BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

INITIAL POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTLITIES COMMISSION OF OHIO

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INTRODUCTION

The Public Utilities Commission of Ohio (Commission) is presented with a Stipulation that resolves all the issues in six complex cases that were consolidated to form this proceeding. The Stipulation is reasonable and meets the Commission's three-part test for approval of stipulations. It should be adopted by this Commission.

PROCEDURAL SCHEDULE

On October 23, 2020, The Dayton Power and Light Company (the Company or DP&L), the Staff and 19 intervening parties filed a stipulation and recommendation (Stipulation) that purports to resolve issues in the six above-captioned cases.

The parties that signed the Stipulation are: DP&L, the Staff of the Public Utilities Commission of Ohio (Staff), the City of Dayton, Industrial Energy Users-Ohio (IEU), Ohio Energy Group (OEG), Ohio Manufacturers' Association Energy Group (OMAEG), Ohio Hospital Association (OHA), Ohio Partners for Affordable Energy (OPAE), University of Dayton (UD), Honda of America Mfg., Inc. (Honda), The Kroger Company (Kroger), Interstate Gas Supply, Inc. (IGS), IGS Solar, LLC (IGS Solar) Sierra Club, Ohio Environmental Council (OEC), Environmental Law & Policy Center (ELPC), Natural Resources Defense Council (NRDC) The Smart Thermostat Coalition, ChargePoint, Inc., and Armada Power, LLC.

On October 27, 2020, 2020, the Attorney Examiner consolidated the six cases for purposes of considering the Stipulation.[1] The hearing on these consolidated began January 11, 2021 and concluded January 15, 2021.

DISCUSSION

I. The Stipulation meets the Three-Part Test for reasonableness.

Rule 4901-1-30, O.A.C, authorizes parties to Commission proceedings to enter into stipulations. Although not binding upon the Commission, the terms of such agreements are to be accorded substantial weight.[2] The ultimate issue for the Commission's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings.[3] In considering the reasonableness of a stipulation, the Commission has used the following criteria:

(1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

(2) Does the settlement, as a package, benefit ratepayers and the public interest?

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1 *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Plan to Modernize Its Distribution Grid*, Case No. 18-1875-EL-GRD, et. al. (October 27, 2020 Entry).

2 *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St, 3d 123, at 125, citing *Akron v. Pub. Util. Comm*. (1978), 55 Ohio St, 2d 155.

3 See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Ohio Edison Co.*, Case No. 92-1463-GA-AIR, et al. (August 26, 1993); *Ohio Edison Co.*, Case No. 89-1001-EL-AIR (August 19, 1993); *The Cleveland Electric Illumination Co.*, Case No. 88-170-EL-AIR (January 31, 1989); and *Restatement of Accounts and Records* (Zimmer Plant); Case No, 84-1187-EL-UNC (November 26, 1985).

(3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve cases.[4] When the Commission reviews a contested stipulation, as is the case here, the Court has also been clear that the requirement of evidentiary support remains operative. While the Commission "may place substantial weight on the terms of a stipulation," it "must determine, from the evidence, what is just and reasonable."[5] The agreement of some parties is no substitute for the procedural protections reinforced by the evidentiary support requirement.[6]

Below is a summary of some of the major components of the Stipulation, but is not meant to be a comprehensive list[7]:

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

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

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4 *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm*. (1994), 68 Ohio St. 3d 559, citing, *Consumers' Counsel*, supra, at 126.

5 *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126, 592 N.E.2d 1370.

6 *In re Application of Columbus S. Power Co*. (2011), 129 Ohio St.3d 46.

7 DP&L Ex. 4 (Schroder Direct) at 4-11.

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

(4) Estimated savings that the parties agree will be generated by SGP Phase 1 expenditures will be used to offset the IIR.

(5) DP&L's investments and expenses will be subject to an annual audit, which will review DP&L's expenditures.

(6) Install approximately 95% of Advanced Metering Infrastructure (AMI) meters.

(7) Implement Distribution Automation investment on approximately 20% (88) of DP&L's circuits.

(8) Implement Substation Automation investment on approximately 30 substations.

(9) Acceleration of the implementation of Conservation Voltage Reduction/Voltage and VAR Optimization (CVRNVO), which is expected to create significant cost savings for customers.

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

(11) Implementation of a Smart Thermostat rebate program, which is expected to generate significant energy savings for customers, while reducing greenhouse gasses. The Smart Thermostat rebate program will be paid for by DP&L's shareholders.

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

(13) Provisions regarding data access, which will:

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

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

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

(14) Additional Benefits for residential customers:

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

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

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

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

a. Prioritize the installation of the SGP in economically disadvantaged areas of the City, many of which were struck by tornados last year.

b. Explore a joint partnership with the City of Dayton and the University of Dayton's Hanley Sustainability Institute for a program supporting mutual goals for all three organizations.

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

d. Waiver of fees for alternative feed service for City of Dayton accounts that currently have redundant service.

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

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

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

a. Waiver of fees for alternative feed service for hospitals.

b. Continuation of DP&L's TCRR Opt-Out Pilot Program.

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

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

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

(18) Support for developing an energy resiliency project in or near the Wright Patterson Air Force Base, through $250,000 contributed by DP&L shareholders.

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

(20) Agreement that the benefits of DP&L's SGP Phase 1 exceed the costs on both a nominal and net-present-value basis.

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

(22) Agreement that the Signatory Parties will not challenge DP&L's right to operate under ESP I.

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

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

The signatory parties, and the Commission staff, respectfully submit that the Stipulation here satisfies the reasonableness criteria, and that the evidence of record supports and justifies a finding that its terms are just and reasonable.

A. Serious Bargaining

The Stipulation is the product of serious negotiations among knowledgeable parties. The Stipulation is supported by parties representing a wide range of interests, including the interests of DP&L, the largest municipality in DP&L's service territory (which represents itself and its residents), a representative of residential low-income customers, three state-wide organizations of large industrial customers, one large industrial customer, one of the largest supermarket chains in the country, a state-wide organization representing hospitals in DP&L's service territory, a large, local university, four environmental groups, a provider of competitive retail electric service, and four other parties that do business and represent interests in the smart grid field. In addition, the Commission's Staff signed the Stipulation.[8] The Commission's Staff is charged with balancing the interests of all parties and the public.[9]

The Stipulation the product of serious bargaining among capable, knowledgeable parties. All of the intervening parties in the matters participated in the negotiations, and all but two of them support it.[10] The settlement negotiations involved a diverse group of experienced parties.[11] Eight bargaining sessions, including one technical conference, were held, at which DP&L explained the Stipulation, and all parties could make comments or ask questions.[12] All parties that intervened in these proceedings were invited to participate in those sessions and a telephone bridge or video conference line was established for each session.[13] All sessions following the outbreak of COVID-19 were held by video conference and at the beginning or in advance of most of these

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8 *Id.* at 13.
9 *Id.*
10 *Id.*
11 *Id.*
12 *Id.*
13 *Id.* at 13-14.

sessions, DP&L circulated to the parties either a settlement term sheet or draft Stipulation.[14]

At each session, DP&L answered questions from the parties and asked for feedback on DP&L's proposed settlement terms.[15] Staff and other parties made extensive changes to DP&L's proposals, and all Signatory Parties made compromises.[16] In addition, DP&L contacted every party to discuss their individual interests and DP&L had extensive conversations with individual parties, who offered significant comments and revisions to the draft Stipulation.[17] All of the Signatory Parties were represented by attorneys, most if not all of whom have years of experience in regulatory matters before this Commission and who possess extensive information.[18] All of the negotiations were at arm's length.[19] Numerous hours were devoted to the negotiating process and to the exchange of language and information associated with the terms of the Stipulation.[20] The result of the negotiations was a compromise and many parties receive benefits under the Stipulation, but neither DP&L nor any other Signatory Party received everything that it wanted.[21] The Stipulation strikes a reasonable balance that benefits customers and the public interest.[22]

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[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*

The hearing included the testimony of Company witnesses, a Staff witness, and witnesses representing other parties to the case. The OCC opposes the Stipulation arguing that the Signatory Parties does not represent a variety of diverse interests. These claims are baseless. As mentioned above, both the Staff and a variety of diverse interests, which include DP&L, the largest municipality in DP&L's service territory (which represents itself and its residents), a representative of residential low-income customers, three state-wide organizations of large industrial customers, one large industrial customer, one of the largest supermarket chains in the country, a state-wide organization representing hospitals in DP&L's service territory, a large, local university, four environmental groups, a provider of competitive retail electric service, and four other parties that do business and represent interests in the smart grid field were all signatory parties. Although the conclusion that the Stipulation results from serious bargaining among knowledgeable parties is obvious, that does not prevent opposing parties from challenging it. In sum, the Stipulation is the product of serious negotiations among knowledgeable parties.

B. Public Interest

The Stipulation benefits customers and the public interest. The benefits of the Stipulation are that it will allow DP&L to modernize its distribution grid while maintaining its financial integrity and continuing to provide safe and reliable service. The Stipulation also provide numerous additional benefits to customers with minimal rate impacts.

1. Distribution Grid Modernization.

The Stipulation will allow DP&L to modernize its distribution grid. The principal components of DP&L's SGP Phase 1 are[23]:

(1) Smart Meters – DP&L will invest $77.6 million in the installation of smart meters, also known as Advanced Metering Infrastructure (AMI), such that nearly every customer will receive an advanced meter.

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

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

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

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

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

In the Stipulation, DP&L also commits to investing in the development of a new Customer Information System (CIS) that will be needed for DP&L to provide and support many of benefits identified in my testimony.[24] The benefits of smart meters will include[25]:

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23 DP&L Ex. 4 (Schroder Direct) at 15-16.
24 *Id.* at 16.
25 *Id.* at 16-17.

(1) Enabling implementation of demand response and time-of-use rates, which will enable customers to save money on their bill.

(2) Accelerating DP&L's restoration response, using data from smart meters to provide additional information to DP&L about outages.

(3) Reducing DP&L's operational expenses. Decreased expenses result from a variety of factors, including the reduction of meter-reading expenses, remote reconnects and disconnects, and fewer billing disputes.

(4) Improving safety with the elimination of travel and entering customer locations to read meters.

Modernization of DP&L's distribution system will make portions of DP&L's distribution system self-healing, which in turn will provide significant customer benefits, including but not limited to[26]:

(1) Improving reliability for customers by automatically identifying issues with the grid and either correcting those issues automatically by either re-routing power flows or providing information to DP&L about the issues so DP&L can send crews to fix them more quickly and efficiently than they are currently able.

(2) Reducing operational expenses because crews will be able to more quickly identify and resolve issues across the grid.

(3) Reducing line losses due to the enhanced and more efficient grid system.

(4) Enabling and encouraging distributed energy and demand response resources to be more easily integrated into the grid.

DP&L's SGP Phase 1 contains many innovations designed to improve the customer experience, including[27]:

(1) Implementing an online customer portal, through which customers can review detailed information about their account, including but not limited

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[26] *Id.* at 17.
[27] *Id.* at 17-18.

to usage comparisons and projected costs. This portal will give customers greater control over their usage and experience with DP&L.

(2) Improving communications about outage events, through a customer's preferred communication method, such as text message, email or phone message.

(3) Improving billing accuracy, through the elimination of estimated bills.

The AMI and self-healing grid investments require new telecommunications infrastructure to function properly.[28] Additionally, the AMI and self-healing grid investments will generate large amounts of data that DP&L's current telecommunications infrastructure is not capable of utilizing in its operations and not capable of sharing with customers, CRES providers, or other third parties.[29] DP&L, therefore, needs to improve and upgrade its telecommunications network to implement its SGP and unlock the benefits of this data.[30]

The Stipulation also has customer benefits associated with DP&L's planned cyber security expenditures.[31] Since DP&L's SGP will generate significant amounts of additional customer and operational-related data, cyber security investments and are necessary to protect that data.[32] DP&L will also invest in and implement a new CIS, which will provide the following customer benefits[33]:

(1) Establishing the foundation for providing flexible rate structures for customers.

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28 *Id.* at 18.
29 *Id.*
30 *Id.*
31 *Id.*
32 *Id.*
33 *Id.* at 18-19.

(2) Driving operational efficiencies across a cross-section of DP&L customer service functions, which means that customer service and operations functions will not be siloed, but rather will work directly with each other.

(3) Providing for an open architecture that will create the flexibility necessary to adapt to future markets.

(4) Enabling customers, as well as CRES providers and third parties (with customer consent), to access customer data.

DP&L will recover a return on and of its prudently incurred capital investment in the new CIS and associated systems and its incremental operation and maintenance expenses associated with the new CIS through base distribution rates and not through the IIR, thus promoting gradualism in rates.[34]

In addition to the benefits identified above, other broader, societal benefits will be realized, including[35]:

(1) Reduced energy usage and truck rolls in DP&L's service territory associated with the SGP will reduce greenhouse gas emissions.

(2) DP&L's SGP investments associated will have multiplier effects on the economy, creating additional jobs and other economic benefits inside and outside of DP&L's service territory.

(3) DP&L is the only electric utility in Ohio that has not implemented an SGP. Economic development in its service territory, as well as the availability of grid modernization throughout the state, will benefit everyone in Ohio.

The SGP will significantly improve the ability of customers to understand their energy usage and make decisions about their usage.[36] The SGP and the data it will unlock will foster innovation in the competitive marketplace, providing customers with new

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[34] *Id.* at 19.
[35] *Id.* at 19-20.
[36] *Id.* at 20.

energy choices and solutions unavailable today.[37] Also, the SGP will significantly improve safety, since it will reduce the time, travel and potential risks associated with: (1) reading meters; (2) responding to outages; and (3) the installation and removal of meters.[38]

Figure 1 in Exhibit 4 to the Stipulation & Recommendation demonstrates that DP&L's SGP Phase 1 investments and expenditures (as modified by the Stipulation) will have net benefits exceeding $425 million on a nominal basis over 20 years and $63 million on a net present value basis over the same time period, without takin into account societal benefits.[39] Figure 2 in Exhibit 4 incorporates the societal benefits of those investments and expenditures, raising the net benefits to more than $867 million on a nominal basis over 20 years and more than $413 million on a net present value basis over the same time period.[40] DP&L estimated those expenditures using a variety of methods, including reviewing publicly available pricing information, reviewing smart grid filings of other utilities and consulting with vendors. DP&L also engaged West Monroe (WM) to assist in its analysis.[41] WM is a knowledgeable and respected consultant in the smart grid field. With the assistance of WM, DP&L estimated the benefits as follows[42]:

(1) Energy and Demand: DP&L's SGP Phase 1 is projected to reduce customer energy usage and demand for a variety of reasons, including: (1) Conservation Voltage Reduction Voltage and VAR optimization will allow DP&L to reduce energy consumption by regulating voltage on its system;

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37 *Id*.
38 *Id*.
39 *Id.*, Joint Ex. 1 (Stipulation) at Exhibit 4.
40 *Id.*, Joint Ex. 1 (Stipulation) at Exhibit 4.
41 DP&L Ex. 4 (Schroder Direct) at 21.
42 *Id.* at 21-24.

and (2) time-of-use rates will incentivize customers to use generation at off-peak hours. DP&L estimated the reduction in energy and demand by leveraging technical studies and applying benchmarks to DP&L's planned deployment and customers impacted, and quantified that benefit by using a forecast of future generation rates.

(2) Reliability: DP&L estimated the benefits of improved reliability using the Department of Energy's Interruption Cost Estimate model.

(3) O&M Savings: DP&L's SGP will significantly reduce DP&L's O&M costs for a variety of reasons, including but not limited to reduced meter reading expenses, reduced time associated with repairing downed lines, and fewer call center calls. DP&L estimated the reduction in those expenditures based upon its experience and the historical level of those expenses.

(4) Deferred Capital: The SGP provides a proactive and planned approach for DP&L for its capital investments, ultimately benefiting customers. DP&L estimated the amounts saved based upon its experience and its projections for future expenditures.

(5) Customer EV Savings: In response to expected growth in EV adoption, DP&L's SGP Phase 1 is projected to contribute to customers' transition to EVs from traditional internal combustion engine vehicles. With EV adoption, customers will be able to save money on the energy source used to power their vehicles.

(6) Greenhouse Gases: DP&L's SGP is expected to reduce greenhouse gases for three reasons: (1) reduced energy consumption will lessen the need to burn fossil fuels to generate electricity; (2) fewer operations and maintenance related truck rolls will reduce the vehicles miles driven and their associated GHG emissions; and (3) the EV charging stations incentivized by the EV Rebate Program will encourage adoption of EVs, which will reduce use of gasoline. DP&L estimated the value of each ton of greenhouse gases by using estimates of the societal costs of carbon promulgated by the United States Environmental Protection Agency.

(7) Economic Development: DP&L's investments in its SGP are expected to generate over $400 million in nominal dollars of economic benefit and create over 400 direct jobs and nearly 2,000 indirect jobs over a period of 20 years. DP&L estimated the economic value of those jobs using the Bureau of Economic Analysis Regional Input-Output Modeling System II. It is worth repeating that DP&L has not attempted to quantify all of the

benefits of the SGP, including improved safety, an improved customer experience, and other economic development benefits. Setting those benefits aside, however, the benefits of DP&L's SGP Phase 1 exceed its costs on a net present value basis, as shown in Exhibit 4 to the Stipulation.

2. Financial Integrity and Safe and Reliable Service

The Stipulation will allow DP&L to continue to restore its financial integrity and continue to provide safe and reliable service. DP&L Witness Malinak, in his testimony, demonstrates that the continuation of DP&L's existing Electric Security Plan will allow DP&L to provide safe and reliable service to its customers.[43]

3. Additional Customer Benefits

The Stipulation Will Provide Additional Benefits to Customers that include the following[44]:

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

(2) DP&L's SmartGrid Application proposed that a portion of estimated operational cost savings associated with grid modernization would be passed through to customers when DP&L filed future rate cases. The Stipulation now guarantees that the updated estimated amount of total savings, which includes all categories of operational savings, will be passed back to customers through the IIR, which will allow customers to benefit from those savings more quickly. (Joint Ex. 1, Stipulation, ¶ 3.b).

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43 DP&L Ex. 1.

44 DP&L Ex. 4 Schroder Direct at 24-29.

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

(4) The Stipulation establishes procedures for DP&L to update the Commission and interested parties regarding the status of grid modernization. (Joint Ex. 1, Stipulation, ¶ 5.b & 5.c.). There were no such procedures in DP&L's SmartGrid Application.

(5) The Stipulation establishes a Smart Thermostat Program, which will be funded by DP&L with shareholder dollars. (Joint Ex. 1, Stipulation, ¶ 9). There were no such provisions in DP&L's SmartGrid Application.

(6) DP&L's SmartGrid Application provided for recovery of investments and expenditures associated with a new CIS. (SmartGrid Application, 7 2.c.). and 13. The Stipulation provides that investments and expenditures associated with the CIS will be recovered through base rates instead of through the IIR like other SGP Phase 1 components. (Joint Ex. 1, Stipulation, ¶ 10.g.). That provision will benefit customers because it will ensure that the CIS system is fully functional, including the numerous functionality commitments, prior to DP&L seeking recovery of invested dollars.

(7) The Stipulation contains detailed provisions regarding the appropriate and timely access of customer data to customers, CRES providers and third parties. (Joint Ex. 1, Stipulation, ¶ 11).

(8) The Stipulation contains the additional benefits for residential customers, as described above, including but not limited to funding a weatherization program for low-income customers, and a water heater pilot program directed at low income residential customers. (Joint Ex. 1, Stipulation, ¶ 12). These provisions will encourage residential customers to lower their energy usage and reduce their risk of disconnection. The Stipulation contains additional benefits for the City of Dayton, as described above, including but not limited to prioritization of the installation of the SGP in economically disadvantaged areas of the City; $350,000 in annual financial contributions of DP&L shareholder dollars to the PACE program, economic development, and low-income residents; and a commitment to provide support relating to an interconnection of net metering systems for two City of Dayton Solar Projects. (Joint Ex. 1, Stipulation, ¶¶ 13 and 16.b.). In addition, the Stipulation contains a waiver of fees for alternative feed service for City of Dayton accounts that have redundant service. (Joint

Ex. 1, Stipulation, ¶ 13.a.iv.). These provisions lend significant support to the largest municipality in DP&L's service territory and its residents.

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

(10) The Stipulation contains additional economic development incentives and grants for hospitals and manufacturers in DP&L's service territory. These benefits are intended to assist those organizations in responding to the financial consequences of COVID-19 and restarting Ohio's economy by supporting large employers that are key drivers of economic development in the region, thereby benefiting the region and State more broadly. (Joint Ex. 1, Stipulation, ¶ 15). Moreover, DP&L will bear the cost of these incentives and grants and will not recover that cost from customers. (Joint Ex. 1, Stipulation, ¶ 15).

(11) The Stipulation further provides $250,000 of support toward analyzing the technical aspects of an energy resiliency project in or near the Wright Patterson Air Force Base. The projects may include renewable energy and distributed energy resources, energy storage, advanced control systems, and reduction of energy consumption through lighting and water upgrades, and HVAC improvements. (Joint Ex. 1, Stipulation, ¶ 16.a.) DP&L will also bear this cost and will not recover that cost from customers. (Joint Ex. 1, Stipulation, 16.a.).

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

(13) SGP Phase 1 will provide benefits that exceed their costs on both a nominal and net-present-value basis. (Joint Ex. 1, Stipulation, ¶ 17 and Exhibit 4).

(14) The Stipulation further provides that DP&L's ESP I passes the SEET and MFA test in R.C. 4928.143(E) and the SEET in R.C. 4928.143(F), and the Signatory Parties agree not to challenge DP&L's right to operate under ESP I. (Joint Ex. 1, Stipulation ¶¶ 19.a, 19.c.i., and 19.c.iii.). These provisions reduce regulatory uncertainty, and as [DP&L] Witness Malinak explains, bolster DP&L's financial integrity and ability to provide safe and reliable service. The Stipulation further reduces litigation expense by consolidating these proceedings and narrowing the contested issues before the Commission.

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

(16) The Stipulation also benefits customers by providing that DP&L will file an application for an ESP, not an MRO, in 2023. (Joint Ex. 1, Stipulation, ¶ 20). The Commission repeatedly has found that ESPs were more favorable in the aggregate than MROs, so DP&L's commitment to file for an ESP will benefit customers.

(17) The Stipulation further benefits customers by prohibiting DP&L from proposing in ESP IV a nonbypassable charge related to provider of last resort risks, stability, financial integrity, or any other charge that is substantially calculated based on the credit ratings, debt, or financial performance of any parent or affiliated company of DP&L, thus eliminating customer exposure to such charges in DP&L's next electric security plan. (Joint Ex. 1, Stipulation ¶ 20).

4. Rate Impacts

Exhibit 2 to the Stipulation explains the modest customer rate impacts and provides the anticipated Revenue Requirement for the IIR during SGP Phase 1.[45] Exhibit

45 DP&L Ex. 4 (Schroder Direct) at 29.

SRS-1 to DP&L Witness Schroder's testimony shows that DP&L's bills are the lowest in the State of Ohio.[46] As of October 2020, DP&L's typical residential customer bills are more than $17 lower than those of the next lowest Ohio electric distribution utility.[47] Even after the amounts identified above are added, DP&L's rates for a typical residential customer would remain lower than the rates currently charged by other Ohio utilities.[48]

5. Compromise

The Stipulation is the product of compromise, and none of the parties received everything that they wanted. The principal compromises made by DP&L include but are not limited to[49]:

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

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

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

  b. The low-income weatherization program described in Stipulation 3 ¶ 12.a.;

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

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

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46 *Id.* at 30.
47 *Id.*
48 Id.
49 DP&L Ex. 4 (Schroder Direct) at 30-32.

e. The City of Dayton economic development programs described in Stipulation, ¶ 14.a.v;

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

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

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

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

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

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

(5) DP&L agreed to file for ESP IV by October 30, 2023, and that its ESP IV Application will not include a request for a nonbypassable charge to customers related to provider of last resort risks, stability, financial integrity, or any other charge that is substantially calculated based on the credit ratings, debt, or financial performance of any parent or affiliated company of DP&L.

C. The Stipulation does not violate any important regulatory principle or practice, rather it promoted public policy.

The Stipulation complies with all relevant and important regulatory principles and practices. The Stipulation encourages compromise as an alternative to litigation and allows DP&L to recover just and reasonable rates while implementing smart grid technologies that benefit its customers.[50] The Stipulation further promotes DP&L's financial condition and its ability to provide safe and reliable service to its customers.[51]

50 *Id.* at 32.
51 *Id.*

1. State Policy

R.C. 4928.02 provides guidelines for the Commission to weigh in evaluating an electric distribution utility's SSO. The Stipulation advances this state policy in a number of ways.

The Stipulation provides significant support for DP&L's ability to provide reliable and safe electric service.[52] As demonstrated in the testimony of DP&L Witness Malinak, DP&L's ability to provide reliable and safe service would be jeopardized if ESP I were terminated. And the deployment of SmartGrid will increase the reliability, safety, and efficiency of the distribution system while still maintaining typical residential bills that are lower than any other electric utility in the state. The Stipulation advances the state policy to "[e]nsure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities."[53] DP&L commits to providing data to CRES providers that will allow them to offer new and innovative products and services to customers.[54] The Stipulation also encourages diversity of electricity supplies and suppliers by encouraging the development of distributed facilities through the resiliency project[55] and the solar projects identified.[56] DP&L has committed to filing with the Commission a status report for the resiliency project[57] and a report

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52 R.C. 4928.02(A).
53 R.C. 4928.02(C).
54 Joint Ex. 1 (Stipulation) at ¶ 11, DP&L Ex. 4 (Schroder Direct) at 33.
55 DP&L Ex. 4 (Schroder Direct) at 33, Joint Ex. 1 (Stipulation) at ¶16.a.
56 DP&L Ex. 4 (Schroder Direct) at 33, Joint Ex. 1 (Stipulation) at ¶16.b.
57 DP&L Ex. 4 (Schroder Direct) at 33, Joint Ex. 1 (Stipulation) at ¶16.a.iv.

describing any distribution and transmission costs saved or avoided as a result the solar project.[58] The deployment of smart grid, coupled with the implementation of CIS, will also provide additional opportunities for integration of distributed and small generation facilities.[59]

The Stipulation advances the state policy to "encourage innovation and market access for cost-effective supply-and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure."[60] The Stipulation provides for significant investment in AMI, distribution automation, substation automation, and CRVNVO technologies, and ensures the availability of time-of-use rates for customers, including on an opt-in basis through the SSO until at least three different suppliers offer time-varying products utilizing AMI.[61] Moreover, as stated above, the Stipulation encourages innovation by ensuring that customers, CRES providers, and third parties have access to the most current data available for both prospective and existing customers, with their authorization, which is unavailable today.[62]

The Stipulation advances the state policy to "[e]ncourage cost-effective and efficient access to information regarding the operation of the transmission and

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58 DP&L Ex. 4 (Schroder Direct) at 33, Joint Ex. 1 (Stipulation) at ¶16.c.
59 DP&L Ex. 4 (Schroder Direct) at 33.
60 R.C. 4928.02(D).
61 DP&L Ex. 4 (Schroder Direct) at 34, Joint Ex. 1 (Stipulation) at , ¶ ¶ 6.a, 6.b., 6.c, 6.d, 6.e and Exhibit 1.
62 DP&L Ex. 4 (Schroder Direct) at 34, Joint Ex. 1 (Stipulation) at ¶ 11 .b.iv.

distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language."[63] In the Stipulation, DP&L commits to providing annual reporting for the metrics identified in Exhibit 3, including metrics relating to AMI, meter reading, data access and utilization, billing, customer impact, distribution automation, and CVR/VVO.[64] These metrics will enable the development of performance standards and targets for service quality for DP&L's customers.[65]

The Stipulation advances the state policy to "[p]rotect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource."[66] The Stipulation protects at-risk populations in several ways. First, DP&L commits in the Stipulation to contribute $900,000 in shareholder dollars to support a weatherization program for low-income residents.[67] Second, DP&L agrees in the Stipulation to support a water-heater pilot program for Percentage of Income Program (PIPP) customers in the City of Dayton to reduce their peak load contribution following installation of smart meters.[68] Third, DP&L further commits in the Stipulation not to implement any form of prepay program as part of SGP Phase 1 and not to use AMI to unlawfully limit the electric usage of residential

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63 R.C. 4928.02(E).
64 DP&L Ex. 4 (Schroder Direct) at 34, Joint Ex. 1 (Stipulation) at ¶5.b. and Exhibit 3.
65 DP&L Ex. 4 (Schroder Direct) at 34.
66 R.C. 4928.02(L).
67 DP&L Ex. 4 (Schroder Direct) at 35, Joint Ex. 1 (Stipulation) at ¶ 12.a.
68 DP&L Ex. 4 (Schroder Direct) at 35, Joint Ex. 1 (Stipulation) at ¶ 12.c.

customers.[69] Fourth, DP&L agrees in the Stipulation to contribute $200,000 in shareholder dollars annually to assist the City of Dayton in providing economic development programs and providing essential city services to residents, including low-income residents during ESP I.[70] Fifth, under the Stipulation, DP&L will prioritize residential customers in the historically disadvantaged Western and Northwestern areas of the City of Dayton when implementing SGP Phase 1.[71]

The Stipulation advances the state policy to "[e]ncourage the education of small business owners in this state regarding the use of, and encourage the use of, energy efficiency programs and alternative energy resources in their businesses."[72] DP&L has committed to spending $6.1 million during SGP Phase 1 for customer education programs regarding the benefits of SGP Phase 1 components.[73] In each year of SGP Phase 1, $50,000 of those customer education funds will be paid to each of IEU, OHA, OMAEG, and the City of Dayton to educate and engage hospitals, manufacturers, and residents regarding the potential benefits of grid modernization, such as assisting with accessing and analyzing energy usage and rate information that will become available upon the installation of CIS.[74] Stipulation, ¶ 14(c). An additional $50,000 per year will be applied toward marketing and education for residential customers about the Smart Thermostat Rebate Program in conjunction with its deployment of residential AMI

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69 DP&L Ex. 4 (Schroder Direct) at 35, Joint Ex. 1 (Stipulation) at ¶ 12.d. and 12.e.
70 DP&L Ex. 4 (Schroder Direct) at 35, Joint Ex. 1 (Stipulation) at ¶ 13.a.v.
71 DP&L Ex. 4 (Schroder Direct) at 35, Joint Ex. 1 (Stipulation) at ¶ 12.a.i.
72 R.C. 4928.02(M).
73 DP&L Ex. 4 (Schroder Direct) at 36, Joint Ex. 1 (Stipulation) at ¶ 2, Exhibit 1.
74 DP&L Ex. 4 (Schroder Direct) at 36, Joint Ex. 1 (Stipulation) at ¶ 14(c).

meters.[75] Stipulation, ¶ 12(b). Further, DP&L commits to pay $150,000 in shareholder dollars to OHA in 2023 and 2024 as an energy education grant.[76]

The Stipulation advances the state policy to "facilitate the state's effectiveness in the global economy."[77] As explained above, grid modernization will improve reliability for customers, reduce operational expenses and line losses, and enable new innovative products and services for DP&L's customers, including but not limited to integrated distributed energy and demand response resources and time-varying products.[78] These significant benefits will foster economic development in the Miami Valley and the State of Ohio.[79] Moreover, under the Stipulation, DP&L has committed significant shareholder dollars to economic development, including $200,000 in annual payments to the City of Dayton for economic development programs and providing essential city services to residents,[80] various economic development incentives for DP&L customers,[81] $750,000 in annual economic development grants for DP&L customers,[82] and $1 million for a solar project in DP&L's service territory.[83]

The Stipulation advances the state policy to "[e]ncourage cost-effective, timely, and efficient access to and sharing of customer usage data with customers and

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75 DP&L Ex. 4 (Schroder Direct) at 36, Joint Ex. 1 (Stipulation) at ¶ 12(b).
76 DP&L Ex. 4 (Schroder Direct) at 36.
77 R.C. 4928.02(N).
78 DP&L Ex. 4 (Schroder Direct) at 36.
79 *Id*.
80 DP&L Ex. 4 (Schroder Direct) at 36-37, Joint Ex. 1 (Stipulation) at ¶13.a.v.
81 DP&L Ex. 4 (Schroder Direct) at 37, Joint Ex. 1 (Stipulation) at ¶15.a.
82 DP&L Ex. 4 (Schroder Direct) at 37, Joint Ex. 1 (Stipulation) at ¶15.b.
83 DP&L Ex. 4 (Schroder Direct) at 37, Joint Ex. 1 (Stipulation) at ¶16.c.

competitive suppliers to promote customer choice and grid modernization."[84] The Stipulation encourages cost-effective, timely, and efficient access to and sharing of customer data with robust provisions allowing access to such data at no fee for customers and at no fee during SGP Phase 1 for CRES providers and other third parties.[85] Moreover, DP&L will offer Electric Data Interchange and data access for CRES providers as part of its new Customer Information System (CIS) for billing and scheduling purposes[86] and through Green Button Connect My Data (GBC) for prospective and existing customers.[87]

The Stipulation advances the state policy to "[e]nsure that a customer's data is provided in a standard format and provided to third parties in as close to real time as is economically justifiable in order to spur economic investment and improve the energy options of individual customers."[88] In the Stipulation, DP&L commits to releasing customer energy-usage data only in accordance with applicable North American Energy Standards Board Energy Services Provider Interface standards and in compliance with all Ohio law.[89] Moreover, as stated above, DP&L will provide GBC data access to any authorized CRES or third party in the timeline associated with DP&L's new CIS.[90] These provisions will allow CRES providers and other third parties to access the most current

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84 R.C. 4928.02(O).

85 DP&L Ex. 4 (Schroder Direct) at 37, Joint Ex. 1 (Stipulation) at ¶¶ 10, 11, 11.a.vii. and 11.e.

86 DP&L Ex. 4 (Schroder Direct) at 37, Joint Ex. 1 (Stipulation) at ¶¶10.e. and 11.b.iv.

87 DP&L Ex. 4 (Schroder Direct) at 37, Joint Ex. 1 (Stipulation) at ¶11.b.

88 R.C. 4928.02(P).

89 DP&L Ex. 4 (Schroder Direct) at 38, Joint Ex. 1 (Stipulation) at ¶11.b.i.

90 DP&L Ex. 4 (Schroder Direct) at 38, Joint Ex. 1 (Stipulation) at ¶11.b.

customer data available, subject to authorization by the customer, so as to encourage development in innovative products and services for energy users.[91]

2. Retrospective SEET

On December 1, 2020, the Supreme Court of Ohio issued an opinion in an appeal taken from the Commission's determination that Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, FirstEnergy) did not have significantly excessive earnings under its ESP for calendar year 2017.[92] The Court concluded that the Commission's decision to exclude revenue resulting from FirstEnergy's Distribution Modernization Rider (DMR), which had been approved as part of the ESP, was not reasonable.[93] More specifically, the Court stated that "the commission's interpretation of R.C. 4928.143(F)—that it allows the exclusion of DMR revenue from the SEET—is not reasonable."[94] Accordingly, the Court reversed the Commission's orders and remanded the case for further review.[95] Further, the Court instructed the Commission to "conduct a new SEET proceeding in which it includes the DMR revenue in the analysis, determines the SEET threshold, considers whether any adjustments under R.C. 4928.143(F) are appropriate, and makes any other determinations that are necessary to resolve [the] matter" on remand.[96] The Stipulation subject to review

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[91] DP&L Ex. 4 (Schroder Direct) at 38, Joint Ex. 1 (Stipulation) at ¶11.b.iv.

[92] *In re Determination of Existence of Significantly Excessive Earnings for 2017 Under the Elec. Sec. Plan for Ohio Edison Co.,* Slip Opinion No. 2020-Ohio-5450.

[93] *Id.* at ¶ 3, 16.

[94] *Id.* at ¶ 16.

[95] *Id.* at ¶ 3, 65.

[96] *In re Ohio Edison*, supra, at ¶ 65.

in these consolidated proceedings includes the resolution of both the 2018 SEET Case and the 2019 SEET Case, the applications for which seek a Commission finding that the Company did not have significantly excessive earnings under R.C. 4928.143(F) for calendar year 2018 and 2019, respectively. Each of the applications, and the submitted supporting testimony, exclude the Company's DMR revenues from the necessary calculations. In the December 4, 2020 Entry the attorney examiner permitted the parties to submit separate, supplemental testimony regarding how the SEET test should be conducted in light of the Supreme Court of Ohio's recent decision in *In re Ohio Edison*.[97]

In this proceeding, Staff submitted testimony regarding the narrowly-focused issue regarding how the SEET test should be conducted in light of the Supreme Court of Ohio's recent decision in *In re Ohio Edison*.[98] The Ohio Revised Code guides the evaluation of Significant Excessive Earnings for DP&L and other Ohio Electric Distribution Utilities (EDUs). R.C. 4928.143(F) states that:

> with regard to the provisions that are included in an electric security plan under this section, the commission shall consider, following the end of each annual period of the plan, if any such adjustments resulted in excessive earnings as measured by whether the earned return on common equity of the electric distribution utility is significantly in excess of the return on common equity that was earned during the same period by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate. In making its determination of significantly excessive earnings under this division, the commission shall, for affiliated Ohio electric distribution utilities that operate under a joint electric security plan, use the total of the utilities' earned return on common equity. *Consideration also shall be*

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[97] December 4, 2020 Entry at ¶ 16.
[98] Staff Ex. 1 (Buckley Direct) at 2-3.

> *given to the capital requirements of future committed investments in this state*." (Emphasis added).[99]

In evaluating what is significantly excessive, the Commission considers additional factors, besides the earned return on equity (ROE) calculations.[100] The Commission considers certain factors, such as,

> the electric utility's most recently authorized ROE, the electric utility's risk, including the following: whether the electric utility owns generation; whether the ESP includes a fuel and purchased power adjustment or other similar adjustments; the rate design and the extent to which the electric utility remains subject to weather and economic risk; capital commitments and future capital requirements; indicators of management performance and benchmarks to other utilities; and innovation and industry leadership with respect to meeting industry challenges to maintain and improve the competitiveness of Ohio's economy, including research and development expenditures/investments in advanced technology, and innovative practices; and the extent to which the electric utility has advanced state policy.[101]

Under DP&L's ESP I there is not an established SEET threshold for 2018 and 2019.[102] From November 1, 2017 through December 18, 2019, DP&L operated pursuant to an approved ESP plan, which was initially filed on March 13, 2017 (ESP 3).[103] On November 21, 2019, the PUCO issued a supplemental order modifying ESP 3, and as a result DP&L filed a Notice of Withdrawal of its ESP 3 Application and requested to revert to the ESP rates that were in effect prior to ESP 3, the ESP 1 Rates.[104] The Notice

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99 R.C. 4928.143(F).

100 Staff Ex. 1 (Buckley Direct) at 4.

101 *In the Matter of the Investigation into the Development of the Significantly Excessive Earnings Test Pursuant to Amended Senate Bill 221 for Electric Utilities,* Case No. 09-786-EL-UNC, (Opinion and Order) (June 30, 2010) at page 29.

102 Staff Ex. 1 (Buckley Direct) at 5.

103 *Id.*

104 *Id.*

of Withdrawal was approved by the PUCO on December 18, 2019.[105] Under the ESP 1, a SEET threshold was not established.[106]

Staff calculated DP&L's 2018 and 2019 earnings by using information that DP&L provided in 2018 (Case No.19-1121-EL-UNC) and 2019 (Case No. 20-1041-EL-UNC) as part of its SEET filings.[107] Listed below are the ROEs for the 2018 and 2019 SEET filings with the DMR included in net income and no other exclusions or adjustments[108]:

	2018	**2019**
Net Income	$86,695	$125,042
DMR	$82,570	$70,596
Average Equity	$387,883	$459,324
ROE	22.35%	27.22%

Staff disagreed with DP&L's calculation of the SEET ROE.[109] As permitted in Section 4828.143(F) of the Revised Code, and stated in the Staff Report in Case No. 15-1830-EL-AIR, issued on March 3, 2018, Staff adopted the same hypothetical capital structure used in the previous rate case of 52.48 percent debt and 47.52 percent equity.[110] That changed the average equity and the ROEs as detailed below[111].

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105 *Id.*
106 *Id.*
107 *Id.* at 5-6.
108 *Id.* at 6.
109 *Id.*
110 *Id.*
111 *Id.* at 6-7.

Rate Case Capital Structure

	2018	**2019**
Net Income	$86,695	$125,042
DMR	$82,570	$70,596
Average Equity[112]	$532,875	$552,107
ROE	16.27%	22.65%

In evaluating earnings for the other electric distribution companies in Ohio, Staff uses adjusted financial information of the companies that make up the SPDR Select Sector Fund – Utility (XLU) (Comparable Group) and then applies an adder, which is the standard deviation of the average ROEs of the Comparable Group multiplied by 1.64 (using a 95 percent confidence threshold).[113] The sum of the average ROE of the Comparable Group when combined with the adder results in the earnings threshold.[114] Staffs use the components of XLU as its comparable group because XLU is the most widely traded utility electronically traded fund (ETF) and the components are selected by an independent third party that is not involved in this proceeding.[115] This independence removes any bias in selecting the comparable group.[116] That is one reason Staff would advocate having an independent party selecting the comparable companies.[117] In addition, Staff believes the use of XLU not only removes bias from the selection of the comparable

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112 *Id.* at Attachment 3.
113 *Id.* at 7.
114 *Id.*
115 *Id.*
116 *Id.*
117 *Id.*

group, but that it also fosters use of a simple and transparent process that produces consistent reasonable results.[118] Having more parties understand the process will allow greater participation in the review.[119] Finally, the Commission used this approach in multiple previous SEET cases to determine the comparable ROE.[120]

Staff also adopt the standard deviation approach in establishing the adder to the ROE because in previous SEET cases (Case No.11-4571-EL-UNC and Case No. 11-4572-EL-UNC), the Commission used this approach in establishing the adder to the XLU comparable group ROE.[121]

Using this methodology for the SEET, Staff determined that it would lead to a refund of approximately $3.7 million in 2018 and $57.4 million in 2019, as detailed below[122]:

Case No. 19-1121-EL-UNC

Calculation of Refund for DP&L Customers 2018		(000)
		Staff Threshold
(1)	SEET - Adjusted Net Income	$86,695
(2)	SEET - Adjusted Average Equity	$532,875
(3)	SEET - Earned ROE (1/2)	16.27%

118 *Id.*
119 *Id.* at 7-8.
120 *Id.* at 8.
121 *Id.*
122 *Id.* at 8-10.

(4)	SEET - Staff ROE Threshold[123]	15.73%
(5)	Allowed Income at the ROE Threshold (2*4)	$83,821
(6)	Excessive Net Income (1-5)	$2,874
(7)	Tax Gross Up Factor	1.28
(8)	Pre-Tax Revenue (6*7)	$3,678

Case No. 20-1041-EL-UNC

Calculation of Refund for DP&L customers 2019		(000)
		Staff Threshold
(1)	SEET - Adjusted Net Income	$125,042
(2)	SEET - Adjusted Average Equity	$552,107
(3)	SEET - Earned ROE (1/2)	22.65%
(4)	SEET - Staff ROE Threshold[124]	14.53%
(5)	Allowed Income at the ROE Threshold (2*4)	$80,221
(6)	Excessive Net Income (1-5)	$44,821
(7)	Tax Gross Up Factor	1.28
(8)	Pre-Tax Revenue (6*7)	$57,371

As stated in the Commission's June 30, 2010 order in Case No. 09-786-EL-UNC, shown above, the Commission will give due consideration to capital commitments and

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[123] *Id.* at Attachment 1.
[124] *Id.* at Attachment 2.

future capital requirements among other things.[125] Staff believes that DP&L or AES (DP&L's parent) have made capital commitments that should be given special consideration in these proceedings.[126] As outlined in the AES SEC 10-K report, DP&L is projecting to spend an estimated $621 million on capital projects from 2020 through 2022.[127] DP&L expects to finance this construction with a combination of cash on hand, short-term financing, long-term debt and cash flows from operations.[128] In December 2018, DP&L filed a Distribution Modernization Plan with the PUCO proposing to invest $576 million in capital projects over the next 20 years, which includes leveraging technologies to modernize and improve the sustainability of the grid, and enhancing customer experience and security, as well as to allow DP&L to leverage and integrate distributed energy resources into its grid, including community solar, energy storage, microgrids and electric vehicle charging infrastructure.[129]

The AES Corporation provided a capital contribution of $150 million to DP&L on June 26, 2020 to enable DP&L to improve its infrastructure and modernize its grid while maintaining liquidity.[130] In addition, as more fully described in DP&L's June 17, 2020 8-K filing, AES has provided a statement of intent to contribute an additional $150 million to DPL or DP&L in 2021 to enable smart grid investment.[131]

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125 *Id.* at 10.
126 *Id.*
127 *Id.*
128 *Id.*
129 *Id.*
130 *Id.*
131 *Id.* at 10-11.

Staff did not make any additional adjustments to DP&L's net income or equity.[132] Staff will typically use Moody's or S&P adjusted financial statements in calculating ROEs.[133] For any additional modifications Staff will wait for the Commission through its orders to instruct Staff to make alterations.[134] This is to increase transparency and remove bias in removing items suggested by the company or intervening parties.[135]

Overall, based on the AES Corporation's commitment to provide a capital contribution of $300 million to DP&L to improve its infrastructure and modernize its grid, Staff believes that DP&L has made a substantial commitment to invest in Ohio.[136] The investment exceeds what would be customary to maintain its system and therefore Staff believes that DP&L has satisfied the criteria of the SEET test and recommends that no refund is appropriate at this time.[137]

CONCLUSION

The Stipulation meets all prongs of the three-part test. The Commission should adopt the Stipulation as its order in this case.

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132 *Id.* at 11.
133 *Id.*
134 *Id.*
135 *Id.*
136 *Id.*
137 *Id.*

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Initial Post-Hearing Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via electronic mail upon the following Parties of Record, this 12th day of February, 2021.

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