BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company D/B/A AES Ohio for Approval of Its Electric Security Plan.	:	Case No. 22-900-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company D/B/A AES Ohio for Approval of Revised Tariffs.	:	Case No. 22-901-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company D/B/A AES Ohio for Approval of Accounting Authority Pursuant to R.C. 4905.13.	:	Case No. 22-902-EL-AAM

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

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On Behalf of the Staff of the
Public Utilities Commission of Ohio

Date: May 26, 2023

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This initial post-hearing brief represents Staff of the Public Utilities Commission of Ohio's ("Staff") position regarding Dayton Power and Light Company's d/b/a AES Ohio ("AES Ohio" or the "Company") latest Standard Service Offer application ("ESP IV"). AES Ohio proposes new riders in its application, and also proposes modifications to some existing riders. Staff believes that, considering the Stipulation's improvements upon the original application, the Commission should approve the Stipulation.

The Commission is presented with a near-unanimous Stipulation and Recommendation (Stipulation) that Staff believes resolves this case in a manner that meets the Commission's three-part test for approving stipulations. The evidence presented by the signatory parties shows that the Stipulated terms meet the statutory criteria for approval, and all riders agreed upon in the Stipulation are authorized by law. For these reasons and the reasons set forth in greater detail, *infra*, the Commission should approve the Stipulation in this case.

I. FACTS

On September 26, 2022, AES Ohio filed an Application for a standard service offer (SSO) pursuant to R.C. 4928.141 ("Application"). The Application was for approval of an electric security plan (ESP), in accordance with R.C. 4928.143, for the period of July 1, 2023, through June 31, 2026. *In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Approval of its Electric Security Plan*, Case Nos. 22-900-EL-SSO, et al. ("*ESP 4 Case*").

In that Application AES Ohio seeks approval of a Standard Offer Rate pursuant to R.C. 4928.143(B)(1). The Standard Offer Rate represents AES Ohio's retail generation charge as a result of its auctions. The Standard Offer Rate includes over- or under-recovery of supply costs associated with a capacity bidding program and recovery of costs to administer and implement the auctions. The Application requested approval of several riders and tariffs:

<u>1. Distribution Investment Rider ("DIR"):</u> AES Ohio plans to invest in its distribution system during the ESP 4 period, which AES Ohio asserts is necessary to improve its reliability metrics and provide reliable service to customers.

2. Proactive Reliability Optimization Rider (“PRO”): AES Ohio states that it needs to increase its spending on vegetation management to be able to provide reliable service to customers.

3. Economic Development Incentive Tariff: AES Ohio plans to implement economic development programs to benefit the greater Dayton area community by incentivizing new development and expanding customers to create or retain jobs. AES Ohio proposes to use an approved tariff that would not require any additional approvals after a service agreement is signed by AES Ohio and any customer utilizing the incentive.

4. Regulatory Compliance Rider (“RCR”): AES Ohio seeks approval of a Regulatory Compliance Rider ("RCR") pursuant to R.C. 4928.143(B)(2)(h) to recover certain regulatory assets.

5. Consumer Programs Rider (“CPR”): AES Ohio applied for Commission approval to implement Electric Vehicle and Demand Side Management programs.

6. Green Energy Alternative (“GEA”) Tariff: AES Ohio sought to implement a program through which it can work with interested nonresidential customers to install renewable energy resources pursuant to R.C. 4928.47.

7. Distribution Decoupling Rider (“DDR”): AES Ohio sought to implement a decoupling mechanism for AES Ohio, which was withdrawn as part of the Stipulation negotiations.

8. Storm Cost Recovery Rider (“SCRR”): AES Ohio applied to continue its Storm Cost Recovery Rider ("SCRR") pursuant to R.C. 4928.143(B)(2)(h). This rider authorizes

recovery of operation and maintenance costs related to restoring service and repairing distribution facilities after severe storms.

9. Infrastructure Investment Rider ("IIR"): AES Ohio sought to continue its Infrastructure Investment Rider ("IIR") for recovery of investments and expenses related to the Company's SmartGrid Plan.

10. Energy Efficiency Rider ("EER"): AES Ohio applied to continue its Energy Efficiency Rider pursuant to R.C. 4928.64 and 4928.66 to recover the cost of prior energy efficiency programs that require a final reconciliation.

11. Tax Savings Credit Rider ("TSCR"): As part of its ESP plan, AES Ohio sought to continue its Tax Savings Credit Rider ("TSCR"), which refunds electric distribution benefits resulting from the Tax Cuts and Jobs Act of 2017.

12. Transmission Costs Recovery Rider ("TCRR"): AES Ohio seeks to continue its Transmission Cost Recovery Rider ("TCRR") for the purpose of recovering transmission-related costs charged by FERC or PJM.

By Entry dated November 21, 2022, a procedural schedule was established. A local public hearing was held on February 2, 2023; and by later Entry an evidentiary hearing was set to commence on May 2, 2023, at the PUCO.

On April 10, 2023, a Stipulation was filed by the Company and numerous parties, with the Office of the Ohio Consumers Counsel ("OCC") as the only party opposed to the Stipulation. The Stipulation provided that the parties had a limited carve-out for litigating changes to the Company's competitive bid process or changes to the company's Master Service Agreement.

Prior to the evidentiary hearing, the Company submitted prefiled testimony from witnesses Carrie Inman,[1] Patrick Donlon,[2] Mark Houdek,[3] Claire Hale,[4] Mark Vest, Robert Adams,[5] Edward Schmidt, Zac Elliott, and Sharon Schroder.[6] Constellation NewEnergy, Inc. ("Constellation") witness Muralikrishna Indukuri testified as to Constellation's preferred changes to the auction process.[7] Staff witnesses Timothy Benedict,[8] Natalia Messenger,[9] Jonathan Borer,[10] and Jacob Nicodemus[11] filed testimony on behalf of Staff in support of the Stipulation.

II. LAW AND ARGUMENT

R.C. 4928.143 sets out the requirements for an ESP. An ESP must include provisions relating to the supply and pricing of generation service. R.C. 4928.143(B). An ESP may also provide for the automatic recovery of certain costs, as set forth in R.C. 4928.143(B)(2).

In addition, the Commission is required to approve, or modify and approve the ESP if the ESP, including its pricing and all other terms and conditions, including deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply in a Market Rate Offer (MRO) under

1 Direct Testimony of Carrie Inman ("Inman Testimony").
2 Direct Testimony of Patrick Donlon ("Donlon Testimony").
3 Direct Testimony of Mark Houdek ("Houdek Testimony").
4 Direct Testimony of Claire Hale ("Hale Testimony").
5 Direct Testimony of Robert Adams ("Adams Testimony").
6 Direct Testimony of Sharon Schroder ("Schroder Testimony").
7 Direct Testimony of Muralikrishna Indukuri ("Indukuri Testimony").
8 Direct Testimony of Timothy Benedict ("Benedict Testimony").
9 Direct Testimony of Natalia Messenger ("Messenger Testimony").
10 Direct Testimony of Jonathan Borer ("Borer Testimony").
11 Direct Testimony of Jacob Nicodemus ("Nicodemus Testimony").

Section 4928.142 Revised Code. R.C. 4928.143(C)(1). Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation, as they have here. Although not binding upon the Commission, the terms of such agreements are to be accorded substantial weight.[12]

The Commission's standard of review when considering a stipulation ultimately turns on whether the agreement is reasonable and should be adopted by the Commission. 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?

The Ohio Supreme Court has endorsed the three-part test as a manner of resolving Commission cases, including SSO cases.[13] When the Commission reviews a contested stipulation, as is the case here, the Court has also been clear that the requirement of evidentiary support for the provisions of the stipulation remains in place.[14]

Here, Company witness Inman attests to the CPR and Economic Development Incentive Tariff. Witness Donlon attests to the RCR, SCRR, and the GEA tariff. Witness

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[12] *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123,125,592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm*., 55 Ohio St.2d 155,157, 378 N.E.2d 480 (1978).

[13] *Indus. Energy Consumers v. Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St. 3d 559.

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

Adams attests to the scope of the DIR and PRO riders and how they will be audited. Moreover, Staff reviewed the costs associated with the RCR, including a prudence audit, where appropriate, led by Staff witness Jonathan Borer.[15]

A. The Settlement Satisfies the Three-Part Test for Commission Stipulations

The Signatory Parties agree that the Stipulation satisfies the three-part test used by the Commission to consider stipulations.[16] In support of the Stipulation, the Company filed the testimony of Sharon Schroder, and Staff filed the testimony of Natalia Messenger.

1. The Settlement Is A Product of Serious Bargaining Among Capable, Knowledgeable Parties.

Here, there was serious bargaining among capable and knowledgeable parties prior to the signing of the Stipulation. The parties engaged in a number of settlement discussions, including meetings with Staff and individual stakeholder groups and in negotiations including all intervening parties. The list of signatory parties is large and represents diverse interests: AES Ohio; Staff; Ohio Partners for Affordable Energy; the City of Dayton; Ohio Energy Leadership Council; Ohio Energy Group; Ohio Hospital Association; University of Dayton; The Kroger Company; Walmart Inc.; IGS Energy; Ohio Manufacturers' Association Energy Group; The Retail Energy Supply Association;

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15 Borer Testimony p. 3-6.
16 Joint Ex. 1 at 39.

Constellation Energy Generation, LLC and Constellation NewEnergy, Inc.; ChargePoint, Inc.; and Armada Power, LLC all signed the Stipulation.

Moreover, the Citizens' Utility Board of Ohio; Ohio Environmental Council; and One Energy Enterprises, Inc. were all non-opposing parties.

As Ms. Schroder attests, fifteen all-party bargaining sessions were held, at which all parties were able to make comments or ask questions.[17] AES Ohio further documents the significant discovery interchange between the parties throughout the proceedings and leading up to the Stipulation.[18]

While the Stipulation was signed by groups representing a wide variety of customer classes and interests, there is no requirement that a stipulation be executed by a diverse group of stakeholders in order to meet the public interest prong. Nor does OCC's decision not to sign the Stipulation somehow, in and of itself, overcome the first prong of the test. As the Commission has held:

> The three-prong test utilized by the Commission and recognized by the Ohio Supreme Court does not incorporate the diversity of interest component, as presented by OCC and APJN. We reject OCC/APJN's attempt to revise the test to evaluate stipulations based on the diversity of signatory parties. . . . The Commission has repeatedly determined that we will not require any single party, including OCC, to agree to a stipulation, in order to meet the first prong of the three-prong test. *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 13-1571-GA-ALT, Opinion and Order (Feb. 19, 2014) at 10; *In re FirstEnergy*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 26, citing *Dominion Retail, Inc. v. The Dayton Power and Light Co.*, Case No. 03-2405-EL-

[17] Schroder Testimony p. 5.
[18] Schroder Testimony p. 7.

CSS, et al., Opinion and Order (Feb. 2, 2005), Entry on Rehearing (Mar. 23, 2005) at 7-8.[19]

Furthermore, OPAE is a signatory party to the Stipulation, and the Commission has previously considered OPAE an advocate on behalf of low and moderate-income residential customers.[20] As in that case, OCC was invited to and participated in negotiations. As in that case, OPAE is a signatory party to the Stipulation here. OCC's opposition to the Stipulation does not entail the Commission's denial of the Stipulation.

2. The Stipulation Benefits Ratepayers and the Public Interest.

In addition to having diverse support among intervening parties, the Stipulation benefits ratepayers and the public interest. As AES Ohio witness Schroder testifies and Staff witness Messenger accords, the DIR and PRO, in particular, will increase reliability and allow for long-needed investments by the Company, which states that it is experiencing financial instability.[21] Improving reliability is in and of itself beneficial to the public: AES Ohio has missed its CAIDI targets for 2019-2022,[22] and Staff witness Nicodemus states that improving reliability is in the interests of customers.[23] AES Ohio states in uncontroverted testimony that it has not had the funds to allow it to "manage vegetation on its distribution lines consistent with its vegetation management plan,"

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19 *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case Nos. 14-1693-EL-RDR and 14-1694-EL-AAM.

20 *See, e.g., In re FirstEnergy*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 26.

21 Schroder Testimony p. 8., Messenger Testimony p. 4-5.

22 Schroder Testimony p. 8, Nicodemus Testimony p. 4.

23 Nicodemus Testimony p. 5-6.

which the PRO is intended to remedy.[24] As the Company states, improved reliability will also result from AES Ohio's plans to invest in its distribution and transmission systems during the term of the ESP via equity infusions from its parent company, meaning not all costs will be borne by ratepayers.[25]

The Stipulation further benefits a number of stakeholders with new funding. As Staff witness Messenger attests, the Stipulation contains a Customer Programs Rider (CPR) that will benefit ratepayers and the public interest by focusing funding on low-income assistance programs.[26] In aid of economic growth in the Dayton area, the Stipulation also proposes Economic Development Incentives intended to encourage projects for new or expanding non-residential customers by providing an efficient process for these developing businesses to enter into a Service Agreement with AES Ohio.[27] Economic development brings jobs to the Company's service territory and, in the long run, grows ratepayer base. Importantly, the Stipulation also caps the revenue to be collected from ratepayers for providing these incentives.[28]

Changes to the DIR enacted by the Stipulation also benefit the public interest. In the Stipulation, AES Ohio has agreed to revenue caps on the DIR, and to lower those caps if it does not achieve specified reliability targets.[29] Moreover, AES Ohio has agreed to file a new base distribution rate case on or before December 31, 2025 or the DIR will

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24 Schroder Testimony p. 8.
25 Schroder Testimony p. 9.
26 Messenger Testimony p. 6.
27 Messenger Testimony p. 7.
28 Messenger Testimony p. 5.
29 Stipulation § XX.

sunset and be set to zero on January 1, 2026. This incentivizes a rate case filing by the Company.[30]

Likewise, improvements in the auction process provide a significant benefit to ratepayers by avoiding the likelihood of price spikes which may severely affect ratepayers. AES agrees to reinstate laddering, which will also lower the risk that auction prices will be set during a price spike.[31] In addition, the Stipulation preserves the right of Signatory Parties to advocate for what they consider to be improvements to the competitive bidding process, resolution of which reduces regulatory risk going forward and thus benefits the public interest.

While this brief does not purport to cover every benefit of the Stipulation, several additional important benefits include:

- Holding AES Ohio to a Significantly Excessive Earnings Test (SEET) threshold of 13% during the term of the ESP.[32]
- Meeting with the members of the Grid Mod Implementation Update Group to discuss converting the results of the SSO auction into retail rates that include on-peak and off-peak pricing.[33]
- Developing a proactive distribution maintenance plan to improve AES Ohio's reliability.[34]

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30 Schroder Testimony p. 16-17.
31 Schroder Testimony p. 16-17.
32 Stipulation § XX.
33 Stipulation § III.D.
34 Stipulation § IV.L. and Exhibit 2 to the Stipulation.

- Implementing a Green Energy Alternative Tariff to offer customer-sited renewable energy resources for mercantile customers pursuant to R.C. 4928.47. Stipulation § X. In AES Ohio's next distribution rate case, it will evaluate costs to serve customers with large, distributed generation facilities.[35]
- Providing customer data to CRES providers (with customer consent) and third-party aggregators so that customers can participate in the PJM ancillary services market, which may confer significant customer savings in the long run.[36]
- Eliminating a $25 fee to reconnect a customer when the customer can be reconnected remotely. AES Ohio also agrees to eliminate fees for customers to switch to/from CRES providers.[37]
- Billing transmission costs to non-residential customers based upon their contribution to AES Ohio's Network Service Peak Load ("NSPL"), starting in 2025. By billing customers on their NSPL contribution, AES Ohio will allow customers to manage their transmission bills by shifting their usage off-peak, which will benefit all customers.[38]
- Before AES Ohio’s next rate case, AES Ohio will meet with interested Signatory Parties to discuss potential rate structure for non-residential

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[35] Stipulation § XII.
[36] Stipulation § XIII.B.
[37] Stipulation § XIV; Stipulation § XXVI.
[38] Stipulation § XVI.

customers with low energy utilization, including but not limited to EV charging stations.[39]

These benefits weigh in favor of a finding that the Stipulation, as a whole, benefits the public interest. Moreover, they serve as the factual predicates that demonstrate that the MRO statutory test is satisfied, an issue covered in more detail, *infra*.

3. The Stipulation Does Not Violate any Important Regulatory Principle or Practice.

The General Assembly is clear about the policies it intends to promote through electric regulation restructuring and has provided a list of these policies in R.C. 4928.02. The Commission has recognized that the state policy codified by the General Assembly in Chapter 4928, Revised Code, sets forth important objectives. And it has determined that, in determining whether an ESP meets the requirements of R.C. 4928.143, it will take into consideration the policy provisions of R.C. 4928.02, and use those policies as a guide in its implementation of R.C. 4928.143.

The Stipulation complies with all relevant and important regulatory principles and practices. R.C. 4928.02 provides guidelines for the Commission to weigh in evaluating an electric distribution utility's SSO. The Stipulation, as outlined in greater detail, *supra*, ensures the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service. The stipulation terms are authorized by Ohio law, *supra*. And the Stipulation will ensure that AES Ohio has the appropriate programs and infrastructure to provide reliable and sufficient supply of retail

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[39] Stipulation § XXII.

electric service for its customers, with reliability benchmarks as part of the DIR that ensure the Company's and customers' expectations are aligned.

B. The Stipulated-to ESP Passes the ESP vs. MRO Test

Section 4928.143, Revised Code, sets out the requirements for approval of an ESP. The statute provides that the Commission is required to approve, or modify and approve the ESP, if the ESP, including its pricing and all other terms and conditions, including deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under R.C. 4928.142 (MRO Test). The Supreme Court of Ohio has determined that R.C 4928.143(C)(1) does not bind the Commission to a strict price comparison, but rather instructs the Commission to consider pricing, as well as all other terms and conditions.[40] Therefore, the Stipulation as a total package should be considered, including both a quantitative and qualitative analysis.

The record demonstrates that the Stipulation is, in fact, more favorable to customers, evaluated from a quantitative and a qualitative perspective, than would be expected of an MRO, and should be approved. Compliance with the MRO Test is backed by Staff witness Messenger, who considered both quantitative and qualitative factors included as part of the Stipulation, including the fact that reliability will be increased.[41] Messenger states that, when balancing those factors, the benefits added by the ESP outweigh any added costs, should the Commission find any.[42] Messenger states that

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40 *Columbus S. Power Co.*, 128 Ohio St.3d 402, 2011-Ohio-958, 945 N.E.2d 501.
41 TR. Vol. II, p. 604; Messenger Testimony p. 7-9.
42 Messenger Testimony p. 7-9.

because the Stipulation provides for the SSO load to be procured through a competitive bidding process, “there is no difference between market-based SSO rates under an ESP or an MRO.”[43] While the Stipulation includes riders that would not be present in an MRO, the Commission has consistently found that the revenue requirements for such distribution-related riders is “considered to be the same whether recovered through the ESP or through a distribution rate case conducted in conjunction with an MRO.”[44] Even when considering capital investments recovered through capital riders such as the DIR proposed here, the Commission has held that those investments "would be recovered to an equal extent through either riders or through distribution rates, provided that the property is used and useful.”[45]

Moreover, as witness Messenger made clear in her testimony at hearing, for certain costs, approving a cost recovery mechanism in an ESP is preferable to approving deferrals that may later be included in a base rate case. Rider mechanisms allow Staff to audit the cost annually and reconcile what the Company is actually spending with what it's recovering, which is not present if deferrals are recovered in base rates.[46]

A quantitative benefit of the ESP, that would not be present in an MRO, includes a provision withdrawing Case No. 20-140-EL-AAM, resulting in the elimination of the risk

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43 Messenger Testimony p. 8; see also Malinak Testimony p. 16: “Under both the proposed ESP 4 and an MRO, I assume that electricity supply charges reflect AES Ohio's Competitive Bidding Plan ("CBP") electricity supply rates. AES Ohio's CBP rates are derived based on the results of a competitive auction that awards wholesale electricity suppliers the right and obligation to supply AES Ohio's SOR 19 customers for a future period (1-3 year of supply obligations). Consequently, the SOR rates will be the same under both ESP 4 and a hypothetical MRO.”

44 *In re Duke Energy Ohio*, Case No. 17-1263-EL-SSO, Opinion at ¶289 (Dec. 19, 2018).

45 *In re AEP Ohio,* Case No. 16-1852-EL-SSO, Opinion at ¶267 (April 25, 2018).

46 TR Vol. II, p. 602.

of ratepayers paying more than $51 million for past decoupling amounts.[47] Staff further maintains that the Stipulation provides several important qualitative benefits to ratepayers, including those discussed in greater detail above, such as investments focused on reliability improvements, low-income assistance programs, and economic development programs.[48]

Moreover, the Company, through witness Malinak, asserts that the Company is in financial stress, and has cited evidence that AES Ohio's credit ratings were at the “lower end of investment grade” and a “low grade for a regulated Transmission and Distribution utility.”[49] Allowing the Company to improve its financial standing, and thus its long-term cost of debt, is a benefit of approval of the Stipulation.

III. CONCLUSION

For the above-stated reasons, the Commission should approve the Stipulation agreed to in this case.

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47 Messenger Testimony p. 8.
48 Messenger Testimony p. 9.
49 Malinak Testimony p. 8.

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On Behalf of the Staff of the
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Post-Hearing Brief**, submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via electronic mail upon the below parties, this 26th day of May, 2023.

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