

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Long-Term Forecast)
Report of Dayton Power and Light) Case No. 10-505-EL-FOR
Company and Related Matters.)

OPINION AND ORDER

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

APPEARANCES:

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

Mike 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 Richard C. Reese, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215.

Ohio Environmental Council, by William Reisinger, 1207 Grandview Avenue, Suite 201, Columbus, Ohio 43212.

OPINION:

I. Background

Dayton Power and Light Company (DP&L) is an electric light company, as defined by Section 4905.03(A)(3), Revised Code, and a public utility, as defined under Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission. Rule 4901:5-3-01(A), Ohio Administrative Code (O.A.C.), requires each electric utility to file annually a long-term forecast report (LTFR). On April 15, 2010, DP&L filed its 2010 LTFR.

By entry issued on June 3, 2010, the attorney examiner granted the motion for a hearing filed by the staff of the Commission (Staff), setting this matter for a public

hearing on July 13, 2010. The attorney examiner found that a public hearing was required pursuant to Section 4935.04(D)(3), Revised Code, as Staff's motion demonstrated that good cause exists to hold a public hearing in this matter. Staff's motion explained that DP&L's LTFR addresses existing and imminently planned solar generation facilities for which DP&L may seek a reasonable allowance and/or non-bypassable charge under Section 4928.143(B)(2)(b) or (c), Revised Code.

On July 12, 2010, DP&L filed proofs of publication of notice of the hearing, in accordance with Section 4935.04(D)(3), Revised Code. The public hearing commenced as scheduled on July 13, 2010. No members of the public appeared at the public hearing, during which the attorney examiner granted the motions to intervene filed by the Ohio Consumers' Counsel (OCC) and Ohio Environmental Council (OEC).

DP&L, Staff, OCC, and OEC (Signatory Parties) filed a stipulation and recommendation (stipulation) resolving all issues in the case on January 14, 2011. By entry issued on January 31, 2011, this matter was set for an evidentiary hearing for the purpose of considering the stipulation.

II. Summary of the Stipulation

In the stipulation, the Signatory Parties agree that DP&L's April 15, 2010, LTFR filing substantially complies in all material respects with the requirements imposed by Chapter 4901:5-5, O.A.C. The Signatory Parties agree that, as shown on PUCO Form FE-R6 of DP&L's application, DP&L is capacity deficient in year 0 (2010) of the LTFR planning period. As explained on PUCO Form FE-R6, DP&L has already purchased approximately 400 MW of capacity for the 2010-2012 period to remedy its capacity deficiency. In addition, the Signatory Parties agree that, based on resource planning projections submitted by DP&L pursuant to the alternative energy resource requirements in Sections 4928.143(B)(2)(c), and 4929.64(B)(2), Revised Code, there is a need for a 1.1 MW solar generation facility, known as Yankee 1, and for additional solar generation facilities during the LTFR planning period.

DP&L's application explains that Yankee 1 has already been constructed and placed into service. DP&L plans to construct additional solar generating facilities to be on-line in 2012, and expects that the size of the facility or facilities to be approximately 3.9 MW. The Signatory Parties specifically agree that there is a need for the 3.9 MW facility or facilities. Plans to build additional solar generation facilities beyond 2012 will be addressed in the Company's future annual LTFR proceedings.

The stipulation also states that, in one or more separate proceedings, DP&L will seek recovery of all prudent and reasonable capital and operating costs of the Yankee 1 solar generation facility and may seek recovery of additional planned solar generation facilities. The stipulation does not prohibit a party from participating in any such cost recovery proceeding. In addition, the Signatory Parties also agree that nothing within the stipulation shall preclude a party from actively participating in *In the Matter of the Application of the Dayton Power and Light Company for Approval of a Residential and Small Commercial Renewable Energy Credit Purchase Program Agreement*, Case No. 10-262-EL-UNC.

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, serious, 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.).

Hertzel Shamash, director of resource planning at DP&L, explains that the settlement talks involved a diverse set of interests. Mr. Shamash states that all parties were represented by experienced counsel and, in addition, all parties have participated in numerous proceedings before the Commission and are knowledgeable in regulatory matters. Mr. Shamash explains that this stipulation benefits the customers and public interests because interested parties are made aware of DP&L's plans to meet its customers' needs over the planning period in the areas of generation, transmission, and distribution service. Mr. Shamash also states that the stipulation does not violate any important regulatory practice or principle (DP&L Ex. 2 at 4-5).

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 April 15, 2010, DP&L filed its 2010 LTFR.
- (2) On May 18, 2010, Staff filed a motion for a hearing.
- (3) By entry issued June 3, 2010, Staff's motion for a hearing on the 2010 LTFR was granted, and a public hearing was scheduled for July 13, 2010.
- (4) On July 12, 2010, DP&L filed proofs of publication for the July 13, 2010 public hearing.
- (5) The public hearing was held as scheduled on July 13, 2010.
- (6) OCC's and OEC's motions to intervene were granted on July 13, 2010.
- (7) On January 14, 2011, DP&L, Staff, OCC, and OEC filed a stipulation resolving all issues in the case.
- (8) The evidentiary hearing was held before the Commission on March 8, 2011.
- (9) At the hearing, the stipulation was admitted into the record, intending to resolve all issues in this case.
- (10) The stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.
- (11) There is a need for a 1.1 MW solar generation facility, known as Yankee 1, and for additional solar generation facilities during the LTFR planning period.

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,

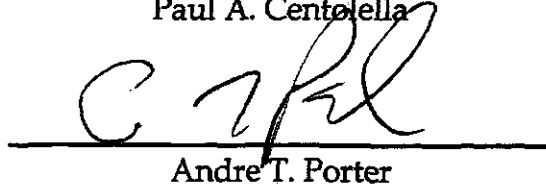
ORDERED, That a copy of this opinion and order be served upon each party of record.

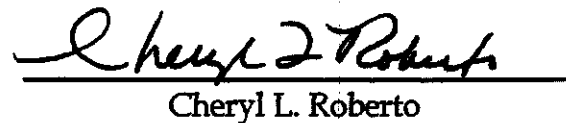
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Paul A. Centolella


Steven D. Lesser

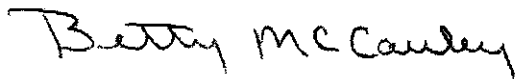

Andre T. Porter


Cheryl L. Roberto

JJT/sc

Entered in the Journal

APR 19 2011


Betty McCauley

Betty McCauley
Secretary