outweigh its extremely high cost to customers. The Settlement
19 provisions demanding that the general body of customers must be burdened with the
20 stability charge and must forego over \$150 million in SEET refunds that they are entitled
21 to receive does nothing more than egregiously subsidize AES Corporation’s profits.
22 Those provisions are not needed to ensure DP&L’s financial integrity, credit quality and
23 ability to invest in and maintain the distribution system, as I explained in detail in my

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1 October 22 direct testimony. DP&L's financial integrity and credit quality are entirely
2 satisfactory on a stand-alone basis, and the Utility may file distribution base rate cases, as
3 needed, to collect from customers its cost of providing necessary utility service with an
4 opportunity to earn a reasonable profit. The additional \$450 million in stability charges
5 and foregone SEET refunds has nothing to do with collection from customers of utility
6 costs. The assertion that the Rare Stabilization Charge is needed to ensure the provision
7 of reliable service is not true and is a red herring.

8
9 Witness Schroder may be correct that the Settlement, which appears to extend for four
10 years, may contribute to rate stability,²¹ but it does so only by "stabilizing" customer rates
11 at levels far above the utility cost of service. That is not a public interest benefit.

12
13 ***Q16. HOW HAS WITNESS SCHRODER ADDRESSED THE THIRD PRONG OF***
14 ***CONSISTENCY WITH REGULATORY PRINCIPLES AND PRACTICES?***

15 ***A16.*** Her testimony claims it meets this prong by being consistent with a number of policy
16 goals set forth in statutes.²² In this regard, she states that the Settlement "allows DP&L to
17 recover just and reasonable rates,"²³ provide reliable service at reasonable rates, achieve
18 the various goals associated with the implementation of the Smart Grid Plan, promote
19 economic development and provide protection for at risk populations (*e.g.*, low-income
20 assistance and programs).

²¹ *Id.* at 28.

²² *Id.* at 32-35.

²³ *Id.* at 32.

**Q17. WHAT IS YOUR RESPONSE TO WITNESS SCHODER'S ASSERTIONS THAT
THE SETTLEMENT PROPERLY ADDRESSES THE THIRD PRONG OF
CONSISTENCY WITH REGULATORY PRINCIPLES AND PRACTICES?**

A17. The Settlement is inconsistent with accepted regulatory principles and practices in a number of fundamental ways. Sound utility regulatory principles, including those used by the PUCO, require the setting of regulated customer rates based on the cost of providing utility service plus a reasonable return on invested equity. Regulatory principles also require that utility customers not pay rates that subsidize non-regulated affiliate activities. The Settlement clearly violates these basic regulatory fundamental principles.

Specifically, the Settlement approves the continuation of the stability charge for approximately the next four years, thereby charging utility distribution customers more than \$300 million unrelated to any investment or expense incurred by DP&L to provide utility service. The stated purpose of the RSC is to provide a funding source, paid for by utility customers, needed to service the debt of an unregulated affiliate company—DP&L's parent. Mr. Malinak makes it clear in his April 2020 testimony why the Utility believes this charge is needed. As I made clear in my direct testimony and reemphasize here, the servicing of non-utility debt, totally unrelated to utility service, is not the responsibility of utility customers but rather the ultimate parent, AES Corporation. The Settlement simply cannot be reconciled with accepted legitimate cost of service utility ratemaking principles.

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1 Further, the PUCO previously ruled that the RSC was a provider of last resort charge
2 (“POLR”).²⁴ When it was originally authorized, DP&L owned power plants that were
3 providing power to DP&L customers. Because DP&L owned the plants, it was able to
4 provide POLR service to customers. Since the approval of DP&L’s ESP II in 2013,
5 however, DP&L has not been providing POLR service. In the ESP II case, POLR
6 obligations were shifted to the marketers who bid in competitive auctions to supply the
7 standard service offer to DP&L’s customers. Since January 1, 2014, DP&L has procured
8 100% of the power for standard service through various rounds of competitive auctions.
9 DP&L’s standard service offer rate no longer has any relationship to DP&L’s power
10 plants (which it no longer owns) or its generation rate (because it has no generation and
11 thus no generation rate). Nor does DP&L provide any POLR service. The PUCO
12 acknowledged this when it ruled in DP&L’s first ESP withdrawal that “POLR service is
13 currently provided by competitive bidding process auction participants.”²⁵

14
15 The Settlement, however, requires customers to keep paying DP&L \$79 million a year
16 under the RSC. In other words, customers would be paying DP&L \$79 million a year for
17 POLR service that DP&L does not provide. This blatantly violates the most basic
18 regulatory principle that utility customers do not pay their utility for a service that the
19 utility does not provide.

²⁴ Case Nos. 08-1094-EL-SSO, Finding & Order ¶ 23 (Aug. 26, 2016).

²⁵ *In the Matter of DP&L’s Application*, Case No. 08-1094-EL-SSO, Finding and Order at ¶23 (Aug. 26, 2016).

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1 An additional problem is that the Settlement requires that utility customers forego refunds
2 worth approximately \$150 million associated with extreme excess earnings in 2018 and
3 2019. As Dr. Duann demonstrates in his testimony, the Utility's actual ROEs in those two
4 years were on the order of about 25%, or egregiously in excess of the cost of equity and
5 the approved SEET ROE threshold of 12%. These high earnings were largely the result
6 of DP&L's so-called Distribution Modernization Rider ("DMR"), which was terminated
7 in response to the Supreme Court overturning FirstEnergy's similar charge.
8 Unfortunately, DP&L customers never were refunded for the \$218 million²⁶ they paid to
9 DP&L before the charge was terminated.

10
11 The Settlement would harm customers once again by not providing refund to customers
12 when the refunds are required under Ohio law. This effectively sanctions DP&L (and its
13 parent AES Corporation) retaining these improper monopoly profits.

14
15 Regulatory principles require the setting of rates and utility compensation so as to avoid
16 undue monopoly profits. In Ohio, utilities, through electric security plans, can have
17 excessive earnings, just not significantly excessive earnings. In 2018 and 2019, DP&L's
18 earnings were significantly excessive and should be refunded to customers consistent
19 with Ohio law. The Settlement violates that principle.

²⁶ See <http://www.occ.ohio.gov/sites/default/files/images/refunds041020/piechart-111820.jpeg>.

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1 Moreover, while witness Schroder at least attempts to justify the retention of the Rate
2 Stabilization Charge for four years on the grounds that it fosters reliable service (and of
3 course it does not), her testimony does not even seek to support or justify the Settlement
4 provision that requires the forfeiting of these customer refunds.

5
6 ***Q18. WHAT DO YOU CONCLUDE REGARDING THE THIRD PRONG CONCERNING***
7 ***ADHERENCE TO ACCEPTED REGULATORY PRINCIPLES AND PRACTICES?***

8 ***A18.*** The Settlement fails this prong as it is not consistent with the principles that utility rates
9 should be based on the reasonable and necessary costs of providing utility service and
10 avoiding undue or unreasonable monopoly profits. It is an accepted regulatory principle
11 that customer utility rates should not be set for the purpose of funding or subsidizing an
12 unregulated affiliate of the utility. The Settlement does just that, and therefore must be
13 rejected under the PUCO's third prong. The fact that the Settlement seems to have
14 garnered support from certain intervening parties by providing some shareholder
15 subsidized rate discounts to a few select customers and certain customer-funded cash and
16 cash equivalent payments, does not salvage the validity of the Settlement.

III. ADDITIONAL ANALYSIS OF THE ISSUES

Q19. YOUR TESTIMONY STATES THAT THE SETTLEMENT WOULD IMPROPERLY IMPOSE A COST BURDEN ON UTILITY CUSTOMERS OF ABOUT \$450 MILLION. HOW IS THAT FIGURE CALCULATED?

A19. Witness Malinak in his April testimony states that the cost of the stability charge is about \$79 million per year or \$314 million for four years, 2020 – 2023. The Settlement affirms the Rate Stabilization Charge and retains it until ESP I is replaced, which likely would be in late 2024. I base this on the requirement in the Settlement to submit a new ESP application by October 1, 2023, and the assumption that based on past experience the case would not be resolved through a PUCO final order until at least a year after filing, or late 2024. This is nearly an additional year beyond Mr. Malinak's study. However, in calculating the consumer rate burden of the Settlement, I exclude the 2020 charges as those charges presumably would not be governed by the Settlement. Thus, while the RSC charges imposed by the Settlement cannot be calculated precisely, nearly four years at \$79 million per year total to roughly \$300 million or slightly more.

The refunds due to consumers are quantified in Dr. Duann's testimony. They total \$62.9 million for 2018 and \$87.7 million for 2019, or a total of \$150.6 million. These large refunds are the result of DP&L earnings from its electric security plan that allowed it to earn profits of 24.6 percent in 2018 and 26.7 percent in 2019.²⁷ The cost to consumers

²⁷ See Duann Testimony.

1 would include the sum of the roughly \$300 million in RSC going forward charges and a
2 foregone refund of \$151 million total (in other words \$450 million). If the 2020 Rate
3 Stabilization charges were to be included, the cost burden for DP&L customers would be
4 over \$500 million, or about \$1,000 per retail customer.

5
6 ***Q20. WITNESS SCHRODER DISCUSSES THE ECONOMIC ACTIVITY BENEFITS OF***
7 ***THE SMART GRID PLAN IN HER TESTIMONY IN CONNECTION WITH THE***
8 ***PUCO'S THREE-PRONG TEST. DOES THE \$450 MILLION COST BURDEN***
9 ***ALSO HAVE ECONOMIC ACTIVITY IMPLICATIONS?***

10 ***A20.*** Absolutely. Witness Schroder seeks to defend the Settlement as being in the public
11 interest by citing to study results claiming that the large capital investment and other
12 expenditures on the Smart Grid Plan will stimulate job creation and regional economic
13 activity expansion that will be as large as about \$400 million over a 20-year study period.
14 While I cannot confirm the \$400 million estimate, I agree that a large utility investment
15 program will stimulate job creation and economic activity over time unless that program
16 is displacing other investment spending. As I stated earlier, it is very questionable
17 whether this should be attributed to the Settlement, unless one assumes that there could
18 be no Smart Grid Plan absent this specific Settlement, which does not seem to be a
19 reasonable assumption.

20
21 In any case, these economic activity benefits cannot in any way justify the \$450 million
22 cost burden on customers imposed by the Settlement. For one thing, the Settlement could
23 be modified and vastly improved by merely removing these two burdensome provisions.

1 Moreover, imposing an added cost of \$450 million on customers serves to depress local
2 economic activity offsetting or more than offsetting the SGP modeled economic activity
3 gains.

4
5 ***Q21. PLEASE EXPLAIN WHY THE RATE STABILIZATION CHARGE AND THE***
6 ***REFUND PROHIBITION PROVISION DEPRESS ECONOMIC ACTIVITY IN THE***
7 ***DP&L SERVICE AREA.***

8 ***A21.*** The rates that DP&L charges affect the cost of living for residents as well as the cost of
9 doing business for commercial and industrial establishments in the Utility's service area.
10 For residents, their assigned share of the \$450 million serves to reduce their disposable
11 incomes which will have the effect of reducing household spending on locally provided
12 goods and services. Thus, local business will experience this as a demand reduction
13 thereby adversely affecting local hiring and investment. This demand and spending
14 reduction will have a "multiplier effect" on regional economic activity. Local businesses
15 paying the Rate Stabilization Charge or foregoing the refunds will experience this as an
16 increase in their cost of doing business. They may respond by raising prices for their
17 goods and services (further reducing the disposable income of area residents) or
18 accepting a reduction in profits as they absorb the higher costs. Lower business income is
19 likely to translate into reduced spending by those businesses and those that own those
20 businesses. This further contributes to the economic activity loss. It is also possible that
21 this could affect the decisions of businesses to locate in the DP&L service area. It is

1 certainly plausible that the negative economic impacts of this \$450 million subsidy are as
2 large as the claimed 20-year \$400 million referenced by witness Schroder.

3
4 ***Q22. ARE THE SMART GRID PLAN BENEFITS CLAIMED BY WITNESS SCHRODER***
5 ***PART OF THE MORE FAVORABLE IN THE AGGREGATE STATUTORY TEST***
6 ***THAT PURPORTEDLY SUPPORTS THE CONTINUATION OF ESP I UNDER***
7 ***THE SETTLEMENT?***

8 ***A22.*** No, my understanding is the Smart Grid Plan, while a major part of the Settlement, is not
9 part of the ESP I continuation review and therefore those claimed benefits are not part of
10 the Utility's statutory MFA test. This makes sense because the continuation review is
11 supposed to be looking at the electric security plan, including its "then existing pricing
12 and all other terms and conditions." I believe that witness Schroder makes that clear
13 when stating that for the ESP I continuation support, she and DP&L are relying solely on
14 witness Malinak's April direct testimony.

15
16 As summarized earlier, Mr. Malinak's "proof" that ESP I prevails under that test is his
17 surmising that under the alternative MRO, the PUCO would somehow impose a Financial
18 Incentive Charge even larger than the Rate Stabilization Charge. Such speculation is not
19 remotely realistic as I believe even, he realizes, as he argues that this massive Financial
20 Incentive Charge that he hypothesizes would be "bypassable," and therefore would not be
21 financially feasible. As mentioned earlier and discussed in my October direct testimony, a
22 key reason why Mr. Malinak reaches his conclusion that a Rate Stabilization Charge (or

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1 Financial Incentive Charge) is even needed is that he assumes away the possibility of a
2 distribution base rate case. That assumption is no longer in any way defensible (if it ever
3 was) since on November 30, 2020, the Utility filed an application to increase its base
4 distribution rates by \$120.8 million, an increase that would substantially alter Mr.
5 Malinak's financial analysis.²⁸ This means that Mr. Malinak's financial modeling
6 assumptions for DP&L are incorrect, and that the revenue, cash flow, earnings and credit
7 metrics would be far stronger than his projections due to this additional base rate case
8 revenue. This greatly weakens his financial need case for the continuation of the RSC and
9 his unwarranted assumption that under an MRO the PUCO would award a Financial
10 Integrity Charge of any kind, let alone larger than the RSC.

11
12 Aside from whether the financial modeling can even support his More Favorable in the
13 Aggregate test finding, the purpose of the Rate Stabilization Charge, as Mr. Malinak
14 makes clear in his testimony, is to provide a funding source for the DPL, Inc. non-utility
15 debt service. As I have explained, that debt service is the responsibility of AES
16 Corporation which is the sole owner of DPL, Inc. AES Corporation can and will address
17 this financial problem, but only if the PUCO makes clear that it is not the responsibility
18 of DP&L and its distribution utility customers by rejecting this Settlement. Approving the
19 Settlement removes AES Corporation's incentive to take any remedial action as its profit
20 maximizing behavior would be simply letting DP&L customers fund it.

²⁸ *In the Matter of the Application of Dayton Power and Light Company to Increase its Rates for Electric Distribution* Case No. 20-1651-EL-AIR, Application, Book I, Volume I, ¶ 6 (Nov. 30, 2020).

1 ***Q23. WHAT IS AES CORPORATION'S ROLE AND OBLIGATION UNDER THE***
2 ***SETTLEMENT?***

3 ***A23.*** None whatsoever. AES Corporation is not obligated under the Settlement to do anything.
4 Its role, as far as I can tell, is to enjoy the massive captive customer-funded profits that
5 this Settlement provides to DP&L, profits that at the end of the day belong to AES
6 Corporation, the entity that through its business decisions provided the basis for the Rate
7 Stabilization Charges continuation request. Moreover, while the Settlement does provide
8 Rate Stabilization funds to enable the servicing of the DPL, Inc. non-utility debt by utility
9 ratepayers, it is far from clear that it solves any problem on a permanent basis. According
10 to the most recent DPL, Inc./DP&L SEC Form 10-Q, DPL, Inc. has about \$900 million of
11 non-utility debt on its balance sheet.²⁹ No plan has been presented for extinguishing that
12 debt, and it is therefore likely to remain a problem at the end of the four-year term of this
13 Settlement. Hence, the Settlement merely kicks the can down the road. It should be
14 rejected.

15
16 ***Q24. DOES THIS CONCLUDE YOUR SUPPLEMENTAL DIRECT TESTIMONY?***

17 ***A24.*** Yes, it does.

²⁹ DPL, Inc/DP&L SEC 10-Q for the quarter ended September 30, 2020, at 21. The DPL, Inc. balance sheet shows non-utility long-term debt of about \$820 million and outstanding draw on its credit facility of \$90 million.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Supplemental Direct Testimony of Matthew I. Kahal on Behalf of the Office of the Ohio Consumers' Counsel*, was served via electronic transmission to the persons listed below on this 17th day of December 2020.

/s/ Christopher Healey
Christopher Healey
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Case No. 18-1875-EL-GRD, et al.

steven.beeler@ohioattorneygeneral.gov	ccox@elpc.org
Robert.eubanks@ohioattorneygeneral.gov	Michael.schuler@aes.com
Bethany.allen@igs.com	jsharkey@ficlaw.com
Joe.oliker@igs.com	djireland@ficlaw.com
Michael.nugent@igs.com	chollon@ficlaw.com
dstinson@bricker.com	fdarr@mwncmh.com
kherstein@bricker.com	mpritchard@mwncmh.com
jspottswood@bricker.com	mfleisher@dickinsonwright.com
jdunnlegal@gmail.com	cpirik@dickinsonwright.com
kevin.oles@thompsonhine.com	mkurtz@bkllawfirm.com
stephanie.chmiel@thompsonhine.com	kboehm@bkllawfirm.com
cmooney@opae.org	jkylercohn@bkllawfirm.com
whitt@whitt-sturtevant.com	Bojko@carpenterlipps.com
glover@whitt-sturtevant.com	Dressel@carpenterlipps.com
drinebolt@opae.org	Paul@carpenterlipps.com
nvijaykar@elpc.org	Dutton@carpenterlipps.com
glpetrucci@vorys.com	slessor@beneschlaw.com
dparram@bricker.com	talexander@beneschlaw.com
dstinson@bricker.com	mkeaney@beneschlaw.com

Attorney Examiners:

Patricia.schabo@puco.ohio.gov
gregory.price@puco.ohio.gov

Case No. 19-1121-EL-UNC

steven.beeler@ohioattorneygeneral.gov
Michael.schuler@aes.com
mkurtz@bkllawfirm.com
kboehm@bkllawfirm.com
talexander@beneschlaw.com

jkylercohn@bkllawfirm.com
bojko@carpenterlipps.com
paul@carpenterlipps.com
mpritchard@mcneeslaw.com
rglover@mcneeslaw.com

Attorney Examiners:

Patricia.schabo@puco.ohio.gov
gregory.price@puco.ohio.gov

Case No. 20-1041-EL-UNC

steven.beeler@ohioattorneygeneral.gov
Michael.schuler@aes.com
Bojko@carpenterlipps.com
Paul@carpenterlipps.com

mpritchard@mcneeslaw.com
rglover@mcneeslaw.com
talexander@beneschlaw.com

Attorney Examiners:

Patricia.schabo@puco.ohio.gov
Michael.williams@puco.ohio.gov

Case No. 20-680-EL-UNC

thomas.lindgren@ohioattorneygeneral.gov
dparram@bricker.com
dstinson@bricker.com
jspottswood@bricker.com
bojko@carpenterlipps.com
Bethany.allen@igs.com
Joe.oliker@igs.com
Michael.nugent@igs.com
Fdarr2019@gmail.com
paul@carpenterlipps.com
kevin.oles@thompsonhine.com
stephanie.chmiel@thompsonhine.com

jsharkey@ficlaw.com
djireland@ficlaw.com
chollon@ficlaw.com
michael.schuler@aes.com
mkurtz@bkllawfirm.com
kboehm@bkllawfirm.com
jkylercohn@bkllawfirm.com
mpritchard@mcneeslaw.com
rglover@mcneeslaw.com
slessor@beneschlaw.com
talexander@beneschlaw.com
mkeaney@beneschlaw.com
khehmeyer@beneschlaw.com

Attorney Examiners:

Patricia.schabo@puco.ohio.gov
Michael.williams@puco.ohio.gov

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Summary: Testimony Supplemental Direct Testimony of Matthew I. Kahal on Behalf of The Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Healey, Christopher