

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The )  
Dayton Power and Light Company for ) Case No. 12-1832-EL-ESS  
Establishing New Reliability Standards. )

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 The 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 Staff of the Commission.

Bruce J. Weston, Ohio Consumers' Counsel, by Joseph P. Serio, Assistant Consumers' Counsels, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of residential customers of The Dayton Power and Light Company.

OPINION:

I. Background

The Dayton Power & Light Company (DP&L) is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission. On June 29, 2012, DP&L filed an application to establish new reliability standards pursuant to Rule 4901:1-10-10, Ohio Administrative Code (O.A.C). On July 18, 2012, DP&L filed a supplement to its application containing workpapers to support the application.

On July 26, 2012, the Ohio Consumers' Counsel (OCC) filed a motion to intervene. By entry issued on October 10, 2012, the attorney examiner granted OCC's motion to intervene and set a procedural schedule in this case. As provided by Rule 4901:1-10-10(B)(6), O.A.C., a technical conference was held on November 1, 2012. Comments were filed on November 20, 2012, by OCC and, on November 30, 2012, by Staff of the Commission (Staff). DP&L and OCC each filed reply comments on December 20, 2012.

On February 5, 2013, a prehearing conference was held. On July 16, 2013, a stipulation and recommendation was filed by DP&L and Staff. By entry issued on August 1, 2013, this matter was set for hearing for the purpose of considering the stipulation. On August 8, 2013, OCC filed a correspondence in this case indicating that it would not litigate this case. OCC was presented the opportunity to call witnesses at the hearing and to file briefs in this case but did not avail itself of either opportunity.

## II. Summary of the Application and Comments

Rule 4901:1-10-10, O.A.C., prescribes the measurement of each electric utility's service reliability, the development of minimum performance standards for such reliability, and the reporting of performance against the established standards. An electric utility's service reliability is measured by two service reliability indices: the customer average interruption duration index (CAIDI) and the system average interruption frequency index (SAIFI). CAIDI represents that average interruption duration or average time to restore service per interrupted customer and equals the sum of customer interruption durations divided by the total number of customer interruptions. SAIFI represents the average number of interruptions per customer and equals the total number of customer interruptions divided by the total number of customers served.

Rule 4901:1-10-10(B)(2), O.A.C., requires each electric utility in Ohio to file with the Commission an application to establish company-specific minimum performance standards. The rule requires that the application include a proposed methodology for establishing reliability standards; a proposed company-specific reliability performance standard for each service reliability index based on the proposed methodology; and supporting justification for the proposed methodology and each resulting performance standard.

In its application, DP&L proposed setting CAIDI at 125 minutes, based on a five-year CAIDI average of 114.36, and SAIFI at .97, based on a five-year SAIFI average of 0.88. DP&L calculated its proposed standards by using the mathematical increment above the average as reflected in the approved CAIDI and SAIFI reliability standards in DP&L's 2009 reliability standards case, Case No. 09-754-EL-ESS. (DP&L Ex. 1 at 2.)

The application also indicated that DP&L completed a customer perception survey, in compliance with the three-year timeline established by Rule 4901:1-10-10(B)(4)(b), O.A.C. DP&L developed and distributed the customer perception survey to 400 residential and 400 small commercial respondents. The purpose of the survey was to measure customers' perception and experience regarding the frequency of momentary power interruptions, the frequency of sustained power interruptions, the duration of sustained power interruptions, and the loss estimates as a result of sustained power

interruption. DP&L contended in the application that the survey suggests that the duration of power interruptions is the most important aspect of reliable service for a majority of customers, followed closely by the number of sustained outages. Pursuant to Section 4901:1-10-10(4)(b), O.A.C., DP&L then outlined customer expectations of electric service reliability in terms of the service reliability indices. (DP&L Ex. 1 at 4-5.)

### III. Summary of the Stipulation

Based on a review of DP&L's historical data, the stipulation establishes a CAIDI of 125.04 minutes and a SAIFI of 0.88 (Jt. Ex. 1 at 2-3). These standards are more stringent than DP&L's current standards. The actual CAIDI and SAIFI performances excludes "major event days" as defined by the Institute of Electrical and Electronic Engineers (IEEE) 1366-2006 (2.5 Beta Method) standard. The stipulation also requires DP&L to develop its next customer survey by January 31, 2014, and to provide Staff the opportunity to review prior to implementation (Jt. Ex. 1 at 3; DP&L Ex. 3 at 2).

### 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, 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.

The signatory parties represent that the stipulation is the product of lengthy, arm's length bargaining among the signatory parties. The signatory parties also maintain that the stipulation is supported by adequate data and information; as a package, the stipulation benefits customers and the public interest; promotes effective competition and the development of the competitive marketplace; represents a reasonable resolution of all issues in this proceeding; violates no regulatory principle or practice; and complies with and promotes the policies and requirements of Chapter 4928 of the Ohio Revised Code. (Jt. Ex. 1 at 1-2.)

In his testimony, Robert J. Adams, a rate analyst with DP&L, stated that the settlement talks involved all intervening parties, each of whom was represented by experienced, knowledgeable negotiators as well as legal counsel (DP&L Ex. 3 at 3). Mr. Adams also claimed that the stipulation benefits the public interest because customers will benefit from the high reliability standards set for DP&L while the requirement that DP&L conduct a customer perception survey using quarterly samples will ensure the availability of customer feedback. Mr. Adams added that the stipulation does not violate any important regulatory practice or principle. (DP&L Ex. 3 at 3.)

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 agrees with Mr. Adams and finds that the stipulation filed in this case appears to be the product of serious bargaining among capable, knowledgeable parties (DP&L Ex. 3 at 3). 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 Commission agrees with Mr. Adams that the stipulation 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 (DP&L Ex. 3 at 3). Finally, the Commission finds that the stipulation meets the third criterion because it does not violate any important regulatory principle or practice (DP&L Ex. 3 at 3). *Consumers' Counsel*, supra, at 126. Accordingly, we find that the stipulation is reasonable and should be adopted.

Further, the Commission notes that OCC did not present a witness or file briefs in this case. We find that OCC's decision not to present witnesses at hearing or file briefs should be construed as neither supporting nor opposing the stipulation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On June 29, 2012, DP&L filed an application for approval of its system reliability standards pursuant to Rule 4901:1-10-10, O.A.C.
- (2) OCC's motion to intervene was granted by entry issued on October 10, 2012.
- (3) OCC and Staff filed comments on DP&L's application on November 20, 2012, and November 30, 2012, respectively. DP&L and OCC each filed reply comments on December 20, 2012.
- (4) On July 16, 2013, a stipulation and recommendation was filed by DP&L and Staff. OCC neither supported nor opposed the stipulation.
- (5) A hearing was held on August 8, 2013, to consider the stipulation and recommendation.
- (6) The Commission finds that the stipulation and recommendation submitted in this case is reasonable. Therefore, the stipulation and recommendation should be approved and adopted in its entirety.

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,

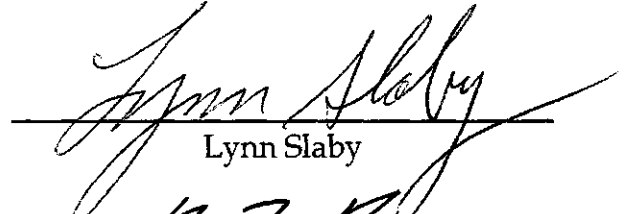
ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

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

  
Steven D. Lesser

  
Lynn Slaby

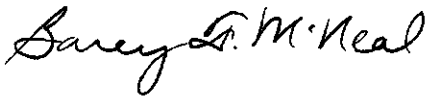
  
M. Beth Trombold

  
Asim Z. Haque

BAM/sc

Entered in the Journal

**OCT 02 2013**

  
Barcy F. McNeal

Barcy F. McNeal  
Secretary