

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton) Case No. 22-900-EL-SSO
Power and Light Company d/b/a AES Ohio for)
Approval of Its Electric Security Plan.)
)

In the Matter of the Application of The Dayton)
Power and Light Company d/b/a AES Ohio for) Case No. 22-901-EL-ATA
Approval of Revised Tariffs.)
)

In the Matter of the Application of Dayton)
Power and Light Company d/b/a AES Ohio for) Case No. 22-902-EL-AAM
Approval of Accounting Authority Pursuant to)
Ohio Rev. Code § 4905.13.)

**JOINT POST-HEARING REPLY BRIEF
OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP
AND
THE KROGER CO.**

Respectfully submitted,

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I. INTRODUCTION

As demonstrated through record evidence and explained in the initial post-hearing briefs filed by the majority of the parties, the Stipulation and Recommendation filed on April 10, 2023 (Stipulation)¹ is just and reasonable and satisfies the Public Utilities Commission of Ohio's (Commission) three-part test, and, therefore, should be adopted in its entirety without modification. More specifically, the Stipulation resolving the Dayton Power and Light Company d/b/a AES Ohio's (AES) September 26, 2022 application (Application)² to implement a fourth

¹ See Signatory Parties Ex. 1 (Joint Stipulation and Recommendation (Stipulation)) (April 10, 2023).

² AES Ex. 4 (AES Ohio's Application (Application)) (September 26, 2023).

Electric Security Plan (ESP IV) is, as a package, reasonable, serves the public interest, benefits ratepayers, and does not violate any important regulatory principles or practices.

As noted in the initial briefs, following months of robust and lengthy settlement negotiations, as well as extensive discovery by many intervening parties, the Signatory and Non-Opposing Parties filed a settlement on April 10, 2023.³ All participating parties—except one—agreed to either join or not oppose the Stipulation. The Signatory Parties include Staff of the Commission (Staff), the Ohio Manufacturers’ Association Energy Group (OMAEG), The Kroger Co. (Kroger), AES, Ohio Energy Group (OEG), Ohio Energy Leadership Council (OELC), Retail Energy Supply Association (RESA), Ohio Partners for Affordable Energy (OPAE), the City of Dayton, Interstate Gas Supply, Inc. (IGS), Walmart Inc. (Walmart), Ohio Hospital Association (OHA), University of Dayton, Armada Power, LLC, ChargePoint, Inc., and Constellation Energy Generation and Constellation NewEnergy, Inc. (collectively, Constellation).⁴ Additionally, One Energy Enterprises Inc., Citizens Utility Board of Ohio, and the Ohio Environmental Council joined the Stipulation as Non-Opposing Parties.⁵ As the briefs highlight, the only party that opposed the Stipulation was the Office of the Ohio Consumers’ Counsel (OCC).⁶

³ Joint Post Hearing Brief of The Ohio Manufacturers’ Association Energy Group and The Kroger Co. at 4 (May 26, 2023) (OMAEG/Kroger Brief); Initial Post Hearing Brief of The Dayton Power and Light Company at 2–3 (May 26, 2023) (AES Brief); Post-Hearing Brief of Staff at 8 (May 26, 2023) (Staff Brief); Initial Post-Hearing Brief of Ohio Energy Leadership Council at 2 (May 26, 2023) (OELC Brief); Initial Brief of Retail Energy Supply Association at 2–3 (May 26, 2023) (RESA Brief); Initial Post-Hearing Brief of Interstate Gas Supply, LLC at 6–7 (May 26, 2023) (IGS Brief); and Initial Post-Hearing Brief of Walmart Inc. at 3–4 (May 26, 2023) (Walmart Brief). *See also* Signatory Parties Ex. 1 at 2–3, 40–42 (Stipulation).

⁴ OMAEG/Kroger Brief at 4; AES Brief at 3; Staff Brief at 7–8; Post-Hearing Brief of Ohio Energy Group at 1–2 (May 26, 2023) (OEG Brief); IGS Brief at 3; and Walmart Brief at 1–2. *See also* Signatory Parties Ex. 1 at 40–41; AES Ex. 1 at 4–5 (Schroder Direct) (April 10, 2023).

⁵ OMAEG/Kroger Brief at 4; AES Brief at 3; Staff Brief at 7–8; OEG Brief at 1–2; and Walmart Brief at 1–2. *See also* Signatory Parties Ex. 1 at 42 (Stipulation); AES Ex. 1 at 5 (Schroder Direct).

⁶ OMAEG/Kroger Brief at 4; AES Brief at 1; Staff Brief at 8–9; OELC Brief at 1; Joint Initial Brief of Ohio Partners for Affordable Energy and City of Dayton at 1 (May 26, 2023) (OPAE/Dayton Brief); IGS Brief at 7; and Walmart Brief at 2.

Following the presentation of evidence in support of the Stipulation at the evidentiary hearing, the Commission directed interested parties to submit initial post-hearing briefs by May 26, 2023, and reply briefs by June 5, 2023. A number of parties, including OMAEG and Kroger, AES, Staff, OEG, OELC, RESA, OPAE and the City of Dayton, IGS, Walmart, and Constellation submitted initial briefs urging the Commission to adopt the Stipulation as just and reasonable. As explained by the Signatory Parties, the Stipulation resolves issues related to AES' Application in a manner that, as a package, is just and reasonable, serves the public interest, benefits ratepayers, and does not violate any important regulatory principles or practices.

OCC, the only party opposing the Stipulation submitted its initial brief arguing against adoption of the Stipulation.⁷ However, the arguments offered by OCC should fail as they ignore the extensive, fair, and open bargaining process between capable and knowledgeable parties that culminated into the Stipulation. OCC also ignores the majority of the terms of the Stipulation, which, as a package, provide benefits to ratepayers and the public interest, and comply with Ohio law and Commission regulations. Instead, OCC misinterprets the meaning of the word knowledgeable as part of the Commission's three-part test, and attempts to argue that certain provisions in the Stipulation are unreasonable when considered in isolation. However, the Commission's analysis of a stipulation does not consider provisions in isolation. Rather, the Commission determines whether a stipulation, as a *package*, benefits ratepayers and the public interest.

As noted by the Signatory Parties, "the ultimate issue for the Commission's consideration is whether the agreement, which embodies considerable time and effort by the Signatory Parties,

⁷ Initial Brief by the Office of the Ohio Consumers' Counsel (May 30, 2023) (OCC Brief).

is reasonable and should be adopted.”⁸ The manifest weight of the record evidence in this case demonstrates that the Stipulation, as a package, satisfies the criteria established by the Commission’s three-part test for evaluating the reasonableness and lawfulness of a settlement. As was demonstrated at the evidentiary hearing and as explained by Signatory Parties in their initial briefs, the Stipulation is a product of serious bargaining among capable and knowledgeable parties; will create significant benefits for customers, and, as a package, is in the public interest; and does not violate any important regulatory principles or practices. Therefore, OMAEG and Kroger respectfully request that the Commission reject OCC’s arguments and adopt the Stipulation in its entirety.

II. ARGUMENT

As supported by the initial briefs filed in this case, the manifest weight of the record evidence demonstrates that the Stipulation, as a package, is just and reasonable and benefits the public interest. Therefore, it satisfies the Commission’s three-part test for evaluating settlements and determining whether to adopt a stipulation. The Supreme Court of Ohio has endorsed the Commission’s use of this three-part test “to resolve cases in a manner economical to ratepayers and public utilities” and has “affirmed that the Commission may place substantial weight on the terms of a stipulation.”⁹ As part of its evaluation, the Commission considers the following:

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?

⁸ AES Brief at 2. *See also* Staff Brief at 6; OEG Brief at 2; and Walmart Brief at 2.

⁹ *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), *citing* *Consumers’ Counsel v. Public Util. Comm.*, Ohio St.3d 123, 126, 592 N.E.2d 1370, 1373 (1992).

3. Does the settlement package violate any important regulatory principle or practice?¹⁰

As was demonstrated in the initial briefs, a large and diverse group of capable and knowledgeable parties participated in numerous settlement meetings in this proceeding, over the course of several months, where all parties engaged in negotiations regarding AES' proposed riders, tariffs, and other programs.¹¹ These settlement meetings ultimately led to the almost unanimous Stipulation, which expeditiously and equitably resolves all of the issues in this proceeding in a way that benefits ratepayers and the public interest, and does not violate any important regulatory principles or practices.¹² Therefore, as demonstrated at the evidentiary hearing and as supported by the Signatory Parties' initial briefs, the Stipulation satisfies the Commission's three-part test and should be adopted by the Commission in its entirety.¹³

A. The Stipulation is the product of serious bargaining among capable, knowledgeable parties.

Contrary to OCC's claims, the record in this case and the Signatory Parties have clearly demonstrated that the Stipulation is the product of serious, extensive, and robust bargaining between a large and diverse group of parties represented by capable, experienced, and knowledgeable counsel. Therefore, the Stipulation satisfies the Commission's first prong.

¹⁰ *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125–26 (1992).

¹¹ OMAEG/Kroger Brief at 8–10; AES Brief at 2–4; Staff Brief at 7–9; OEG Brief at 3; OELC Brief at 2; RESA Brief at 2–3; OPAGE/Dayton Brief at 3–4; IGS Brief at 6–7; and Walmart Brief at 3–6.

¹² OMAEG/Kroger Brief at 7; AES Brief at 4–28; Staff Brief at 1–2; OEG Brief at 1–2; OELC Brief at 1–2; RESA Brief at 1; OPAGE/Dayton Brief at 1–2; IGS Brief at 3–4; and Walmart Brief at 1–3.

¹³ OMAEG/Kroger Brief at 8; AES Brief at 2; Staff Brief at 2; OEG Brief at 3; OELC Brief at 2; RESA Brief at 5; OPAGE/Dayton Brief at 7; IGS Brief at 4; and Walmart Brief at 3.

Testimony from several witnesses,¹⁴ as well as the initial briefs filed by various parties,¹⁵ demonstrate that the Stipulation satisfies the first prong. In fact, as noted by several Signatory Parties, OCC’s own witnesses “stated that they had no reason to contest and/or doubt that the Stipulation satisfied prong one.”¹⁶

However, despite offering no evidence or testimony to contest this fact, OCC attempts to argue in its initial brief that this prong was not met because the parties were not knowledgeable.¹⁷ Specifically, OCC claims that if the Signatory Parties were not aware of certain costs of the Settlement, then “this is *prima facie* evidence that the Signatory Parties were not ‘knowledgeable’ parties.”¹⁸

While OCC’s argument is baseless, it also ignores the fact that the Commission has consistently considered the “knowledgeable” requirement in terms of whether parties are knowledgeable about the Commission’s processes and regulatory matters.¹⁹ As recognized in

¹⁴ AES Ex. 1 at 5–6 (Schroder Direct); Staff Ex. 6 at 3 (Messenger Direct); Tr. Vol. II at 307 (Fortney Cross); and Tr. Vol. IV at 669 and 671 (Morgan Cross).

¹⁵ See OMAEG/Kroger Brief at 8–10; AES Brief at 2–4; Staff Brief at 7–9; OEG Brief at 3; OELC Brief at 2; RESA Brief at 2–3; OPAE/Dayton Brief at 3–4; IGS Brief at 6–7; and Walmart Brief at 3–6.

¹⁶ Walmart Brief at 5, *citing* Tr. Vol. II at 307 (Fortney Cross) and Tr. Vol. IV at 669 and 671 (Morgan Cross). See also OMAEG/Kroger Brief at 9; AES Brief at 3; and RESA Brief at 3.

¹⁷ OCC Brief at 15.

¹⁸ *Id.* See also Tr. Vol. I at 129–32 (Schroder Cross); Tr. Vol. III at 562–75 (Messenger Cross). It should also be noted that OCC’s focus on whether the *Signatory* Parties were knowledgeable of certain specific facts ignores the actual language of the three-part test. See OCC Brief at 15–17. The first prong examines whether a settlement is “a product of serious bargaining among capable, knowledgeable *parties*,” and does not specify whether those parties must be signatories. *Consumers’ Counsel v. Pub. Util. Comm.* at 125 (emphasis added).

¹⁹ See *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case Nos. 21-887-EL-AIR et al., Opinion and Order at ¶ 100 (December 14, 2022) (“all parties, both signatory and non-signatory, are represented by capable and knowledgeable counsel familiar with Commission proceedings”); *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 44 (“each of the parties is represented by competent, capable, and knowledgeable counsel familiar with Commission proceedings and with access to technical experts”) (December 30, 2020). See also Walmart Brief at 5.

rulings on objections during cross-examination, “[t]he word is knowledgeable. It’s not do [parties] have specific knowledge of specific facts that [an opposing party] find[s] interesting.”²⁰

The Commission determines whether parties are knowledgeable by considering whether they are “represented by competent, capable, and knowledgeable counsel familiar with Commission proceedings and with access to technical experts.”²¹ In this case, there is no question that the parties negotiating the Stipulation were represented by attorneys, most if not all of whom have years of experience in regulatory matters before the Commission and who possess or their clients possess extensive information and knowledge.²² As noted by Walmart, OCC’s attempts to imply otherwise “fail[] to cast doubt on whether the Signatory Parties were knowledgeable within the meaning of the three-part test.”²³

Moreover, OCC offered no evidence to demonstrate that parties did *not* know the details of the Stipulation. In fact, the evidence demonstrated the opposite as, per the Commission’s rules, *all* parties involved in this case received the same discovery responses that OCC is purportedly relying upon. Therefore, even by OCC’s own incorrect interpretation of the word “knowledgeable,” there is no reason to believe that the parties involved in negotiations were not aware of all of the discovery responses issued in this case.

As indicated by the Signatory Parties in their briefs, the record in this case clearly demonstrates that the Stipulation results from a fair and open bargaining process between a large

²⁰ Tr. Vol. III at 573 (Messenger Cross). *See also* Walmart Brief at 5.

²¹ Case No. 19-468-GA-ALT, Opinion and Order at ¶ 44.

²² OMAEG/Kroger Brief at 9, *citing* AES Ex. 1 at 6 (Schroder Direct) and Staff Ex. 6 at 3 (Messenger Direct); OEG Brief at 3; OELC Brief at 2; RESA Brief at 2; OPAE/Dayton Brief at 4; IGS Brief at 6; and Walmart Brief at 4–6.

²³ Walmart Brief at 5.

and diverse group of knowledgeable and capable parties.²⁴ OCC’s arguments misstate and misapply the first prong of the three-part test and should be rejected. The Stipulation satisfies the first prong of the Commission’s three-part test and should be adopted in its entirety.

B. The Stipulation, as a package, benefits ratepayers and the public interest.

As OMAEG, Kroger, and others noted in their initial briefs, the second prong of the settlement test requires the Commission to evaluate the settlement “as a package.”²⁵ The Commission does not focus on individual settlement provisions because “[t]he question before the Commission is not whether there are other mechanisms that would better benefit ratepayers and the public interest but whether the Stipulation, as a package, benefits ratepayers and the public interest.”²⁶ As such, the Commission has rejected arguments that focus on whether individual provisions could be “more or less” beneficial because the Commission views provisions “within the context of the remaining provisions of the Stipulation.”²⁷ Any focus on individual provisions, rather than the Stipulation as a whole, is contrary to the Commission’s precedent.²⁸

²⁴ OMAEG/Kroger Brief at 10; AES Brief at 4; Staff Brief at 7–8; OEG Brief at 3; OELC Brief at 2; RESA Brief at 2–3; OPAE/Dayton Brief at 4; IGS Brief at 6–7; and Walmart Brief at 6.

²⁵ OMAEG/Kroger Brief at 10 (stating that “‘the second part of the test specifically requires that [the Commission] evaluate the settlement as a package’,” *quoting In the Matter of the Application Seeking Approval of Ohio Power Company’s Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, Opinion and Order at 77 (March 31, 2016)); OPAE/Dayton Brief at 2 (stating that “all provisions of a proposed ESP are considered as a ‘total package’,” *quoting In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, Opinion and Order at 94 (February 25, 2015); and Walmart Brief at 6 (stating that “‘the language of the second criterion clearly states, that the benefits of the Stipulation are evaluated as a package’,” *quoting In the Matter of the Application Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 16-1852-EL-SSO and 16-1853-EL-AAM, Opinion and Order at 93 (April 25, 2018)).

²⁶ Case No. 19-468-GA-ALT, Opinion and Order at ¶ 73.

²⁷ Case Nos. 21-887-El-AIR et al., Opinion and Order at ¶ 137, *citing* Case No. 19-468-GA-ALT, Opinion and Order at ¶ 73.

²⁸ *See* Case No. 19-468- GA-ALT, Opinion and Order at ¶ 73.

Through the record evidence²⁹ and their initial briefs,³⁰ the Signatory Parties highlighted a number of the Stipulation's benefits, which, as a package, benefit ratepayers by significantly lowering the costs incurred by customers over the course of the ESP term, obtaining other concessions from AES, and enabling AES to continue making reliability improvements and encourage economic development. For example, the Stipulation secures a commitment from AES to withdraw its application in Case No. 20-140-EL-AAM, through which it sought to recover \$51 million in decoupling amounts;³¹ mitigates the bill impacts of the Regulatory Compliance Rider (RCR) by extending recovery over five years while capping going-forward carrying costs;³² eliminates AES' proposed Distribution Decoupling Rider (DDR);³³ creates Economic Development Incentives to support new or expanding businesses;³⁴ implements revenue caps on the Distribution Investment Rider (DIR) without rollover;³⁵ sets AES' SEET threshold at 13% during the term of the ESP;³⁶ and implements Network Service Peak Load (NSPL) billing for

²⁹ AES Ex. 1 at 7–19 (Schroder Direct); Staff Ex. 6 at 4–6 (Messenger Direct); and Tr. Vol. II at 310–14 (Fortney Cross).

³⁰ OMAEG/Kroger Brief at 10–16; AES Brief at 4–14; Staff Brief at 9–13; OEG Brief at 1–5; OELC Brief at 3–4; RESA Brief at 3–4; OPAE/Dayton Brief at 4–6; IGS Brief at 7–9; and Walmart Brief at 6–11.

³¹ OMAEG/Kroger Brief at 13–14; AES Brief at 10–11; and OEG Brief at 4, referencing AES Ex. 1 at 16 (Schroder Direct); Staff Ex. 6 at 7 (Messenger Direct); Tr. Vol. III at 597 (Messenger Cross); AES Ex. 1 at 16 (Schroder Direct); and Tr. Vol. I at 133 (Schroder Cross).

³² OMAEG/Kroger Brief at 14; AES Brief at 9, referencing Signatory Parties Ex. 1 at 17 (Stipulation); AES Ex. 1 at 17 (Schroder Direct). The carrying costs are capped at \$4 million, which is comparable to carrying costs for a three-year amortization period.

³³ OMAEG/Kroger Brief at 13; OEG Brief at 4, referencing Signatory Parties Ex. 1 at 18 (Stipulation); AES Ex. 1 at 17 (Schroder Direct).

³⁴ OMAEG/Kroger Brief at 15; AES Brief at 9; Staff Brief at 10; OEG Brief at 4; OELC Brief at 4; and Walmart Brief at 7–10, referencing Signatory Parties Ex. 1 at 30–32 (Stipulation); AES Ex. 1 at 13–14 (Schroder Direct).

³⁵ OMAEG/Kroger Brief at 12–13; AES Brief at 4–5; Staff Brief at 10; OEG Brief at 3–4; OELC Brief at 3; and OPAE/Dayton Brief at 4, referencing Signatory Parties Ex. 1 at 7–10 (Stipulation); AES Ex. 1 at 16 (Schroder Direct).

³⁶ OMAEG/Kroger Brief at 11; AES Brief at 10; Staff Brief at 11; OEG Brief at 4; and Walmart Brief at 7, referencing Signatory Parties Ex. 1 at § XX (Stipulation).

eligible commercial customers.³⁷ As noted by Staff, such “benefits weigh in favor of a finding that the Stipulation, as a whole, benefits the public interest.”³⁸

However, in its initial brief, OCC merely focuses on individual provisions that it itself finds unfavorable, while simply ignoring the many benefits provided in the Stipulation. For example, OCC argues that the Stipulation does not benefit customers because it allows AES to collect certain deferred costs through the RCR.³⁹ Not only is OCC considering this provision in isolation, it ignores the significant reductions to the RCR amounts in the Stipulation as compared to AES’ Application. As discussed in AES’ Brief, under the Stipulation, AES’ OVEC recovery was decreased by \$660,616,⁴⁰ and its decoupling recovery was decreased by over \$40 million.⁴¹

Similarly, OCC argues that the Stipulation does not benefit customers because it allows AES to create a DIR to recover distribution investments.⁴² Once again, OCC only focuses on this provision in isolation and ignores the DIR-related benefits secured by the Stipulation. But as explained by Staff and other Signatory Parties, “[c]hanges to the DIR enacted by the Stipulation [] benefit the public interest” in part because under the Stipulation, the DIR would have revenue caps (without rollover), which were not proposed in AES’ Application.⁴³ Moreover, those revenue

³⁷ OMAEG/Kroger Brief at 12; AES Brief at 9; Staff Brief at 12; and OEG Brief at 4, referencing Signatory Parties Ex. 1 at 29 (Stipulation); AES Ex. 1 at 13 (Schroder Direct).

³⁸ Staff Brief at 13. *See also* OMAEG/Kroger Brief at 11–12; AES Brief at 4; OEG Brief at 4; OELC Brief at 3; RESA Brief at 3; OP AE/Dayton Brief at 4; IGS Brief at 8; and Walmart Brief at 6.

³⁹ OCC Brief at 17.

⁴⁰ AES Brief at 14, referencing Signatory Parties Ex. 1 at 15 (Stipulation).

⁴¹ AES Brief at 14, referencing Signatory Parties Ex. 1 at 15 (Stipulation); OCC Ex. 20 (AES Response to PUCO Staff Data Request #3). *See also* OMAEG/Kroger Brief at 14.

⁴² OCC Brief at 18.

⁴³ Staff Brief at 10, referencing Signatory Parties Ex. 1 at § IV.E (Stipulation). *See also* OMAEG/Kroger Brief at 12–13; AES Brief at 4–5; Staff Brief at 10; OEG Brief at 3–4; OELC Brief at 3; and OP AE/Dayton Brief at 4, referencing Tr. Vol. I at 108 (Schroder Cross) (“concession from having no caps in our Application to agreeing to

caps impose an additional reliability requirement based on the System Average Interruption Duration Index (SAIDI) and decreases the revenue caps for each year if AES fails to meet certain reliability benchmarks.⁴⁴

In essence, OCC claims that the Stipulation “does not benefit consumers or the public interest” because OCC disapproves of specific provisions.⁴⁵ However, the Commission does not consider Stipulation provisions in isolation or the dislikes of a particular party or provision. Instead, the Commission considers settlements as a package. Here, as explained by OELC, the Signatory Parties agree that as a package, the Stipulation represents “compromises [that] were reached” by all parties and that “no party received everything that it wanted.”⁴⁶ The whole point of negotiations is so that one party does not get everything it wants at the expense of all others. While OCC may not approve of every provision in the Stipulation, as discussed above and in initial briefs, the Stipulation, as a package, provides meaningful and valuable benefits to customers and benefits the public interest by significantly lowering costs to customers as compared to the as-filed Application, while still incentivizing AES to improve reliability for customers across all rate classes.⁴⁷ Therefore, the Stipulation, as a package, benefits customers and the public interest, and satisfies the second prong of the Commission’s three-part test and should be adopted in its entirety.

revenue caps on the DIR in the Stipulation”); AES Ex. 1 at 16 (Schroder Direct); Staff Ex. 6 at 4 (Messenger Direct); and Tr. Vol. III at 584–85 (Messenger Cross).

⁴⁴ OMAEG/Kroger Brief at 13; AES Brief at 4–5; and Walmart Brief at 6–7, referencing Signatory Parties Ex. 1 at § IV.F (Stipulation); AES Ex. 1 at 16 (Schroder Direct); and Staff Ex. 6 at 4–5 (Messenger Direct).

⁴⁵ OCC Brief at 20.

⁴⁶ OELC Brief at 2. *See also* OMAEG/Kroger Brief at 7; OEG Brief at 3; RESA Brief at 4–5; OPAGE/Dayton Brief 4–6; IGS Brief at 7–8, and Walmart Brief at 4, referencing AES Ex. 1 at 6 (Schroder Direct).

⁴⁷ OMAEG/Kroger Brief at 11; Walmart Brief at 6, referencing Staff Ex. 6 at 4–5 (Messenger Direct).

C. The Stipulation does not violate any important regulatory principles or practices.

Lastly, the Signatory Parties, through testimony⁴⁸ and post-hearing briefs,⁴⁹ demonstrated that the Stipulation, as a package, complies with the Ohio Revised Code, the Ohio Administrative Code, and Commission precedent. When determining whether a stipulation violates any important regulatory principles or practices, the Commission tends to consider its own precedent, and favor stipulations that follow that precedent.⁵⁰

In this case, the Stipulation complies with principles such as gradualism to prevent rate shock,⁵¹ promoting just and reasonable rates as compared to AES' proposals in its as-filed Application,⁵² and various regulatory principles and practices related to Ohio's policy towards retail electric service, as specified in R.C. 4928.02.⁵³ As noted by Staff, the "Stipulation complies with all relevant and important regulatory principles and practices" and "ensures the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail

⁴⁸ Staff Ex. 6 at 6 (Messenger Direct); AES Ex. 1 at 23 (Schroder Direct); and Tr. Vol. II at 349–50 (Fortney Cross).

⁴⁹ OMAEG/Kroger Brief at 16–21; AES Brief at 14–28; Staff Brief at 13–14; OEG Brief at 5; OELC Brief at 4–5; RESA Brief at 3–4; OPAGE/Dayton Brief at 6; IGS Brief at 9; and Walmart Brief at 11–15.

⁵⁰ *See, e.g.*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 79 (Where the stipulating parties had "presented adequate justification for the Commission to uphold the precedent" and "no argument presented by opposing Intervenor [convinced] the Commission to change or revise this practice," the Commission adopted the stipulation.).

⁵¹ OMAEG/Kroger Brief at 17–8; Walmart Brief at 13, referencing Tr. Vol. I at 84–85, 109 (Schroder Cross); OCC Ex. 2 at 42 (Fortney Direct) (April 21, 2023) (explaining that "[g]radualism refers to such items as resulting typical customer billings and resulting revenue increases which would necessarily occur.").

⁵² OMAEG/Kroger Brief at 17, referencing Tr. Vol. II at 349–50 (Fortney Cross); AES Brief at 13–14, referencing AES Ex. 1 at 18–19 (Schroder Direct).

⁵³ OMAEG/Kroger Brief at 19–20, AES Ex. 1 at 23–26 (Schroder Direct); Staff Brief at 13–14; OELC Brief at 4; OPAGE/Dayton Brief at 6; IGS Brief at 9; and Walmart Brief at 7.

electric service,” while also ensuring that AES “has the appropriate programs and infrastructure to provide reliable and sufficient supply of retail electric service for its customers.”⁵⁴

As it did with the second prong of the Stipulation test, OCC again attempts to argue that the Stipulation does not satisfy this prong of the test simply because OCC does not approve of certain individual provisions.⁵⁵ The arguments OCC offers ignore the bulk of the Stipulation’s terms and benefits and therefore ignore the key question of whether the Stipulation, as a package, complies with Ohio law and Commission regulations.

OCC dedicates the majority of its arguments to specifically opposing the RCR amounts allowed to be collected under the Stipulation.⁵⁶ Not only is the focus on a single provision of the Stipulation improper given that the Commission considers a stipulation as a package, it completely ignores the *benefits* conferred by the Stipulation with regards to the amounts allowed to be recovered under the RCR. As noted previously, when compared to the as-filed Application, the Stipulation significantly reduces the amounts that AES may collect through the RCR. Under the Stipulation, AES’ OVEC recovery was decreased by \$660,616,⁵⁷ and its decoupling recovery was decreased by over \$40 million.⁵⁸

Additionally, by primarily focusing on one provision, the RCR, OCC completely ignores how the Stipulation, as a package, complies with Ohio law and Commission regulations. As supported by record evidence and as further detailed in the initial briefs, the Stipulation—among

⁵⁴ Staff Brief at 13–14.

⁵⁵ OCC Brief at 21–79.

⁵⁶ OCC Brief at 21–68.

⁵⁷ AES Brief at 14, referencing Signatory Parties Ex. 1 at 15 (Stipulation).

⁵⁸ AES Brief at 14, referencing Signatory Parties Ex. 1 at 15 (Stipulation) and OCC Ex. 20 (AES Response to PUCO Staff Data Request #3).

other things—promotes rate certainty, predictability, and stability, which in turn results in more just and reasonable rates as compared to AES’ initial Application;⁵⁹ ensures the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;⁶⁰ protects at-risk populations;⁶¹ facilitates the state’s effectiveness in the global economy;⁶² supports innovation in the retail electric service;⁶³ and follows the principle of gradualism.⁶⁴

Lastly, OCC’s argument that the Stipulation should be rejected because the stipulated ESP IV is less favorable in the aggregate than a hypothetical market rate offer (MRO) should also be rejected. As demonstrated through record evidence⁶⁵ and as supported by initial briefs,⁶⁶ the stipulated ESP IV is more favorable in the aggregate than a hypothetical MRO because the benefits of the ESP outweigh any added costs. According to Staff, “when balancing [both quantitative and qualitative] factors, the benefits added by the ESP outweigh any added costs, should the Commission find any.”⁶⁷

⁵⁹ Tr. Vol. II at 349–50 (Fortney Cross); OMAEG/Kroger Brief at 17; and OPAE/Dayton Brief at 6.

⁶⁰ AES Ex. 1 at 23–26 (Schroder Direct); OMAEG/Kroger Brief at 19; Staff Brief at 13; OEG Brief at 5; and OPAE/Dayton Brief at 6.

⁶¹ Signatory Parties Ex. 1 at § IX (Stipulation); OMAEG/Kroger Brief at 20; OEG Brief at 5; and OPAE/Dayton Brief at 6.

⁶² Signatory Parties Ex. 1 at §§ IV, XVII (Stipulation); OMAEG/Kroger Brief at 19; OEG Brief at 5; and OPAE/Dayton Brief at 6.

⁶³ Signatory Parties Ex. 1 at § IV (Stipulation); OEG Brief at 5; and OELC Brief at 4–5.

⁶⁴ Tr. Vol. I at 84–85 (Schroder Cross); OCC Ex. 2 at 42 (Fortney Direct) (April 21, 2023) (explaining that “[g]radualism refers to such items as resulting typical customer billings and resulting revenue increases which would necessarily occur.”); OMAEG/Kroger Brief at 17; and Walmart Brief at 13–15.

⁶⁵ Staff Ex. 6 at 6–7 (Messenger Direct); Tr. Vol. I at 136–37 (Schroder Cross); and Tr. Vol. III at 591–606 (Messenger Cross).

⁶⁶ OMAEG/Kroger Brief at 20–21; AES Brief at 21–28; Staff Brief at 14–16; OPAE/Dayton Brief at 7; and Walmart Brief at 11–13.

⁶⁷ Staff Brief at 14, referencing Staff Ex. 6 at 7–9 (Messenger Direct).

OCC asserts that the Commission should consider stipulated ESP IV costs “in the short-term,” but as admitted by OCC witness Fortney, focusing on short-term costs rather than long-term costs would require the Commission to “change its position” with regard to how it evaluates whether an ESP or MRO is more favorable in the aggregate.⁶⁸ As noted above, when determining whether a proposed stipulation violates any important regulatory principles or practices, the Commission tends to favor stipulations that follow Commission precedent.⁶⁹ Therefore, the Commission should abide by its own precedent and consider the stipulated ESP IV costs in the long-term, which would thus be “a wash” when compared to the costs of an MRO.⁷⁰ Consequently, as stated by Staff, “the Stipulation is, in fact, more favorable to customers, evaluated from a quantitative and a qualitative perspective, than would be expected of an MRO.”⁷¹

Contrary to OCC’s arguments, the Stipulation, as a package, serves a variety of important regulatory principles and practices. As noted by the Signatory Parties, the Stipulation provides many benefits to customers while remaining consistent with regulatory principles and practices.⁷² Therefore, the Stipulation satisfies the third prong of the Commission’s three-part test and should be adopted in its entirety.

⁶⁸ OCC Ex. 2 at 18 (Fortney Direct). *See also* Tr. Vol. II at 278–80 (Fortney Cross).

⁶⁹ *See, e.g.*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 79 (Where the stipulating parties had “presented adequate justification for the Commission to uphold the precedent” and “no argument presented by opposing Intervenor [convinced] the Commission to change or revise this practice,” the Commission adopted the stipulation.).

⁷⁰ AES Brief at 23, referencing OCC Ex. 2 at 18 (Fortney Direct). *See also* Tr. Vol. II at 276–77 and 300 (Fortney Cross).

⁷¹ Staff Brief at 14. *See also* OMAEG/Kroger Brief at 21, *citing* Staff Ex. 6 at 6 (Messenger Direct); AES Brief at 21–28; OPAE/Dayton Brief at 7; and Walmart Brief at 11–13.

⁷² OMAEG/Kroger Brief at 21; Staff Brief at 13–14; OEG Brief at 5; OELC Brief at 4–5; RESA Brief at 5; OPAE/Dayton Brief at 6; IGS Brief at 9; and Walmart Brief at 11–15.

III. CONCLUSION

The record evidence presented at the evidentiary hearing demonstrates that the Stipulation filed on April 10, 2023 satisfies the Commission’s three-part test for evaluating stipulations. A large, diverse group of capable and knowledgeable parties participated in a fair and open settlement process resulting in a Stipulation. This Stipulation equitably and expeditiously resolves all of the issues in this proceeding and serves the public interest by reducing numerous costs to customers and avoiding costs associated with a fully litigated ESP case. Lastly, the Stipulation complies with important regulatory principles and practices by avoiding rate shock and promoting state policy pursuant to R.C. 4928.02. Arguments by OCC improperly focus on individual provisions of the Stipulation rather than the Stipulation as a package, and ignore the manifest weight of the record evidence, which demonstrates the reasonableness of the Stipulation.

Accordingly, for the foregoing reasons, the weight of the evidence presented by AES and the other Signatory Parties and Non-Opposing Parties demonstrates that the Stipulation satisfies the Commission’s three-part test for evaluating settlements.⁷³ Therefore, in order to fully provide these benefits to customers, OMAEG and Kroger respectfully request that the Commission reject OCC’s arguments and adopt the Stipulation in its entirety, without modification.

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⁷³ OMAEG/Kroger Brief at 21; AES Brief at 2; Staff Brief at 7; OEG Brief at 3; OELC Brief at 5; RESA Brief at 5; OPAE/Dayton Brief at 3; IGS Brief 10–11; and Walmart Brief at 3.

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Association Energy Group and The Kroger Co..