

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the )  
Dayton Power and Light Company for ) Case No. 10-734-EL-AEC  
Approval of a Unique Arrangement With )  
Caterpillar Inc. )

OPINION AND ORDER

The Commission, having considered the record in this matter, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Judi L. Sobecki and Randall V. Griffin, 1065 Woodman Drive, Dayton, Ohio 45432, on behalf of Dayton Power and Light Company.

Michael DeWine, Ohio Attorney General, by Thomas W. McNamee, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

Janine Migden-Ostrander, Ohio Consumers' Counsel, by Michael E. Idzkowski and Maureen R. Grady, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215.

McNees, Wallace, and Nurick, LLC, by Samuel C. Randazzo and Joseph E. Oliker, 21 East State Street, Columbus, Ohio 43215, on behalf of Industrial Energy Users-Ohio.

OPINION:

I. Background

Dayton Power and Light Company (DP&L) is an electric distribution facility, as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission. The Commission has the authority to approve a unique arrangement between an electric utility, and a customer or group of customers, upon application by the customer or the utility, pursuant to Section 4905.31, Revised Code, and Rule 4901:1-38-05(A), Ohio Administrative Code (O.A.C.). On July 1, 2010, DP&L filed an application requesting that the Commission approve a unique arrangement between Caterpillar Inc. (Caterpillar) and DP&L.

By entries issued on July 30, 2010, and September 30, 2010, the attorney examiner granted the motions to intervene filed by the Ohio Consumers' Counsel (OCC) and Industrial Energy Users-Ohio (IEU-Ohio).

On January 28, 2011, DP&L, Staff, and OCC filed a stipulation and recommendation (stipulation) resolving all issues in the case. The stipulation states that IEU-Ohio will not be a signatory party to the stipulation but does not oppose it. A hearing was held on March 1, 2011, in order to consider the stipulation.

## II. Summary of the Application

The application explains that Caterpillar plans to construct a distribution facility within DP&L's service territory, scheduled to be completed in the second quarter of 2011. Upon completion, the distribution center is expected to create 500 new full-time jobs with an estimated payroll of \$14 million per year and an average hourly wage of approximately \$13.40 per hour, exclusive of benefits. DP&L states that, in order to incent Caterpillar to construct and operate its new distribution facility, Caterpillar would be billed at a rate reflecting a fifteen percent discount on total DP&L electric charges for a proposed term of 60 months. Caterpillar must reach a minimum metered load of 500 kW to receive the discount.

The application further states that Caterpillar must provide required data submissions in an annual report, as approved by Commission Staff (Staff) and comply with state regulatory requirements. The application further provides that DP&L will offer up to \$100,000 in incentives towards Caterpillar's facility construction, if Caterpillar commits to using the results of its energy efficiency measures and programs towards DP&L's energy efficiency and demand response portfolio. DP&L will also provide up to \$50,000 to assist Caterpillar in connection with any necessary extension of electric facilities to the new facility. The application also includes a request for the recovery of delta revenues as permitted under Rule 4901:1-38-08, O.A.C.

## III. Summary of the Stipulation

The proposed unique arrangement between DP&L and Caterpillar was appended to the stipulation as an exhibit. The following is a summary of the provisions agreed to by the stipulating parties and is not intended to replace or supersede the stipulation:

- (A) The collection of delta revenue from DP&L's customers arising out of the fifteen percent discount associated with the unique arrangement will be capped at \$410,000 over the term of the contract. In addition, DP&L agrees to provide OCC a copy of

the annual report submitted by Caterpillar to Staff and DP&L pursuant to Rule 4901:1-38-06, O.A.C.

- (B) DP&L will provide a credit to the economic development rider (EDR) in the amount of \$30,000 per year for each of the five years of the contract term. If DP&L chooses to delay the collection of the cost of the contract beyond the date of Commission approval, DP&L will not seek to collect carrying charges.
- (C) DP&L will share its proposed customer bill message explaining the EDR with OCC and Staff prior to instituting the recovery of costs through the EDR and consider suggestions from OCC and Staff.
- (D) The calculation of the EDR for each customer class shall follow the allocation required under Rule 4901:1-38-08(A)(4), O.A.C.
- (E) DP&L will develop a document with Caterpillar which will be filed in the docket by December 31, 2011, indicating Caterpillar will commit the results of its energy efficiency and demand response measures associated with LEED certification, for integration with DP&L's energy efficiency and demand response program portfolio. Caterpillar will not seek additional compensation from DP&L or its customers for that commitment.

#### CONCLUSION:

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. See, *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, at 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves almost all of the issues presented 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., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR et al. (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). 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.*).

The signatory parties state that the stipulation is the product of lengthy, arm's length bargaining among all parties to the proceeding. The signatory parties also maintain that the stipulation is supported by adequate data and information, represents a reasonable resolution of all issues in this proceeding, is made by parties representing a wide range of interests, and violates no regulatory principle or practice (Jt. Ex. 1 at 1-2.).

Dona R. Seger-Lawson, director of regulatory operations at DP&L, explains that the settlement talks involved a diverse set of interests, each of whom was represented by experienced, knowledgeable, and competent counsel. Ms. Seger-Lawson notes that although IEU-Ohio is not a signatory party to the stipulation, it will not oppose it. Ms. Seger-Lawson states that the stipulation benefits the public interest because it effectively helps to create jobs in the Miami Valley region, representing a significant benefit to customers and the public interest (DP&L Ex. 2 at 7-8).

Ms. Seger-Lawson further provides that the stipulation does not violate any important regulatory practice or principle and is consistent with Commission rules. She specifically notes that the stipulation is designed to ensure that Caterpillar secures long-term, reliable electric service from DP&L, which will in turn create jobs and facilitate the State's effectiveness in the global economy, in furtherance of the policy of the State of Ohio as embodied in Section 4928.02, Revised Code (DP&L Ex. 2 at 8).

Based on our review of the three-pronged test, the Commission finds the first criterion, that the process involved serious bargaining by knowledgeable, capable parties,

is clearly met. The Commission finds that the stipulation filed in this case appears to be the product of serious bargaining among capable, knowledgeable parties. All parties to the stipulation have been involved in numerous cases before the Commission and have consistently provided extensive and helpful information to the Commission. In addition, the stipulation also meets the second criterion. As a package, the stipulation advances the public interest by resolving all the issues raised in this matter without resulting in extensive litigation. Finally, the stipulation meets the third criterion because it does not violate any important regulatory principle or practice. *Consumers' Counsel*, supra, at 126. Accordingly, we find that the stipulation is reasonable and should be adopted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On June 1, 2010, DP&L filed an application for approval of a unique arrangement with Caterpillar.
- (2) By entry issued July 30, 2010, OCC was granted intervention in this proceeding.
- (3) On September 30, 2010, IEU-Ohio was granted intervention in this proceeding.
- (4) On January 28, 2011, DP&L, Staff, and OCC filed a stipulation resolving all of the issues in this proceeding. IEU-Ohio indicated that it would not oppose the stipulation.
- (5) The evidentiary hearing was held before the Commission on March 1, 2011.
- (6) At the hearing, the stipulation was admitted into the record, intending to resolve all issues in this case.
- (7) The stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.
- (8) DP&L should be authorized to enter into a unique arrangement with Caterpillar consistent with the stipulation and this order.

It is, therefore,

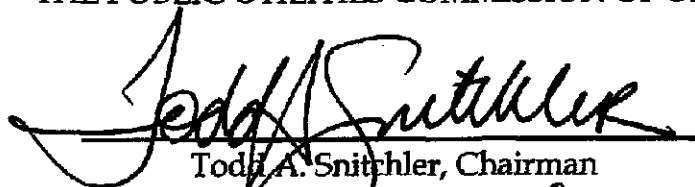
ORDERED, That the stipulation and recommendation submitted in this case be approved and adopted in its entirety. It is, further,

ORDERED, That DP&L take all necessary steps to carry out the terms of the stipulation and this order. It is, further,

ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

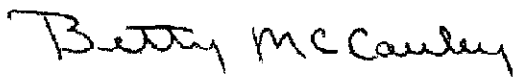
ORDERED, That a copy of this opinion and order be served upon each party of record.

## THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman  
Paul A. Centolella  
Valerie A. Lemmie  
Steven D. Lesser  
Cheryl L. Roberto

JJT/sc

Entered in the Journal

**APR 05 2011**Betty McCauley  
Secretary