

In the Matter of the Application of )  
The Dayton Power and Light Company ) Case No. 11-5730-EL-FAC  
to Establish a Fuel Rider )

This Stipulation is supported by adequate data and information, documented for the record in these proceedings (as agreed to by the Signatory Parties) as follows: (1) DP&L quarterly Fuel Rider filings; (2) the pre-filed testimony of DP&L witnesses David J. Crusey (DP&L Ex. 1), G. Aaron Cooper (DP&L Ex. 2), and Gregory S. Campbell (DP&L Ex. 3) and deposition exhibits DP&L-6 and DP&L-7; 3) the pre-filed testimony of Gregory Slone (OCC Ex. 1) on behalf of the Office of the Ohio Consumers' Counsel ("OCC"); and (4) the

**Parent**

Management/Performance and Financial Audit of the Fuel and Purchased Power Rider of The Dayton Power and Light Company ("2011 Audit Report") filed on April 27, 2012. To the extent any such documents contain confidential material, the documents shall be put into evidence in both public and confidential sealed versions. Each Signatory Party agrees not to object to the introduction of the above-referenced documents into evidence in this proceeding, but each Signatory Party's agreement not to object is with the explicit reservation that it is not necessarily concurring or agreeing with each or any of the opinions and conclusions set forth therein.

The Stipulation represents a just and reasonable resolution of the issues raised in these proceedings; violates no regulatory principle or precedent; and is the product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process, encouraged by this Commission and undertaken by the Signatory Parties representing a wide range of interests, including the Commission Staff, to resolve the aforementioned issues. Although the Commission is not required to accept the terms of this Stipulation,, this Stipulation is entitled to careful consideration by the Commission. For purposes of resolving all issues raised by these proceedings, the Signatory Parties stipulate, agree and recommend as set forth below.

This Stipulation is submitted for purposes of this proceeding only, and neither this Stipulation, nor any Commission ruling considering this Stipulation, shall be deemed binding or precedent in any other proceeding, except to the extent necessary to enforce the terms of this Stipulation, including those terms and conditions as set forth herein that relate to the 2012 Audit period and any proceeding associated with such 2012 Audit period. Except for purposes of enforcement of the terms of this Stipulation, this Stipulation (and the information and data contained therein or attached) and Commission rulings that adopt the Stipulation shall not be relied upon or cited as precedent in any other proceeding for or against any Party, or the

Commission itself. The circumstances of this case are unique, and thus, using the terms of this Stipulation in any other case is inappropriate and undermines the willingness of the parties to compromise. The Signatory Parties' agreement to this Stipulation, in its entirety, shall not be cited or interpreted in a future proceeding before this Commission as their agreement to only an isolated provision of this Stipulation or to any position, argument, or recommendation presented in this proceeding. No specific provision contained in this Stipulation shall be construed or applied in any other proceeding to attribute the results set forth in this Stipulation as the results that any Signatory Party might support or seek, but for this Stipulation. This Stipulation recognizes that each Signatory Party may disagree with individual provisions of this Stipulation, but believes that the Stipulation has value as a whole.

This Stipulation is a reasonable compromise involving a balancing of competing positions, and it does not necessarily reflect the position that one or more of the Signatory Parties would have taken if these issues had been fully litigated. This Stipulation shall not be interpreted to reflect the positions that a Signatory Party would take regarding an individual provision in this Stipulation standing alone.

This Stipulation is expressly conditioned upon its adoption by the Commission in its entirety and without material modification. In the event the Commission issues an order that does not adopt the Stipulation in its entirety without material modification,<sup>2</sup> any Party may file an application for rehearing or terminate and withdraw from the Stipulation by filing a notice with the Commission, including service to all parties, in the docket within thirty (30) days of the Commission's order. Other Signatory Parties to this Stipulation agree that they will not oppose

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<sup>2</sup> Any Party has the right, in its sole discretion, to determine what constitutes a "material" modification for the purposes of that Party withdrawing from the Stipulation.

or argue against any other Party's termination and withdrawal or application for rehearing that seeks to uphold the original, unmodified Stipulation. In the event the Commission issues an entry on rehearing that does not adopt the Stipulation in its entirety without material modification, any Party may terminate and withdraw from the Stipulation by filing a notice with the Commission, including service to all Parties, in the docket within thirty (30) days of the Commission's entry on rehearing (or other ruling subsequent to the original order that does not adopt the Stipulation in its entirety without material modification). Upon the filing of a notice of termination and withdrawal, the Stipulation shall immediately become null and void.

Prior to the filing of a notice of termination and withdrawal, the Party wishing to terminate agrees to work in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation and, if a new agreement is reached that includes the Party wishing to terminate, then the new agreement shall be filed for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful in reaching a new agreement that includes all Parties to the present Stipulation, the Commission will convene an evidentiary hearing such that the Signatory Parties will be afforded the opportunity to present evidence through witnesses, to cross-examine witnesses, to present rebuttal testimony, and to brief all issues that the Commission shall decide based upon the record and briefs as if this Stipulation had never been executed. Some, or all, of the Signatory Parties may submit a new agreement to the Commission for approval if the discussions achieve an outcome they believe substantially satisfies the intent of the present Stipulation.

All the Signatory Parties fully support this Stipulation and urge the Commission to accept and approve the terms herein.

The Parties agree that the settlement and resulting Stipulation is a product of serious bargaining among capable, knowledgeable parties. This Stipulation is the product of an open process in which all parties were represented by experienced counsel. The Stipulation represents a comprehensive compromise of issues raised by Signatory Parties with diverse interests. DP&L, the Office of the Ohio Consumers' Counsel (OCC), Industrial Energy Users-Ohio (IEU-Ohio), and the Commission Staff<sup>3</sup> have signed the Stipulation and adopted it as a reasonable resolution of all issues. The Signatory Parties believe that the Stipulation that they are recommending for Commission adoption presents a fair and reasonable result.

The Signatory Parties agree that the settlement, as a package, benefits customers and is in the public interest.

WHEREAS, all of the related issues and concerns raised by the Signatory Parties have been addressed in the provisions of this Stipulation, and reflect, as a result of such discussions and compromises by the Signatory Parties, an overall reasonable resolution of all such issues. This Stipulation is the product of the discussions and negotiations of the Signatory Parties, and is not intended to reflect the views or proposals that any individual Party may have advanced acting unilaterally. Accordingly, this Stipulation represents an accommodation of the diverse interests represented by the Parties, and is entitled to careful consideration by the Commission;

WHEREAS, this Stipulation represents a serious compromise of complex issues and involves substantial benefits that would not otherwise have been achievable; and

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<sup>3</sup> The Commission Staff is a party for the purpose of entering into this Stipulation by virtue of O.A.C. 4901-1-10(C).

WHEREAS, the Signatory Parties believe that the agreements herein represent a fair and reasonable resolution of the issues raised in the case set forth above concerning DP&L's Application to establish its Fuel Rider;

NOW, THEREFORE, the Signatory Parties stipulate, agree and recommend that the Commission make the following findings and issue its Opinion and Order in these proceedings approving this Stipulation in accordance with the following:

1. Credit to Benefit Standard Service Offer Customers. The Signatory Parties agree that in the first quarterly filing after a Commission order adopting this Stipulation, DP&L will credit the Fuel Rider in the amount of \$2.0 million dollars (i.e. Standard Service Offer customers will receive a reduction in otherwise calculated rates). The auditors for the 2012 Audit Period will report on whether this adjustment was correctly performed.

2. Optimization Provisions.

A. For the 2012 Audit Period, DP&L will not treat as an optimization and will not seek recovery of a 75% charge-back of Optimization Gains with respect to any sale or purchase of fuel for a co-owned power plant that DP&L does not operate. Any Accounting Gains or Accounting Losses<sup>4</sup> with respect to such sales that the operating co-owner charges or credits to DP&L shall be treated consistently with prior periods, i.e., 100% recognition in FERC Account 456 and the jurisdictional share flowed through to customers consistent with the description in section 2.C. below and the documents referenced therein.

B. For 2012 Audit Period, DP&L will not treat as an optimization and will not seek recovery of a 75% charge-back of any Optimization Gains associated with a sale or

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<sup>4</sup> For purposes of this Stipulation, "Accounting Gains" and "Accounting Losses" are defined as those gains or losses from the sale of coal that are recorded by DP&L in Federal Energy Regulatory Commission Account No. 456. The Accounting Gain or Loss is calculated by subtracting the cost of the coal and its related selling costs from the sales price of the coal.

transfer of fuel between one Station operated by DP&L and another Station operated by DP&L. To account for the value of any change in ownership share of the tons sold or transferred, any such sales or transfers will be accounted for using the method as generally described in the 2011 Audit Report, Ex. 4-4.

C. For the 2011 and 2012 Audit Period, the Signatory Parties agree that the use of a methodology that includes recording of 100% of Accounting Gains and Losses in FERC Account 456 for recovery through the Fuel Rider, and the charge-back of 75% of Optimization Gains,<sup>5</sup> all as generally described in DP&L's initial Application of October 9, 2009, in Case No. 09-1012-EL-FAC, the 2011 Audit Report and other documents submitted into evidence in this proceeding, shall be deemed to be consistent and compliant with the 25% sharing method set forth in Section 2 of the stipulation approved by the Commission in Case No. 08-1094-EL-SSO ("ESP Stipulation").

D. It is agreed that sales of coal made by DP&L from purchases entered into after April 29, 2011, shall be treated as optimizations only if replaced with a coal with a similar sulfur content.<sup>6</sup> The above restriction does not apply to sales of coal made by DP&L from purchases entered into prior to April 29, 2011, which remain eligible for optimization treatment irrespective of whether the coal in the portfolio at the time of sale and the replacement coal have

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<sup>5</sup> For purposes of this Stipulation, "Optimization Gains" are defined as the positive difference between the sales price of a coal contract for future deliveries and the cost of purchasing a replacement coal, both converted to a Btu basis, and with other value adjustments relative to differentials in transportation costs, quality specifications, and other factors on an as-delivered and as-consumed basis. These adjustments are described more specifically in the 2011 Audit Report, Ex. 4-1. See also Stipulation Ex. 1, attached hereto and made a part hereof, which provides a simplified and illustrative computation of an Optimization Gain computation. See also Stipulation Ex. 2, attached hereto and made a part hereof, which provides examples demonstrating how optimizations result in a Net Benefit to the Fuel Rider relative to the then-existing position in both falling and rising markets.

<sup>6</sup> For clarity: A sale of NYMEX coal already under contract that is replaced with a low sulfur CAPP coal would be considered an optimization, as would a sale of a high sulfur coal under contract that is replaced with another high sulfur coal.

similar or different sulfur contents. The jurisdictional share of transactions that are considered optimizations shall continue to be shared (75% for DP&L and 25% for customers) as per the stipulation adopted by the Commission in Case No. 08-1094-EL-SSO.

E. Notwithstanding any provision within section 2.G. that could be read to the contrary, for the 2012 Audit Period the Signatory Parties explicitly reserve the right to challenge any recovery of costs related to the transactions challenged by the Auditor in Major Management Audit Finding No. 15 in the 2010 Fuel Audit Report. The Signatory Parties reserve the right to challenge the Auditor's findings and conclusions regarding such transactions and may seek either recovery or disallowance of costs including any charge-back of associated Optimization Gains.

F. For the 2012 Audit Period, the Signatory Parties explicitly reserve the right to challenge the calculations of any optimization of contracts for coal deliveries in 2012, regardless of the execution date of the optimization transactions. This reservation of rights is to ensure that Optimization Gains were calculated using the appropriate adjustments (as generally described in the 2011 Audit Report at pp. 4-4- through 4-6), and were properly recorded, trued-up, and charged consistent with section 10 of the 2010 Fuel Stipulation.

G. Excluding the transactions described in section 2.E., which are to be addressed as reserved in section 2.E., the Signatory Parties explicitly reserve the right for the 2012 Audit Period to challenge any fuel costs for which DP&L seeks recovery on the grounds of imprudence,<sup>7</sup> with respect to the incurrence of such costs. But, with respect to Optimizations, the Signatory Parties shall not challenge the Optimizations based on general views that alternative ratemaking structures, alternative contracting approaches taken prior to April 29,

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<sup>7</sup> Pursuant to R.C. 4928.143(B)(2)(a).



2011, or alternative hedging strategies, could have resulted in a more favorable end-result for customers.

H. Unless excluded from the definition of an Optimization transaction by operation of sections 2.A, 2.B., 2.D., 2.E., or 2.F. or precluded from recovery pursuant to 2.G, fuel sales and replacement purchases that result in an improvement on the then-existing position may be Optimization transactions for which the 75% Charge-back mechanism shall apply. The "then-existing position" means the costs of the coal portfolio as of the time a sale from such coal portfolio is made, which is paired with a lower-cost replacement coal (measured after appropriate Btu, transportation and other adjustments as generally described in the 2011 Audit Report, pp. 4-4 through 4-6).

I. The Stipulating Parties explicitly recognize that Optimization Gains can occur where there is an Accounting Loss and agree that, absent a finding of imprudence, the existence of an Accounting Loss shall not preclude the transactions from being defined as an Optimization transaction for which a 75% Charge-back is made, provided that the fuel sales and replacement purchases result in an improvement on the then-existing position. See also Stipulation Ex. 2 for an illustrative example of how a set of transactions can result in an Accounting Loss and an Optimization Gain for which the 75% Charge back mechanism would apply because it results in an improvement on the then-existing position.

J. Beginning January 1, 2013, and continuing until such time as the Commission issues an order approving a rate plan in Case No. 12-426-EL-SSO and continuing thereafter unless such approved rate plan specifies otherwise, DP&L will cease the charge-back of 75% of any fuel optimization transaction. It is recognized that DP&L may, in its business judgment, continue to engage in transactions that would be considered optimizations, but the

jurisdictional share of any accounting gains and losses and changes in fuel cost would be reflected in rates without any optimization charge-back to customers.

K. For the 2012 Audit Period, DP&L agrees that, in addition to the documentation that it has provided the auditor with respect to optimizations for the 2010 and 2011 Audit Periods, DP&L will provide the following additional documentation and/or calculations: (i) the cost basis of the coal being optimized and the date the coal was acquired; (ii) the sales price (including transactional charges or fees of third parties) of the coal being sold and the date the coal was sold; (iii) the coal sales accounting gain/loss associated with each optimization in 2012 as recorded in FERC Account 456; (iv) the Optimization Gain claimed for each optimization in 2012, computed as set forth in footnote 5 above and consistent with Stipulation Ex. 1 attached hereto; and (v) For each "Plant VOM and Constraints"<sup>8</sup> item used as an input to the optimization analysis, DP&L will provide the date when the input was updated, the person(s) responsible for the updating and the frequency (e.g., quarterly, annually, etc.) for DP&L's policy for updating that input.

DP&L will make such additional documentation available to the Signatory Parties upon request and subject to appropriate confidentiality provisions. DP&L agrees to provide such documentation and/or calculations without agreeing that such documentation and/or calculations are relevant to the consideration of issues related to optimization.

L. The Signatory Parties and DP&L agree, consistent with the discussion at pp. 4-4 through 4-6 of the 2011 Audit Report, that DP&L will continue to include demurrage differences analysis in its evaluation of optimization trades.

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<sup>8</sup> See 2011 Audit Report, Ex. 4-1.

3. Additional Commitments.

A. Consistent with Management Audit Recommendation No. 4 of the 2011 Audit Report, the Signatory Parties and DP&L agree that DP&L will document in writing its efforts to reduce its use of low-sulfur coals below 25% at Stuart Station in a cost-effective manner. DP&L will provide this documentation in time for review by the auditor for the 2012 Audit Period. DP&L also agrees to document, in writing, its efforts to achieve increased fuel flexibility at the Killen station. DP&L will provide this documentation in time for review by the auditor for the 2012 Audit Period.

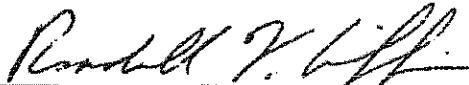
B. Pursuant to the Financial Audit Recommendation No. 1 of the 2011 Audit Report, DP&L will develop its own trend line analysis for residential customer switching that will be used in projecting Fuel Rider kwh sales forecasts. The trend line analysis shall be developed and documented, in writing, in time for review by the auditor for the 2012 Audit Period (and will be provided to the Signatory Parties), and the auditor shall review and report on the adequacy of DP&L's trend line analysis for residential customers switching.

C. Pursuant to the discussion at pp. 3-8 of the 2011 Audit Report, DP&L will revise its Standard Operating Procedure ("SOP") process as follows: 1) modify the SOP to allow suppliers to bid outside boxed specs; 2) modify the SOP to reflect the value of options; and 3) modify the SOP to show that DP&L provides a draft contract to bidders.

4. The Signatory Parties further agree that nothing in this Stipulation supersedes, or in any manner invalidates, any provisions in the stipulation adopted by the Commission in Case No. 08-1094-EL-SSO and the stipulation adopted by the Commission in Case No. 09-1012-EL-FAC. Except with respect to section 2.J and this section 4, this Stipulation shall terminate on December 31, 2013, unless extended by written agreement of the Signatory Parties.

The undersigned Signatory Parties hereby stipulate and agree and each represents that it is authorized to enter into this Stipulation and Recommendation this \_\_\_<sup>th</sup> day of December 2012.

On Behalf of The Dayton Power and Light Company



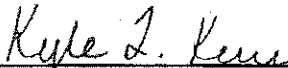
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## STIPULATION EXHIBIT 1

### Optimization Gain (improvement to then-existing position)<sup>9</sup>

- A. As of 2011, DP&L has in its then-existing portfolio coal contracts executed in 2009 for 2012 deliveries
- B. In 2011, DP&L sells some or all of those coal contracts for 2012 delivery at \$60/ton;
- C. At or about the same time in 2011, DP&L purchases replacement coal for 2012 delivery at (\$55)/ton
- D. Sales price is adjusted for any transactional costs (assumed to be \$0.00 in this example); the adjusted sales price is converted to a per Btu price as delivered and as consumed.
- E. Purchase price is adjusted for transportation differentials and quality differentials (assumed in this example to be \$1.00 per ton additional cost) and converted to a per Btu price as delivered and as consumed.
- F. The Btu-equivalent adjusted sales price of \$60.00 per ton minus the Btu-equivalent of the adjusted replacement coal costs of \$56.00 [\$55.00 purchase price + \$1.00 adjusted costs for transportation and quality differentials] yields an Optimization Gain equal to the Btu-equivalent of \$4.00 per ton.

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<sup>9</sup> Actual Optimization Gain calculations include adjustments for any transactional or brokerage fees, differences in transportation costs, Btu adjustments, and other quality differentials that create increased or decreased operational costs. The ultimate comparison between the sales price and the replacement coal value is done on a Btu-equivalent basis.

## STIPULATION EXHIBIT 2

### Net Benefit to Fuel Rider (improvement to then-existing position)

#### *Simplified Illustrative Examples – Net Benefits of Coal Optimization<sup>10</sup>*

##### Example 1

#### FALLING MARKET OPTIMIZATION NET BENEFIT

A. DP&L purchases coal in 2010 for 2012 delivery:		Charge	(\$70)/ton
B. DP&L later sells coal in 2011 for 2012 delivery:		Credit	\$60/ton
C. Resulting Accounting Loss on coal sale:		Charge	(\$10)/ton
D. DP&L purchases replacement coal in 2011 for 2012 delivery:		Charge	(\$56)/ton
E. Resulting coal cost:	C+D	Charge	(\$66)/ton
F. Optimization Gain (improvement to then-existing (2011) position just prior to sale):	B+D		\$4/ton
G. Sharing mechanism:	(B+D)x75%	Charge-Back	(\$3)/ton
H. Fuel Rider cost after sharing:	E+G	Charge	(\$69)/ton
I. Customer benefit relative to then-existing (2011) position:	H-A	Net Benefit	\$1/ton

##### Example 2

#### RIISING MARKET OPTIMIZATION NET BENEFIT

A. DP&L purchases coal in 2010 for 2012 delivery:		Charge	(\$50)/ton
B. DP&L later sells coal in 2011 for 2012 delivery:		Credit	\$60/ton
C. Resulting Accounting Gain on coal sale:		Credit	\$10/ton
D. DP&L purchases replacement coal in 2011 for 2012 delivery:		Charge	(\$56)/ton
E. Resulting coal cost:	C+D	Charge	(\$46)/ton
F. Optimization Gain (improvement to then-existing (2011) position just prior to sale):	B+D		\$4/ton
G. Sharing mechanism:	(B+D)x75%	Charge-Back	(\$3)/ton
H. Fuel Rider cost after sharing:	E+G	Charge	(\$49)/ton
I. Customer benefit relative to then-existing (2011) position:	H-A	Net Benefit	\$1/ton

<sup>10</sup> Actual Optimization Gain calculations include adjustments for any transactional or brokerage fees, differences in transportation costs, Btu adjustments, and other quality differentials that create increased or decreased operational costs. The ultimate comparison between the sales price and the replacement coal value is done on a Btu-equivalent basis, as-delivered and as-consumed.

### **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Stipulation and Recommendation was served on the following this 5th day of December 2012, by regular U.S. Mail or by electronic delivery.



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Summary: Stipulation and Recommendation submitted on behalf of the Staff by Assistant Attorney General Thomas McNamee and signed by The Dayton Power & Light Company and the Office of the Ohio Consumers' Counsel. electronically filed by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio