BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Dominion Retail, Inc., Complainant, v. The Dayton Power and Light Company, Respondent.	)	Case No. 03-2405-EL-CSS
In the Matter of the Complaint of Miami Valley Communications Council, Complainant, v. The Dayton Power and Light Company, Respondent.	)	Case No. 04-85-EL-CSS
In the Matter of the Application Not for an Increase in Rates of The Dayton Power and Light Company for Approval to Modify its Existing Alternate Generation Supplier (AGS) Tariff Sheet No. G8.	)	Case No. 03-2341-EL-ATA

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OPINION AND ORDER

The Commission, coming now to consider the stipulation, testimony, and other evidence presented in these proceedings, hereby issues its opinion and order.

APPEARANCES:

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Bell, Royer & Sanders Co., L.P.A., by Barth Royer, 33 South Grant Street, Columbus, Ohio 43215, on behalf of Dominion Retail, Inc.

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Evelyn R. Robinson, Green Mountain Energy Company, 5450 Frantz Road, Suite 240, Dublin, Ohio 43016, on behalf of Green Mountain Energy Company.

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I. HISTORY OF THE PROCEEDINGS

On June 22, 1999, the Ohio General Assembly passed legislation[1] requiring the restructuring of the electric utility industry and providing for retail competition with regard to the generation component of electric service (SB 3). Pursuant to SB 3, on August 31, 2000, the Commission issued an opinion and order (ETP opinion) approving and modifying a stipulation and recommendation (ETP stipulation) with regard to the electric transition plan (ETP) of DP&L.[2] In its ETP opinion, the Commission, *inter alia*, approved a market development plan (MDP) and a corporate separation plan. As a result of competition not developing according to expectations, on September 2, 2003, the Commission issued an opinion and order (RSP opinion) approving a stipulation and recommendation (RSP stipulation)

1 Amended Substitute Senate Bill No. 3 of the 123rd General Assembly.

2 *In the Matter of the Application of the Dayton Power and Light Company for Approval of its Transition Plan Pursuant to Section 4928.31, Revised Code and for the Opportunity to Receive Transition Revenues as Authorized Under Sections 4928.31 to 4928.40, Revised Code,* Case No. 99-1687-EL-ETP, Opinion and Order, .

which, *inter alia,* extends DP&L's MDP through 2005 and establishes a rate stabilization plan (RSP) for the period through 2008.[3]

On November 26, 2003, DP&L filed an application for approval of the modification of its alternate generation supplier's (AGS) tariff sheet number G8 to permit it to recover the costs that it might incur as a result of a default by any competitive retail electric supplier (CRES), from governmental aggregators, municipalities, or customers, to the extent that the security posted by the defaulting CRES provider is not sufficient to cover the costs incurred (default recovery application).[4] Motions to intervene in the default recovery application were made by the Office of Consumers' Counsel (OCC), Dominion Retail, Inc. (Dominion), Miami Valley Communications Council (MVCC), Industrial Energy Users-Ohio (IEU), and Green Mountain Energy Company (Green Mountain). Those motions were granted on February 26 and March 12, 2004.

As an electric distribution utility (EDU), DP&L is subject to various administrative rules, including one that requires it to make consolidated billing available to CRES providers. Rule 4901:1-10-29(G)(1), Ohio Administrative Code (O.A.C.). On December 16, 2003, Dominion filed a complaint against DP&L, alleging, *inter alia,* that the charges that DP&L imposes for providing consolidated billing service to CRES providers who supply alternative generation service to customers within DP&L's service territory are excessive and constitute a barrier to entry, in violation of the policy of Ohio as set forth in SB3 (Dominion complaint).[5] Motions to intervene in the Dominion complaint were filed by OCC and Green Mountain. Those motions were granted on February 18, 2004.

On January 21, 2004, MVCC filed a complaint against DP&L, alleging, *inter alia,* that the charges that DP&L imposes for providing consolidated billing service to CRES providers who supply alternative generations service to customers within DP&L's service territory are excessive, unjust, unreasonable, and discriminatory; and that DP&L's actions have unreasonably and unlawfully frustrated governmental aggregation and competitive retail switching (MVCC complaint).[6] Motions to intervene in the MVCC complaint were filed by OCC and Green Mountain. OCC's motion was granted on February 18, 2004, and Green Mountain's at the hearing on September 29, 2004 (Tr. II at 7).

On February 18, 2004, the Dominion complaint and the MVCC complaint were consolidated for hearing. On March 12, 2004, the default recovery application was consolidated for hearing with the two complaint cases.

Following public notice, the hearing in the consolidated cases commenced on July 28, 2004, with the hearing of public testimony. Ms. Madeline J. Breslin, a resident of Centerville, Ohio, testified as to her opinion regarding aggregation in the DP&L service territory. She stated that she believes that aggregation is important for the citizens of

3 *In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for the Dayton Power and Light Company,* Case No. 02-2779-EL-ATA, *et al.*

4 *In the Matter of the Application Not for an Increase in Rates of The Dayton Power and Light Company for Approval to Modify Its Existing Alternate Generation Supplier (AGS) Tariff Sheet No. G8,* Case No. 03-2341-EL-ATA.

5 *In the Matter of the Complaint of Dominion Retail, Inc. v. The Dayton Power and Light Company,* Case No. 03-2045-EL-CSS.

6 *In the Matter of the Compliant of Miami Valley Communications Council,* Case No. 04-85-EL-CSS.

Centerville, as they need to find means to obtain any savings available. She was concerned about actions that may have been taken by DP&L that might impact aggregation. (Tr. I at 8-11.)

The hearing continued on September 29, September 30, October 13, October 14, and October 21, 2004. Testimony was received from Dominion, MVCC, and Green Mountain witness John T. Courtney; Dominion witness Thomas J. Butler; MVCC witness Kent Bristol; OCC witness F. Ross Pultz; and DP&L witnesses H. Edwin Overcast, Dona R. Seger-Lawson, and Patricia K. Swanke. On October 14, staff of the Commission presented a stipulation (stipulation) signed by all parties in the consolidated cases other than OCC (signatory parties). Testimony was then received from DP&L witness Alissa M. Stephens. Following recess of one week, testimony in support of the stipulation was received from staff witnesses Gregory C. Scheck and Gregory A. Price.

Pursuant to a provision of the stipulation, on October 27, 2004, the Commission issued an entry directing staff to distribute a request for proposals to perform an audit of the prudency of DP&L's expenditures for modification of its billing system. Following receipt of the requested proposals, on November 10, 2004, the Commission selected UtiliPoint International, Inc. (UtiliPoint), to perform that audit.

Post hearing briefs were filed on November 12, 2004, by OCC, DP&L, IEU, staff, and, jointly, Dominion and MVCC. On November 18, 2004, a letter was filed in the consolidated cases by Ohio Partners for Affordable Energy (OPAE), stating that it believes the stipulation would impose distribution rate increases without following the requirements of Sections 4909.18 and 4909.19, Revised Code; that it would have intervened had those procedural requirements been followed; and that such rate increases violate stipulations in previous cases, to which OPAE was a party. Reply briefs were filed on November 23, 2004, by OCC, DP&L, staff and, jointly, Dominion, MVCC, and Green Mountain.

On December 21, 2004, UtiliPoint filed its report on the prudence of the capital expenditures made by DP&L in modifying its billing system to provide consolidated bill services (audit report).

II. SUMMARY OF THE STIPULATION

The stipulation was intended by the signatory parties to resolve all of the outstanding issues in the three consolidated cases. The stipulation includes, *inter alia*, the following provisions:

1. Under the stipulation, DP&L proposes to charge CRES providers $0.20 per bill for rate-ready consolidated billing.

2. Under the stipulation, DP&L proposes to charge CRES providers an initial set up fee of $5,000 per provider to program rates into its billing system. Subsequent changes would require the payment of $1,000 per change, up to a maximum of $5,000 per request, provided that there would be

no charge for changes that merely increase or decrease existing CRES generation rate elements.

3. Under the stipulation, the signatory parties would not oppose DP&L's application for authority to assess a per-bill charge to CRES providers for dual billing (that is, both DP&L and a CRES provider sending separate bills to the consumers), of up to $0.12 per bill to cover electronic data interchange costs.

4. Under the stipulation, the signatory parties would not change these fees prior to DP&L's next distribution rate case, with any authorized changes to be effective no earlier than January 1, 2009.

5. Under the stipulation, the signatory parties agree to a prudence review (prudence review) of DP&L's investment in changes to its billing system, to be performed by an independent third party. The cost of that review would be borne by DP&L but could be recoverable as a part of the total costs of the billing system changes if approved by the Commission.

6. Under the stipulation, DP&L's billing system modification costs would continue to be deferred, with carrying charges based on the Commission-approved cost of capital from Case No. 91-414-EL-AIR.

7. Under the stipulation, DP&L's prudently incurred investment in changes to its billing system would be recovered from all customers in its service territory beginning on January 1, 2006, through the imposition of a rider. The rider would be designed to recover those costs, including carrying charges and the cost of the prudence review, over a five-year period.

8. Under the stipulation, the signatory parties agree that there have been regulatory changes since the adoption of the ETP stipulation and that the recovery of these costs from all customers would be consistent with the ETP stipulation and the RSP stipulation.

9. Under the stipulation, if DP&L were to incur energy or ancillary services costs associated with a CRES provider default, DP&L would seek to recover those costs through the security posted by the CRES provider and, if insufficient, then through other commercially reasonable means of collection from the CRES provider. If it were still unable to recover those costs, then, under the stipulation, DP&L could apply to the Commission for authority to impose a rider that would

charge those costs to all customers in the customer classes served by the defaulting CRES provider through the establishment of a rider.

10. Under the stipulation, communities engaging in, or desiring to engage in, aggregation could request that DP&L assign a liaison to communicate with the aggregator for the communities.

III. THE AUDIT REPORT

As noted above, the proposed stipulation requires that an independent third party would audit the prudency of DP&L's investment in those changes to its billing system which would enable it to provide consolidated billing services. UtiliPoint submitted its audit report on the prudency of that investment on December 21, 2004.

UtiliPoint reported that, as a result of its prudency review, it had concluded:

1. That from 1999 through 2001, the capital expenditures Dayton Power & Light made for billing system modifications were valid, appropriate, and prudent.
2. That in 1999, Dayton Power & Light acted prudently in choosing to modify the Customer billing system.
3. That in 1999, DP&L performed an effective billing system vendor review.
4. That the billing group was effective in examining billing system functionality.

(Audit report at 6.)

The Commission will review the audit report as a part of the ATA proceeding to consider the rider for recovery of the billing modification costs.

IV. OPPOSITION TO THE STIPULATION

The only party to the consolidated cases which did not sign the stipulation is OCC. In its post-hearing briefs, OCC raised a number of issues requiring Commission consideration. The Commission will review those issues in the context of the three basic aspects of these matters: consolidated billing charges, default recovery, and communications.

A. Billing Charges

In its application for approval of its ETP plan in the ETP case, DP&L requested authority to defer up to $20 million investment in billing system modifications to comply with the requirements of SB3 and the Commission's rules. The application did not specify the time at which such deferrals would be recovered. However, the stipulation did provide that there would be no change in distribution rates until after December 31, 2006, subject to certain exceptions. That date was extended in the RSP case to December 31, 2008. The stipulation in the ETP case, which did not amend DP&L's application in that case as to the requested deferral, specified that the application was to be adopted to the extent not amended by the stipulation. The Commission's opinion and order did not modify that aspect of the stipulation. Thus, approval of the deferral of DP&L's billing system modification costs was approved by the Commission in the ETP case.

In its application for approval of its ETP plan in the ETP case, DP&L also requested authority to charge CRES providers for its billing system modification expenses. Following approval of that request, DP&L's tariff now provides that DP&L is authorized to charge CRES providers (described in the tariff as alternative generation suppliers) for consolidated billing services, on a nondiscriminatory basis. First Revised Sheet No. G8, Alternative Generation Supplier Coordination Tariff, para. 10.1. The amount of that charge is not specified in the tariff. Pursuant to that authority, DP&L is currently charging CRES providers $1.90 per customer, per bill, under a one-year contract, or $1.56 per customer, per bill, under a two-year contract (DP&L Ex. 1, at 7; Dominion Ex. 1, at 5; MVCC Ex. 1, at 16; OCC Ex. 2, at 7).

Under the stipulation, DP&L would charge CRES providers $0.20 per customer, per bill, for consolidated billing, or $0.12 per customer, per bill, for dual billing. In addition, under the stipulation, DP&L would also charge a set-up fee of $5,000 per CRES provider. CRES providers would pay $1,000 per addition or change, up to a maximum of $5,000 for each change request. DP&L would not charge for changes that merely increase or decrease existing generation rate elements. The stipulation provides that the Commission would engage an independent third party to review and report on the prudence of DP&L's investment in changes to its billing system. DP&L would then recover its prudently incurred investment, plus carrying charges, from all customers in its service territory pursuant to a distribution rider, beginning January 1, 2006. (Joint Ex. 1, at 3-5.) This is a change in the timing of the recovery of the deferred billing modification costs.

OCC asks the Commission to reject the stipulation. It raises a number of specific arguments relating to the billing charge aspects of the stipulation. Each of OCC's major arguments will be discussed.

1. <u>Alleged Violation of Previous Side Agreement</u>

During the course of the hearing on these cases, OCC introduced a letter which allegedly represented a side agreement between OCC and DP&L, entered into during the course of the negotiation of the ETP stipulation (OCC Ex. 3A). OCC argues that DP&L's agreement in that side agreement that it would "not seek recovery from residential customers for deferred costs . . . associated with . . . billing system modifications" is breached by the stipulation at issue here (OCC's brief at 10-11, 24-28; OCC's reply brief at 11-13). Staff, Dominion, MVCC, and Green Mountain strongly urge the Commission not to consider the side agreement, on the basis that it is irrelevant and beyond the Commission's jurisdiction to enforce (Staff's brief at 12-15; Staff's reply brief at 10-11; Dominion, MVCC, and Green Mountain's reply brief at 9-10). DP&L also contends that, if the side agreement were to be considered by the Commission, it was first breached by OCC through its assertion that

DP&L should not recover its billing system investment from CRES providers (DP&L's brief at 9; DP&L's reply brief at 4).

The side agreement referenced by OCC was not ever filed with, or approved by, the Commission. Therefore, the Commission will not consider the terms of the side agreement in its determination of whether the stipulation is reasonable. Understandings among parties that are important enough that the parties wish to have a means to bring them to the Commission's attention at a later time should, therefore, be incorporated into any stipulation which the parties are bringing to the Commission for approval.

2. Alleged Violation of ETP Stipulation and the RSP Stipulation

OCC argues that the stipulation being considered in these cases would breach the ETP stipulation and the ETP opinion, as well as the RSP stipulation and RSP opinion (OCC brief at 13, 17). As previously described, the proposed stipulation would allow recovery of the billing modification costs, beginning on January 1, 2006. However, as quoted by OCC, the ETP stipulation includes a provision stating that "base distribution rates (unbundled as described above) will remain the same through December 31, 2006." The ETP stipulation went on to set forth circumstances under which distribution rates might be changed; specifically, to reflect costs of complying with changes in environmental, tax, or regulatory laws or regulations, for relief from storm damage expenses, or in the event of certain emergencies. Changes based on those listed circumstances were to be made by an application under Section 4909.18, Revised Code. The RSP stipulation provides that "DP&L's distribution rates and charges . . . will remain frozen at current levels throughout the RSP subject to the adjustments permitted in the ETP Stipulation that the Company will make by the filing of an 'ATA' application." (OCC's brief at 13, 17.)

OCC asserts that the present stipulation would violate that provision of the ETP stipulation because it would allow recovery of billing system modification costs prior to the termination of the ETP stipulation's freeze on distribution rates. OCC claims that the ETP stipulation is breached by the proposed stipulation because existing circumstances would not fit within the listed exceptions in the ETP stipulation, and because OCC believes that no application under Section 4909.18, Revised Code, would be required under the stipulation. It further contends that the present stipulation would violate the RSP stipulation because the RSP stipulation continues the distribution rate freeze through 2008, there is no circumstance providing an exception to the freeze, and there has been no ATA filing with regard to this issue. (OCC's brief at 13-17.)

DP&L submits that the rider that would be established through the stipulation, to recover its investment in billing system modifications, would not violate the rate freeze in the ETP stipulation because the tariffs in existence prior to unbundling did not include any charge related to billing system modifications. Since there was no such charge prior to unbundling, the proposed rider is a new rate rather than a rate increase. Even if this rider were to be considered as a rate increase, DP&L says that the ETP stipulation and the MDP stipulation would allow the present stipulation, under the terms of any one of three exceptions to the rate freeze. DP&L also points out that, under the provisions of the present stipulation, it would have to make an ATA filing in order to establish the rider to recover its investment in the billing system modifications. (DPL's reply at 13-14.)

Dominion, MVCC, and Green Mountain argue that there have been changes in regulatory policy that constitute an allowable exception to the ETP stipulation freeze (Dominion, MVCC and Green Mountain's reply at 10-12).

Staff argues at some length that the proposed rider would be a new service and therefore not frozen. It also argues that the present situation is "outside the scope" of DP&L's commitment to frozen rates through 2008. In addition, staff says that billing system costs are not "unbundled components" under the controlling statutes. (Staff's reply brief at 16-23.)

The Ohio legislature, when it adopted SB3, required that the total of all unbundled components of electric service remain capped throughout each EDU's market development period. Section 4928.34(A)(6), Revised Code. The market development period was required to end no earlier than December 31, 2005. Section 4928.40((B)(2), Revised Code. The stipulation in the ETP case stated that DP&L's distribution rates would remain unchanged (except in the event of certain listed exceptions) through December 31, 2006, a year longer than was required by the legislature. This original agreement of the parties was then modified, in the RSP case, to extend the distribution rate freeze through 2008.

The parties provided several arguments to explain why an increase in distribution rates would now fall within an exception to the freeze, to reflect the costs of complying with changes, after the date of the ETP stipulation, in regulatory laws or regulations. First, they contend that the Commission's amendment of its billing system regulations caused an increase in the costs that DP&L incurred (DP&L Ex. 1, at 10-11). Although it is clear that regulatory changes had an effect on the cost of compliance, the Commission notes that DP&L did not identify any specific expenses that were incurred as a result of those changes. In addition, the Commission finds that any such additional expenses did not cause the cost of the modifications to exceed the $20 million that was estimated in the application in the ETP case. The second argument of the parties is that the Commission approved a different recovery system for other Ohio EDUs. However, the Commission finds that this is not a change in "regulatory laws or regulations," as the exception was expressed in the ETP stipulation. The third argument of the parties is that the proposed stipulation itself would change DP&L's method of recovery, thus triggering an exception. This is also not a change in "regulatory laws or regulations." Thus, the Commission does not find that the exception in the ETP stipulation applies in this case.

However, inasmuch as the rider for recovery of billing modification expenses would not, under the terms of the proposed stipulation, be imposed until January 1, 2006, the Commission finds that it would not be in violation of the statutory requirements. The distribution rates of DP&L would remain frozen for the statutorily required time period.

In addition, although the proposed stipulation would modify the parties' previously expressed intent as to the time period during which the distribution rates would remain frozen, the Commission finds that this modification is reasonable in light of the fact that (1) early recovery of the billing system modification expenses will decrease the amount of carrying charges incurred, and (2) approval of this stipulation, as modified in this opinion and order, is a complete package that will provide to consumers a variety of benefits that would not otherwise be available, as discussed elsewhere in this opinion and order.

3. Appropriate Administrative Procedure

OCC also complains about the procedures followed in these cases. It states that recovery of the billing system costs earlier than was allowed in the ETP stipulation should have been the subject of an application under Section 4909.18, Revised Code (OCC's brief at 16). OCC also contends that the stipulation itself was a surprise that would have been avoided if DP&L had initially applied for a rate increase under that section. Such an application, according to OCC, would have provided documentation, notice, and other procedures that are appropriate in the case of rate increases. (OCC's brief at 19-21.)

DP&L controverts OCC's arguments. It states, initially, that there was no public notice requirement in the complaint cases that gave rise to the billing cost dispute. DP&L also points out that appropriate means of recovery of such costs were discussed in numerous filings in the cases. It asserts that the Commission recognized in the RSP opinion that stipulations in complex cases often result in the resolution of issues differently than was proposed by any single party. (DP&L reply at 17-19).

Dominion, MVCC, and Green Mountain point out that the stipulation requires an ATA filing regarding the imposition of the proposed rider (Dominion, MVCC, and Green Mountain's reply at 8).

Staff agrees that the proposed rider should be established by an ATA filing for new services, under Section 4909.18, Revised Code (Staff's reply at 21-22).

As noted above, the Commission has previously authorized the deferral of the costs associated with DP&L's billing system modifications. Therefore, the only issue being determined here is one of timing. The proposed stipulation would accelerate the recovery of those deferred costs. The Commission finds that an ATA filing at the time that DP&L is applying to establish its rider will therefore be appropriate. This is in compliance with both the ETP stipulation and the RSP stipulation.

The Commission is not concerned about the fact that the present stipulation arose in the context of a complaint case, nor does it believe a rate increase procedure, as proposed by OCC, is required. As we stated in the RSP opinion, parties to complicated cases often enter into stipulations that resolve disputed issues in unpredicted ways. In these proceedings, we are approving a mechanism for the recovery of certain deferred billing modification costs through a rider, beginning in 2006. Approval of that rider will be considered through the filing of an ATA proceeding. The Commission finds no procedural error, either in the conduct of these cases to date or in the procedure established by the stipulation.

4. Collateral Estoppel

OCC argues that the doctrine of collateral estoppel requires rejection of the proposed stipulation in these cases (OCC's brief at 21-23). In reply, staff suggests that the Supreme Court of Ohio has repeatedly held that, in complaint cases, "reasonable grounds may exist to raise issues which would otherwise be viewed as 'collateral attacks' on previous orders." (Staff reply at 22.)

The Commission finds that the doctrine of collateral estoppel does not prohibit DP&L from beginning to recover its billing system investment costs from all customers beginning January 1, 2006, through the imposition of a rider. In the ETP case, the Commission approved a stipulation which allowed DP&L to defer the unrecovered costs. According to DP&L, its intent was to attempt to recover those costs from CRES providers (DP&L's brief at 4-6). To that end, the alternate generation tariff approved by the Commission states that CRES providers will pay for consolidated billing services provided by DP&L. However, the accounting authority granted by the Commission in the ETP case, authorizing the deferral of these billing system modification costs, is not limited as to the method of recovery of those deferred costs. Hence, recovery from all customers through the imposition of a rider is also within the purview of that authority. The proposed stipulation therefore does not change the previously approved arrangement other than to advance the schedule for recovery of those deferred costs. In addition, even if the proposed stipulation were seen as a change to the current system, the Commission may find reasonable grounds to modify previous orders in the context of complaint cases. As this issue arose in complaint cases and we are finding that it is reasonable to approve this stipulation, collateral estoppel is inapplicable to this situation.

B. Default Recovery

In the default recovery application, DP&L seeks approval from the Commission to amend its AGS tariff to allow it, in the event of a CRES-provider default, to recover any costs incurred as a result of that default, from governmental aggregators or the municipalities they represent, or, if the customers are not aggregated, from the customers themselves. Under current procedures, when a CRES provider seeks to register as a provider in DP&L's service territory, it is required to estimate the load it intends to serve. DP&L uses this information to calculate the amount of collateral it will require the CRES provider to post. This calculation, which is reviewed quarterly, is designed to cover only the cost that DP&L would incur due to customers returning unexpectedly to standard offer service and would not cover such items as pre-enrollment list fees, billing services, technical support and assistance charges, and noncompliance charges. (DP&L Ex. 4, at 3-5.)

DP&L argues that it should not have to bear the risk of a CRES-provider default, since it does not select the CRES providers and does not benefit from their services (DP&L brief at 19). Therefore, it proposed to amend its tariffs to move that risk to the aggregators, the communities, and the customers.

In order to resolve certain parties' concerns regarding the possible consequent barrier to competition, the stipulation would require DP&L, initially, to attempt to recover any energy and ancillary service costs incurred as a result of a default through either the posted security or other "commercially reasonable means." If those efforts were unsuccessful, then DP&L would be allowed to file an ATA case with the Commission to recover those costs (the prudency of which may be contested) from all customers in the customer class (es) served by that CRES provider, through the establishment of a CRES provider default recovery rider. (DP&L brief at 20.)

OCC is concerned that the proposed tariff amendment "would raise the cost of developing an aggregation program and would correspondingly discourage governmental aggregation." (OCC brief at 42.) OCC points out several issues that it believes are problematic.

1. Current Regulatory System

OCC argues that there is no current statute or regulation which would authorize DP&L to create a "cost recovery mechanism from a governmental aggregator, the community it represents or the customers served individually." Rather, the current administrative rule sets forth a procedure to be followed by EDUs in which they would petition the Commission for relief. Rule 4901:1-24-08(C), O.A.C. (OCC's brief at 43, 29.)

DP&L agrees with OCC that there is no current statute or regulation authorizing this mechanism but also asserts that there is no statute or regulation which would prohibit it. Thus, DP&L believes that this argument is irrelevant. (DP&L's rely at 20.)

Dominion, MVCC, and Green Mountain point out that, under the stipulation, the security posted pursuant to the administrative rule remains the "primary protection" for DP&L. The stipulation would not change DP&L's obligation under that rule. They also maintain that the stipulation upholds the rule by requiring Commission review of the prudency of the costs incurred. "Thus, if it can be shown that DP&L should have reasonably anticipated that the security posted by the defaulting CRES provider would be insufficient and that DP&L failed to apply to the Commission to increase the collateral required, the costs in question would not be eligible for recovery through the new rider mechanism." Finally, Dominion, MVCC, and Green Mountain stress that, although the collateral calculation is intended to cover all risks, circumstances could change so abruptly that DP&L would be unable to protect itself through that vehicle. (Dominion, MVCC, and Green Mountain's reply at 21-22.)

Staff states that the proposal is consistent with Rule 4901:1-24-08, O.A.C., according to the testimony of staff witness Price (Staff Ex. 2, at 8). Staff also notes that, since DP&L has statutory POLR responsibilities to serve all returning customers, it has associated risks. Staff points out that there is no statutory requirement that it absorb those risks internally. (Staff reply at 23-24.)

The Commission finds that the proposed default recovery mechanism is not prohibited by any current statute or rule. Rule 4901:1-24-08, O.A.C., allows DP&L to require security to be posted by CRES providers in its territory. The amount of that security is to be determined by DP&L. *See In the Matter of the Village of Indian Hill, Ohio for Certificate Approval as a Governmental Aggregator*, Case No. 03-1145-EL-GAG. If a CRES provider fails to maintain that security, DP&L is authorized to apply to the Commission for relief. However, the rule says nothing about any other possible systems for relieving DP&L of the risk associated with competitive electric markets. While we agree that DP&L should not be authorized to recover costs of CRES provider defaults through the proposed mechanism if it could have reasonably anticipated the insufficiency of that provider's collateral, the Commission also recognizes that, in today's complex markets, price volatility could be such that the posted security would be inadequate due to no fault of DP&L's. The system proposed in the stipulation is consistent with Rule 4901:1-24-08, O.A.C., and is permissible under the current statutory system.

The Commission is concerned, however, about the possible overlap between the costs proposed to be recovered through this default recovery mechanism and costs which have already been approved by the Commission for recovery. In the RSP opinion, we allowed DP&L to charge a rate stabilization surcharge (RSS), based in part on DP&L's argument that it will incur costs in its position as the provider of last resort (POLR). It had asserted that those POLR costs would not be recoverable except through an RSS. Hence, although we did not find that the costs on which the amount of the RSS was calculated were actually POLR costs, we did allow the application of the RSS to all customers because the existence of POLR costs made it reasonable to do so. In the present default recovery mechanism, the stipulation would provide for DP&L to apply for recovery of various costs that it might incur in the event that a CRES provider were to default in its payments to DP&L. This same CRES-provider default would likely result in the unexpected return of customers to DP&L. Thus, at least some of the costs that DP&L might incur in this situation could be POLR costs. Since the Commission has already granted a benefit to DP&L (the charging of the RSS to all customers) based on the existence of POLR costs, those same POLR costs may not now form the basis of an additional rider. Therefore, although we are, in this Opinion and Order, approving this aspect of the stipulation, the parties should be aware that, in the context of any future application for a tariff amendment to implement a rider for default recovery, the Commission will closely analyze the nature of the costs sought to be recovered. To the extent that such costs are POLR costs, recovery will be denied. However, if DP&L can at that time show that it has incurred costs that are not POLR costs and that it could not have anticipated and planned for those costs, then the Commission will consider recovery through the proposed default recovery rider.

2. Reduction in Risk

OCC notes that the risk related to CRES provider default is likely to be reduced as a result of DP&L joining Pennsylvania-New Jersey-Maryland Interconnection, LLC (PJM). Therefore, it implies, a default recovery mechanism of the type proposed in the stipulation is becoming less necessary. (OCC's brief at 29-30.)

DP&L, again, finds OCC's argument to be irrelevant, as the risk will not be eliminated. It argues that a CRES provider could default during a price spike, leaving its security insufficient to protect DP&L fully. (DP&L's reply at 20.)

Dominion, MVCC, and Green Mountain also comment that, while the "potential impact of a default has been significantly diminished by DP&L's full integration into" PJM, there is still a risk that the posted security would be inadequate (Dominion, MVCC, and Green Mountain's reply at 22). (*See also*, Staff's reply at 24.)

The Commission agrees with the parties that DP&L's full integration into PJM does diminish the risk that it bears. However, since it does not eliminate that risk, it does not obviate the necessity for a default recovery mechanism such as the one proposed in the stipulation.

3. Comparison with Other Utilities

OCC complains that no other Ohio EDU is covered by a system for recovery of default costs such as is proposed in the stipulation (OCC brief at 29).

DP&L responds that no other EDU has requested a rider of this nature and that similar riders do exist in the gas industry, as discussed by staff witness Price (Tr. VI at 91-92; DP&L's reply at 20).

Dominion, MVCC, and Green Mountain counter that it is no different to allow DP&L to recover for CRES provider defaults from all of its customers than it is to allow "utilities to recover bad debt expense by incorporating an allowance for uncollectibles in the rates charged their customers, notwithstanding that utilities require deposits from customers they regard as credit risks and pursue collection efforts against customers that do not meet their payment obligations." They also note that the Commission has approved recovery for uncollectible expenses through a rider. (Dominion, MVCC, and Green Mountain's reply at 23.)

The Commission agrees with Dominion, MVCC, and Green Mountain's analogy with recovery for uncollectible expenses. This is a reasonable method to spread the risk of the competitive market and is comparable to methods used by the Commission in similar situations.

4. Level of Commission Oversight

Finally, OCC states, without explanation, that the proposed default recovery system has "a potential for a lower level of regulatory oversight...." (OCC brief at 30.)

DP&L asserts that Commission oversight is not diminished, as Commission review of the prudency of DP&L's costs is required under the proposed system (DP&L reply at 20).

The stipulation specifically provides that the Commission will review the prudency of DP&L's costs. The rider would be established only through a formal "ATA" proceeding that relates to the default of a specific CRES provider (Tr. VI at 98-99). Thus, the Commission would have sufficient opportunity for oversight of the proposed system.

C. Communication

MVCC, a council of municipal governments, works to assist in energy aggregation efforts (MVCC Ex. 1, at 5-8). In the MVCC complaint, it contends, *inter alia*, that DP&L, through certain activities, "violated its duty to provide [MVCC] with accurate and balanced information regarding the potential risks and benefits of aggregation, to facilitate aggregation by providing expertise to those communities considering or engaging in aggregation efforts, and to comply with its corporate separation plan and code of conduct." (Dominion, MVCC, and Green Mountain's reply at 12-13.) MVCC witness Bristol described DP&L's uninvited attendance at meetings with municipal officials, its efforts to discourage aggregation, its accusations that competition may have helped to cause the 2003 blackout, and its perceived threat to shut down a local generating facility (MVCC Ex. 1, at 14-15; Dominion and MVCC's brief at 16).

The stipulation proposes a resolution of the MVCC complaint through the establishment of a communications protocol. Communities that are considering aggregation could request that DP&L assign a liaison with whom they could communicate regarding aggregation issues. DP&L would still be in a position, under the terms of the stipulation, to attend public meetings and to communicate directly with governmental officials. (Jt. Ex. 1, at 8; Dominion and MVCC's brief at 22.)

OCC argues that the protocol established in the stipulation provides no remedy for DP&L's anticompetitive activities. It notes that the stipulation would not subject DP&L to any new restrictions or Commission oversight. (OCC's brief at 36.)

Dominion, MVCC, and Green Mountain reason that OCC, as a mere intervenor in the MVCC complaint, should not be in a position to dispute the appropriate resolution of the complainants' concerns. They also state that the stipulation is intended to address the concerns described in the MVCC complaint "on a forward-looking basis" in order to enhance communications and minimize the potential for future disputes. (Dominion, MVCC, and Green Mountain's reply at 13, 15.)

Staff also "questions OCC's standing to raise such objections . . .." Staff points out that DP&L's competitors are in a better position than OCC to resolve wholesale market issues.

The Commission does not find that OCC has raised concerns regarding the resolution of the communications issue sufficient to overcome the fact that the complainant in the MVCC case (the only case before us in which communications issues arose) is satisfied. As the complainant states that its goal was to avoid the problem in the future and that it is satisfied with the process established, then the Commission will not require the resolution to include further limitations on DP&L's activities.

V. <u>CRITERIA FOR EVALUATING STIPULATIONS</u>

Rule 4901-1-30, Ohio Administrative Code (O.A.C.), authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such agreements are accorded substantial weight. *See Consumers Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125 (1992), *citing Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978). This concept is particularly valid where the stipulation is supported or unopposed by the vast majority of parties in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., Ohio-American Water Co.*, Case No. 99-1038-WW-AIR, Opinion and Order (June 29, 2000); *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR, Order on Remand (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR et al., Opinion and Order (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (January 31, 1989); *Restatement of Accounts and*

Records (Zimmer Plant), Case No. 84-1187-EL-UNC, Opinion and Order (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable 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?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 547 (1994) *(citing Consumers' Counsel, supra*, at 126). The court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission *(Id.)*.

DP&L, Dominion, MVCC, Green Mountain, IEU, and staff all state that the stipulation comports with these criteria (DP&L's brief at 3; DP&L's reply at 24; Dominion and MVCC's brief at 24-27; Dominion, MVCC, and Green Mountain's reply at 24: Staff's brief at 4; Staff's reply at 3).[7] Only OCC argues that the stipulation does not meet the court's criteria.

A. <u>Is the Stipulation the Product of Serious Bargaining among Knowledgeable Parties?</u>

OCC asserts that the stipulation is not the result of serious bargaining among capable, knowledgeable parties. It contends that the stipulation must not be the product of serious bargaining among experienced regulatory counsel, because (1) in its view the stipulation is "seriously flawed" (OCC brief at 38-40), and (2) OCC would not sign the stipulation (OCC brief at 41).

DP&L argues that OCC's concern regarding the wisdom and legality, or lack thereof, of the stipulation relates to the second and third elements of the test, but not to the existence of serious bargaining among knowledgeable parties (DP&L reply at 7-8).

Dominion, MVCC, and Green Mountain point out that "the fact that the negotiations, in which OCC actively participated, did not go OCC's way, does not mean that the stipulated result was not the product of serious bargaining." (Dominion, MVCC, and Green Mountain's reply at 15.)

7 While IEU does not specifically state that it believes that the stipulation meets the three-pronged test, it does reference the test and request approval by the Commission (IEU brief, *passim*).

Staff stresses that OCC's approach to this prong of the test would give it, effectively, "global veto power, thereby precluding Commission approval of any settlement not endorsed by the OCC." Staff also notes that the legal standard that the Commission follows in considering stipulations was adopted in a case in which OCC had not signed the stipulation in question. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123 (1992). Therefore, it contends that OCC agreement is clearly not necessary.

The Commission will not alter its traditional application of this test. The Commission will not require OCC's approval of stipulations. Legal flaws and any lack of benefit conferred by a stipulation will be considered under the other two prongs of the test. In considering whether there was serious bargaining among capable and knowledgeable parties, the Commission evaluates the level of negotiations that appear to have occurred, and takes notice of the experience and sophistication of the negotiating parties. In these cases, it is clear that all parties participated in negotiations. Even OCC does not argue that it was kept away from the negotiating table. It only states that it was unwilling to sign the resultant stipulation. The signatory parties are all ones which routinely participate in complex cases before the Commission. The signatory parties are all represented by counsel who similarly practice before the Commission on a regular basis. It is clear that the first prong of the test is met by the stipulation.

B. Does the Settlement, as a Package, Benefit Ratepayers and the Public Interest?

The signatory parties have identified various benefits of the stipulation. As noted by DP&L, as a result of the stipulation, (1) DP&L will not seek to recover increased costs that it expects to incur as a result of increases in the volume of calls to its call center due to aggregation (DP&L brief at 16); (2) DP&L will only recover $0.20 per consolidated bill, although its costs for the electronic data interface (EDI) transactions associated with each consolidated bill are $0.29 (DP&L brief at 17); (3) the proposed consolidated billing fee will not inhibit competition (DP&L brief at 17-18); (4) the proposed consolidated billing fee will be consistent with similar fees charged by other utilities (DP&L brief at 18); (5) the default recovery rider will protect DP&L from the effects of a CRES default and will result in DP&L withdrawing its tariff application, which, otherwise, might have resulted in an obstacle to competition (DP&L brief at 20-21); and (6) the communication protocol will help to eliminate miscommunications in the future (DP&L brief at 22).

Dominion and MVCC also identify a number of results of the stipulation which they say will be benefits to ratepayers and the public interest. These include (1) the reduction in DP&L's charges for consolidated billing service; (2) the acceleration of the recovery of DP&L's billing costs, resulting in a reduction in total carrying costs; (3) the elimination of the disincentive to aggregate which was posed by DP&L's application for a tariff rider covering default recovery; (4) the review of DP&L's expenditures to ensure their prudency prior to recovery; (5) the enhancement of cooperation and minimization of the potential for future disputes, through the communications protocol; and (6) the facilitation of aggregation through the communications protocol, allowing increased opportunity for customer savings (Dominion and MVCC's brief at 25-26).

Staff provides a similar listing, pointing out that (1) the proposed stipulation would foster retail choice by resolving a series of difficult and important issues; and (2) another stipulation, reached contemporaneously with the one under consideration in these proceedings, would also resolve issues in two additional cases, concerning DP&L's EDI procedures, payment posting priorities, payment plan rules and collection procedures (staff brief at 8). IEU comments that the stipulation would create a comprehensive solution, create better access to alternative suppliers, resolve consolidated billing cost disputes, allow for a prudence review of DP&L's investments in billing, allow DP&L to recover its costs, and address communications issues (IEU brief at 4-5).

OCC disagrees. It lists a number of reasons why it believes that the stipulation does not benefit the ratepayers and the public interest. Specifically, OCC argues that staff witness Price, in discussing staff's view of the benefits, should not have compared the stipulation to the status quo but, rather, should have compared it to the likely outcome of the cases on the merits. Therefore, it suggests that the benefits are overstated. (OCC brief at 31-2.) Staff responds that the Commission should not compare the benefits of the stipulation with OCC's ideal litigation outcome. Staff notes that OCC's ideal outcome is based in part on the side agreement (staff reply at 5-6). The Commission agrees with staff on this point. The Commission has determined that the side agreement will not be considered. The Commission cannot compare a stipulation with a possible outcome of litigation, since that litigation did not occur. Without a complete litigation record, the Commission cannot determine what the outcome would have been without the stipulation. The Commission does not believe it would be in the public interest to require stipulating parties to go to the expense of developing a complete record, on which the Commission could make an independent decision as to the outcome it would reach outside of the stipulation. Therefore, it is not economically feasible to make the comparison that OCC suggests. In addition, OCC's comparison is not actually between the stipulation and the likely outcome of the case. Even OCC does not know the likely outcome. Rather, its comparison is with its own preferred outcome. That is certainly not an appropriate analysis for the Commission to make. In any situation, a stipulation would not appear beneficial from the standpoint of a party that has chosen not to sign that stipulation, if the comparison is made with its preferred outcome. The Commission will compare the stipulation with the status quo, as it normally does in cases such as these.

OCC disagrees that the reduced level of consolidated billing charge is a benefit because it believes that the Commission can, and should, order DP&L to adopt a flat $0.20 charge, apart from the stipulation (OCC brief at 33-34). Staff points out the OCC is asking the Commission to adopt the same consolidated billing charge that was negotiated by the signatory parties, but to do it outside of the stipulation. Thus, OCC is downplaying the benefit of the stipulation while it agrees with the result. (Staff reply at 6-7.) The Commission finds that it is a benefit to the ratepayers and the public interest for the parties to these cases to agree to a per-bill fee that is substantially lower than DP&L currently charges.

OCC disagrees that the prudence review of DPL's expenditures on billing system changes is a benefit because it says that the Commission would review the prudence of DP&L's investment in its billing system prior to ordering a recovery of those costs in the context of a distribution rate case, without requiring the expense of that review to be borne by customers. OCC also believes that a review should include scrutiny of CRES-provider charges. (OCC brief at 34-35.) Staff argues that OCC is not really criticizing the stipulation to assert that the Commission also would have made such a review if it were considering these costs in the context of a rate case. Also, staff notes, the prudence review should not be faulted for not covering CRES provider charges, since those charges were independently supported by testimony at the hearing. (Staff reply at 7.) DP&L also controverts OCC's assertion that the costs of the review in a rate case would not be borne by consumers. Rather, it says, a rate-case review is performed by staff and is paid for by the assessment that DP&L pays to the Commission. That assessment is recovered from customers of DP&L. (DP&L reply at 10. *See, also,* DP&L reply at 11.) The Commission does find that it is a benefit to ratepayers and the public interest for DP&L's billing-modification costs to be reviewed for prudency in the context of these cases. This is the same type of review that staff would make if this were a rate case.

OCC disagrees that the reduction of carrying charges through the early recovery of the costs is a benefit because it believes that early recovery is a violation of the rate freeze provision of the ETP stipulation and the RSP stipulation. It believes that no carrying charge is appropriate. (OCC brief at 35-36.) Staff argues that deferrals were authorized in the ETP stipulation and ETP opinion and that it is the Commission's routine practice to allow carrying charges based on the company's authorized rate of return. No evidence as to other possible carrying charges was presented by OCC or any other party. (Staff reply at 8. *See, also,* DP&L reply at 11.) The Commission agrees that deferrals were authorized in the ETP opinion. The Commission also finds that the agreed-upon carrying charges are appropriate, since they are based on charges previously approved by the Commission. Thus, avoidance of a portion of those charges through earlier recovery of the underlying costs than was previously anticipated is a benefit to ratepayers.

OCC disagrees that the default recovery rider is a benefit because, according to OCC, it has a lower level of Commission oversight than the financial guarantee system that is currently in place (OCC brief at 37). The Commission disagrees. The current, statutorily imposed system will be left in place. The rider proposed in the stipulation will be added to the current system. Thus, there is no diminution of Commission oversight.

OCC disagrees that the communication protocol is a benefit because it believes that DP&L should be subject to additional restrictions and Commission oversight (OCC brief at 36-37). Staff questions OCC's standing to dispute this provision and suggests that the OCC is not in a position to offer a meaningful perspective on these issues (staff's reply at 8-9). The Commission does not find that additional restrictions and oversight are necessary in light of the complaining party being satisfied with the proposed resolution of the issue.

The Commission agrees that the stipulation, as modified by this opinion and order, does, as a package, benefit ratepayers and the public interest. As discussed above, the stipulation, as modified by this opinion and order, allows DP&L to recover its billing system modification expenses more effectively than the current arrangement while limiting the charges to CRES providers and, thus, limiting any negative impact on competition in DP&L's territory. It also allows ratepayers in DP&L's service territory to begin paying for those modifications earlier than they otherwise would have, thus reducing the total carrying charges that they otherwise would have paid. DP&L, through the stipulation, will agree not to recover any increased call center costs and will accept less than its full EDI costs. The default recovery rider will protect DP&L against the risk of CRES provider default, while maintaining Commission oversight of the prudency of its requested cost recovery and allowing the Commission to ensure that such costs are not already being recovered through other mechanisms. Finally, the communication protocol will provide potential aggregators with the means to communicate more openly and fully with DP&L in the future.

C. Does the Stipulation Violate any Important Regulatory Principle or Practice?

The signatory parties believe that the stipulation does not violate any important regulatory principle or practice (DP&L's brief at 3; DP&L's reply at 12; Dominion and MVCC's brief at 26; Dominion, MVCC, and Green Mountain's reply at 3; staff's brief at 8; staff's reply at 9). In making this point, Dominion and MVCC note, among other things, that the costs of billing system modifications are properly regarded as a cost of restructuring (Dominion and MVCC's brief at 26).

OCC makes a number of arguments in support of its assertion that the stipulation violates important regulatory principles and practices. Most of these are discussed, and rejected, above. In addition, OCC asserts that it is not sound regulatory policy to impose a charge on all customers to recover DP&L's investment in its billing system (OCC's brief at 16). The Commission disagrees. Under the ETP stipulation, DP&L was authorized to recover that investment, through a deferral, from all customers. The present stipulation only changes the timing of that recovery. Thus, the stipulation does not impose any new charge, as asserted by OCC. Also, as noted by staff, the proposal in the stipulation, as modified, is consistent with other utilities' situations. Other EDUs recover their consolidated billing expenses through their transition costs (Staff Ex. 2, at 6). Gas utilities recover their consolidated billing costs through a rider on all customers eligible for the gas choice program (Staff Ex. 2, at 6). The Commission finds this system to be both reasonable and not in violation of any regulatory principle or practice.

The Commission would also note that DP&L was required to modify its billing system in order to provide consolidated billing. The Commission finds that it is reasonable for the costs of this mandated action to be borne by all of the company's customers.

The stipulation does not violate any important regulatory principle or practice.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) On November 26, 2003, DP&L filed an application not for an increase in rates, asking for approval to modify its existing alternate generation supplier's tariff sheet number G8.

(2) On December 16, 2003, Dominion filed a complaint against DP&L.

(3) On January 21, 2004, MVCC filed a complaint against DP&L.

(4) On January 2, 2004, and February 11, 2004, DP&L filed answers to the complaints.

(5) Intervention was granted to a number of parties.

(6) On July 28, 2004, a public hearing was held.

(7) On various dates between July 28, 2004, and October 21, 2004, an evidentiary hearing was held.

(8) During the course of the evidentiary hearing, OCC introduced into evidence an alleged side agreement between OCC and DP&L, apparently entered into on June 1, 2000. However, as that document was not filed with, or approved by, the Commission, it will not be considered in these proceedings.

(9) On October 14, 2004, a stipulation was filed by DP&L and staff of the Commission, which stipulation was signed by all parties to these proceedings except OCC.

(10) On December 21, 2004, UtiliPoint filed a report on the prudence of DP&L's modifications of its billing system.

(11) The stipulation, as modified in this opinion and order, if adopted, will resolve all of the issues presented in these proceedings.

(12) The Commission finds that the stipulation, as modified in this opinion and order, is a product of serious bargaining among capable, knowledgeable parties.

(13) The Commission finds that the stipulation, as modified in this opinion and order, as a package, benefits ratepayers and the public interest.

(14) The Commission finds that the stipulation, as modified in this opinion and order, does not violate any important regulatory principle or practice.

(15) The terms of the stipulation, as modified in this opinion and order, are reasonable and will be adopted as set forth herein.

It is, therefore,

ORDERED, That the Stipulation and Recommendation filed October 14, 2004, be approved, as modified in this opinion and order. It is, further,

ORDERED, That DP&L shall, within 30 days, file tariffs for Commission approval that reflect the terms of the stipulation. It is, further,

ORDERED, That DP&L be authorized to file an ATA proceeding to implement the rider to recover its billing system modification costs. It is, further, ORDERED, That Case Nos. 03-2405-EL-CSS and 04-85-EL-CSS be closed of record. It is, further,

ORDERED, That a copy of this opinion and order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Ronda Hartman Fergus

Judith A. Jones

Donald L. Mason

Clarence D. Rogers, Jr.

JWK;geb

Entered in the Journal

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Reneé J. Jenkins
Secretary