BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the Dayton Power and Light Company for Approval of Its Plan to Modernize Its Distribution Grid.	)))	Case No. 18-1875-EL-GRD
In the Matter of the Application of the Dayton Power and Light Company for Approval of a Limited Waiver of Ohio Adm. Code 4901:1-18-06(A)(2).	))))	Case No. 18-1876-EL-WVR
In the Matter of the Application of the Dayton Power and Light Company for Approval of Certain Accounting Methods.	)))	Case No. 18-1877-EL-AAM
In the Matter of the Application of the Dayton Power and Light Company for Administration of the Significantly Excessive Earnings Test Under R.C. 4928.143(F) and Ohio Adm. Code 4901:1-35-10 for 2018.	))))	Case No. 19-1121-EL-UNC
In the Matter of the Application of the Dayton Power and Light Company for 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. 20-680-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

POST-HEARING BRIEF OF THE
THE OHIO ENERGY GROUP

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POST-HEARING BRIEF OF THE THE OHIO ENERGY GROUP

The Ohio Energy Group ("OEG") submits this Brief in support of its recommendations to the Public Utilities Commission of Ohio ("Commission") in these proceedings. Those recommendations are set forth below.

INTRODUCTION

On October 23, 2020, The Dayton Power and Light Company ("DP&L" or "Company") submitted the Stipulation and Recommendation ("Stipulation") that is now before the Commission for consideration. The Stipulation resolves these proceedings in a manner that is supported by Commission Staff and the vast majority of parties in this case, including the Company, OEG, the City of Dayton, Honda of America Mfg., Inc., University of Dayton, Industrial Energy Users-Ohio, Interstate Gas Supply, Inc./IGS Solar, LLC, The Kroger Co, Ohio Hospital Association, Ohio Manufacturers' Association Energy Group, Armada Power, LLC, ChargePoint Inc, Environmental Law & Policy Center, Mission:data Coalition, Natural Resources Defense Council, Ohio Environmental Council, Ohio Partners for Affordable Energy, The Smart Thermostat Coalition, and Sierra Club.

The Stipulation not only enjoys widespread support among the parties, but it also satisfies the Commission's traditional standard for reviewing proposed settlements. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings.[1] While not binding on the Commission, the terms of stipulations are accorded substantial weight.[2] The ultimate issue for the Commission's consideration is whether the agreement, which embodies significant time and effort by the Signatory Parties, is reasonable, and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

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

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

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

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to customers and public utilities.

As discussed below, the Stipulation satisfies this three-pronged test and the Commission should approve the Stipulation without modification.

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[1] Opinion and Order, Case No. 12-1230-EL-SSO (July 18, 2012) ("FirstEnergy ESP Order") at 24; Opinion and Order, Case No. 11-3549-EL-SSO (November 22, 2011) ("Duke ESP Order") at 41 (citing *e.g., Cincinnati Gas & Electric Co.,* Case No. 91-410-EL-AIR (April 14,1994); *Western Reserve Telephone Co*., Case No. 93-230-TP-ALT (March 30,1994); *Ohio Edison Co*., Case No. 91-698-EL-FOR, et al. (December 30,1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989), *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985)).

[2] Duke ESP Order at 41; FirstEnergy ESP Order at 24 (citing *Consumers' Counsel v. Pub, Util. Comm*., 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992) and *Akron v. Pub. Util. Comm.,* 55 Ohio St.2d 155,157, 378 N.E.2d 480 (1978))).

[3] Duke ESP Order at 41; FirstEnergy ESP Order at 24 (citing *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.,* (68 Ohio St.3d 559, 629 N.E.2d 423 (1994) and *Consumers' Counsel* at 126).

ARGUMENT

I. The Stipulation Satisfies the Commission's Three-Prong Test For Determining Whether A Settlement Is Reasonable And Should Be Adopted.

A. The Stipulation Is The Product Of Serious Bargaining Among Capable And Knowledgeable Parties

The parties supporting the Stipulation represent a wide variety of diverse interests, including the interests of the utility, Commission Staff, industrial customers, commercial customers, low-income residential customers, municipal customers, hospitals, a university, competitive retail electric suppliers, developers, and clean energy advocates. Most if not all of those parties have extensive experience in Commission matters and were represented by competent counsel. Moreover, the parties had ample time to review and analyze DP&L's proposals prior to settlement discussions. And significant compromises were made on behalf of many of the parties in order to reach a reasonable settlement in these proceedings. The Stipulation therefore satisfies the first prong of the Commission's test.

B. The Stipulation As A Package Benefits Customers And The Public Interest.

1. The Stipulation Results In A Far Better Outcome for Customers Than DP&L's Litigation Position.

In several major ways, the Stipulation is superior to DP&L's litigation position in these proceedings. For instance, the total grid modernization spend agreed upon by parties to the Stipulation is \$267.6 million, as compared to the \$866.9 million spend initially proposed by the Company – a nearly 70% reduction in the total cost to customers.[4] This less costly grid modernization plan is projected to provide net benefits exceeding \$867 million on a nominal basis and \$413 million on a net present value basis over 20 years, taking into account the societal benefits of the planned grid modernization investments and expenditures.[5] Such benefits include enhanced reliability, O&M savings, reduced energy and demand benefits, lower greenhouse gas emissions, and economic development/job

[4] Tr. Vol. III (January 13, 2021) at 522:12-18.

[5] Stipulating Parties Exhibit 1 (Stipulation and Recommendation) Ex. 4, Fig. 2.

creation.[6] Additionally, the Stipulation ensures that any grid modernization costs spent by DP&L in order to provide these benefits will be subject to stringent audit requirements that were not proposed in DP&L's application.[7]

The Stipulation also effectively ends the most controversial provision of DP&L's ESP - the Rate Stability Charge ("RSC") – once the current ESP concludes. Specifically, the Stipulation prevents the Company from seeking 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 credit ratings, debt, or financial performance of any parent or affiliated company of DP&L" in its next ESP application.[8] This additional customer protection represents a significant concession by DP&L.

Further, several supplemental provisions in the Stipulation bolster the customer benefits derived from this proceeding, including provisions important to large energy-intensive customers in DP&L's territory, particularly reinstatement of the $4/MWh economic development incentive approved by the Commission in the Company's last ESP proceeding.[9] This provision, which allows for economic development credits to large customers in DP&L's service territory calculated based upon their energy usage, incentivizes large energy-intensive customers to increase their production in order to receive an increased credit, encouraging additional production and job retention/growth in the DP&L service territory. Indeed, the only major modification to the previous version of this provision - which the Commission found to be reasonable and approved - is that the economic development incentive would now be funded by shareholders, rather than other DP&L customers. Approval of the Stipulation therefore would commit DP&L to financially promote Ohio's ability to create and retain jobs in the Dayton region at no additional cost to the Company's other customers.

The Stipulation also includes several other DP&L shareholder-funded commitments aimed at helping residential customers conserve energy through weatherization, smart thermostat, and water heater programs as well

[6] DP&L Ex. 4 at 21-23.

[7] DP&L Ex. 4 (Direct Testimony of Sharon R. Schroder in Support of the Stipulation and Recommendation) at 25.

[8] Stipulating Parties Exhibit 1 at 45-46.

[9] Stipulating Parties Exhibit 1 at 35-37; Opinion and Order, Case Nos. 16-395-EL-SSO *et al*. (October 20, 2017) at 8-9.

as financial contributions to the Dayton region, which has been hit hard by both natural disasters and the COVID-19 pandemic. In the absence of the Stipulation, these benefits to customers may not be realized.

2. The Stipulation Correctly Asserts That DP&L's ESP Is More Favorable In The Aggregate Than An MRO.

The Stipulation allows for retention of DP&L's current ESP through at least 2023, which promotes rate certainty and enables accelerated grid modernization. It also maintains regulatory efficiency. For example, use of the Infrastructure Investment Rider ("IIR") – an ESP rate mechanism – to flow through operational savings resulting from grid modernization means that customers will receive those savings more quickly than they would if the savings were addressed in some future DP&L base distribution rate case.[10]

More broadly, the qualitative benefits of ESPs, including DP&L's ESP, weigh heavily in favor of retaining the ESP model rather than pursuing an MRO approach. As DP&L cited, some of these benefits include: 1) preventing rate shock through gradual recovery of certain costs rather than through periodic base rate cases;[11] 2) maintaining the protection of customers from excessive rates via the significantly excessive earnings test;[12] 3) guarding against the *"death spiral"* that could occur as the burden of an increasing bypassable MRO financial integrity charge is levied on a smaller and smaller base of non-shopping customers;[13] and 4) avoiding the irreversibility of the MRO approach.[14] Most critically, retaining the ESP model, as the Commission has repeatedly done, preserves the Commission's broad authority to approve a myriad of rate mechanisms that would otherwise be unavailable in the context of an MRO and that can provide substantial benefits to customers, including mechanisms to enhance reliability, provide rate stability, modernize the grid, and facilitate economic development in Ohio. The Stipulation therefore satisfies the second prong of the Commission's test.

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[10] DP&L Ex. 4 at 24.

[11] DP&L Ex. 1B (Direct Testimony of R. Jeffrey Malinak) at 14:19-23.

[12] DP&L Ex. 1B at 14:9-11.

[13] DP&L Ex. 1B at 14:3-15:12.

[14] DP&L Ex. 1B at 14:11-12.

C. The Stipulation Does Not Violate Any Important Regulatory Principle Or Practice.

None of the individual provisions of the Stipulation is inconsistent with or violates any important Commission principle or practice. Rather, the Stipulation advances important policies and principles, including encouraging innovation for cost-effective retail electric service, ensuring the availability to customers of adequate and reliable service, protecting at-risk populations, and facilitating the state's effectiveness in the global economy. The Stipulation therefore satisfies the third prong of the Commission's test.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Commission should approve the Stipulation.

Respectfully submitted,

/s/ Michael L Kurtz

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing was served upon the persons listed below via electronic transmission this 12th day of February, 2021.

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