BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company to Establish a Fuel Rider	)))	Case No. 12-2881-EL-FAC

OPINION AND ORDER

The Public Utilities Commission of Ohio, 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.

The Ohio Consumers' Counsel, by Kyle Kern, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215-3485, on behalf of the residential customers of The Dayton Power and Light Company.

Mike DeWine, Ohio Attorney General, by Thomas W. McNamee and Steven Beeler, Assistant Attorneys General, Public Utilities Section, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

OPINION:

I. PROCEDURAL HISTORY

The Dayton Power and Light Company (DP&L) is a public utility as defined under R.C 4905.02 and, as such, is subject to the jurisdiction of this Commission.

On June 24, 2009, the Commission issued an Order adopting a stipulation establishing an electric security plan (ESP) for DP&L. *In re The Dayton Power and Light Co.*, Case No. 08-1094-EL-SSO, et al., Opinion and Order (June 24, 2009). The ESP authorized by the Commission contained a requirement for DP&L to implement an avoidable fuel recovery rider to recover fuel and purchased power costs.

On October 30, 2009, DP&L filed an application to establish a fuel rider pursuant to the stipulation approved by the Commission in DP&L's ESP. *In re The Dayton Power and Light Co.*, Case No. 09-1012-EL-FAC, Application (October 30, 2009). In its application to establish a fuel rider, DP&L proposed to establish an optimization program with the objective of acting on opportunities to reduce costs by transactions to optimize the fuel

and purchased power portfolio and to reduce the risks of market price fluctuations. Under DP&L's proposal, an optimization would exist when DP&L makes a coal sale at either a nominal gain or nominal loss and then offsets that nominal amount by a replacement purchase of coal at a lower price. Under DP&L's proposal, 25 percent of the proceeds from an optimization transaction would be shared with customers. *In re The Dayton Power and Light Co.*, Case No. 09-1012-EL-FAC, Application (October 30, 2009) at 6-7.

On September 22, 2010, the Commission issued an entry ordering Staff to issue a request for proposal for the audit services necessary to review and report on the management and financial aspects of DP&L's fuel costs and its fuel recovery mechanism for the twelve month periods ending December 31, 2010, and December 31, 2011. *In re The Dayton Power and Light Co.*, Case No. 09-1012-EL-FAC, Entry (Sep. 22, 2010). On November 10, 2010, the Commission selected Energy Ventures Analysis, Inc. (EVA) to perform the auditing services; and, on April, 29, 2011, EVA filed its report of the management/performance and financial audit for 2010. *In re The Dayton Power and Light Co.*, Case No. 09-1012-EL-FAC, Entry (Nov. 10, 2010); *In re The Dayton Power and Light Co.*, Case No. 09-1012-EL-FAC, Audit Report (April 29, 2011). The parties to the proceeding then filed a stipulation that resolved all of the issues raised regarding the 2010 audit, which was subsequently adopted by the Commission. *In re The Dayton Power and Light Co.*, Case No. 09-1012-EL-FAC, Opinion and Order (Nov. 9, 2011). The Commission's order adopting the stipulation provided, among other things, that Staff would conduct a financial and managerial audit regarding fuel and purchased power costs incurred in 2012. *In re The Dayton Power and Light Co.*, Case No. 09-1012-EL-FAC, Opinion and Order (Nov. 9, 2011) at 6.

On November 10, 2011, DP&L filed its application in Case No. 11-5730-EL-FAC and, on February 27, 2012, EVA was selected to conduct the management/performance and financial audit for the year 2011. Thereafter, on April 27, 2012, EVA filed its report for the management/performance and financial audit for 2011. *In re The Dayton Power and Light Co.*, Case No. 11-5730-EL-FAC, Audit Report (April 27, 2012). On December 5, 2012, the parties to the case filed a stipulation regarding the 2011 audit, which the Commission adopted. *In re The Dayton Power and Light Co.*, Case No. 11-5730-EL-FAC, Opinion and Order (Jan. 23, 2013). In the stipulation, DP&L agreed that it would no longer share in the proceeds of optimization transactions, effective January 1, 2013.

On October 31, 2012, DP&L filed its application in the present case and EVA was again selected by the Commission to conduct the management/performance and financial audit of DP&L's fuel and purchased power, this time for the year 2012. On June 14, 2013, EVA filed its audit report for the management/performance and financial audit for DP&L for 2012. By Entry issued on September 24, 2013, the attorney examiner granted DP&L's motion for protective order for the confidential portions of the audit report and

established a procedural schedule in this matter. By Entries issued on September 24, 2013, and on October 11, 2013, the attorney examiner granted motions by DP&L to revise the procedural schedule. The hearing in this matter commenced on December 9, 2013.

II. SUMMARY OF THE AUDIT REPORT

The audit report submitted by EVA and Larkin & Associates, PLLC (Larkin) presents the results of the management/performance and financial audit of the fuel and purchased power rider of DP&L for the year 2012. In the audit report, EVA and Larkin discuss DP&L's Fuel Procurement in Chapter III, Optimizations in Chapter IV, Plant Performance in Chapter V, and Fuel Adjustment Clause Rider (Fuel Rider) Component in Chapter VI (Staff Ex. 1). EVA conducted the management/performance aspects of the audit, while Larkin conducted the financial audit. The audit report reviewed DP&L's optimization program, which was established for DP&L to act on opportunities to reduce costs by conducting transactions to optimize the fuel and purchased power portfolio and to reduce the risks of market price fluctuations.

The audit report makes numerous management audit findings. In major management audit finding number 15, the audit report finds that DP&L claimed credits for 13 optimizations during the audit period. The audit report finds that five of the 13 should not qualify as optimizations and two of the remaining eight should be adjusted. The reasons for the adjustments include timing, mischaracterization of existing positions, and alleged imprudence related to DP&L not exercising an available option in 2010 for delivery of high-sulfur coal in 2012.

As a result of its management audit findings, EVA makes several recommendations. Initially, EVA recommends that the Fuel Rider be adjusted to reflect the costs associated with DP&L's 2010 decision not to exercise an option for high-sulfur coal for 2012 delivery. EVA recommends that this adjustment include both the direct costs and the related optimization values in Optimizations 2012-B, 2012-C, 2012-D, and 2012-I. Additionally, EVA recommends that the Fuel Rider should be adjusted to delete the optimization values associated with Optimizations 2012-A, 2012-H, 2012-J, and 2012-K.

EVA also made other management audit recommendations. EVA recommended that DP&L develop a new fuel supply strategy, which should be available for review by the next management/performance audit. Additionally, EVA recommends that DP&L develop guidelines for coal sales to affiliate companies and that DP&L conduct other such reviews, as necessary, and make them available for review by the next management/performance audit.

The audit report also made numerous financial audit findings. As a result of the financial audit findings, Larkin recommends that DP&L follow through with

implementing the recommended root cause analysis action items related to addressing the variances detected during the physical coal inventory at the Stuart and Killen generating stations.

III. DISCUSSION AND CONCLUSION

A. Res Judicata and Collateral Estoppel

Initially, we note that pursuant to Findings E, F, and G of the 2011 stipulation, the signatory parties to the stipulation explicitly reserved the right to challenge any costs related to the transactions challenged by the Auditor, including the right to seek either recovery or disallowance of costs, which includes any charge-back of optimization gains. Further, in the 2011 stipulation, for the 2012 audit period, the parties explicitly reserved the right to challenge the calculations of any optimization of contracts for coal deliveries in 2012, regardless of the execution date of the optimization transaction. Finally, the parties reserved the right for the 2012 audit period to challenge on the grounds of imprudence any fuel costs for which DP&L seeks recovery. However, the stipulation provided that the parties would not be permitted to challenge the optimizations based on general views that alternative ratemaking structures, alternative contracting approaches taken prior to April 29, 2011, or alternative hedging strategies, could have resulted in a more favorable end-result for customers. *In re The Dayton Power and Light Co.*, Case No. 09-1012-EL-FAC, Stipulation and Recommendation (October 6, 2011). As indicated supra, the Commission subsequently adopted the stipulation. *In re The Dayton Power and Light Co.*, Case No. 09-1012-EL-FAC, Opinion and Order (November 9, 2011).

Accordingly, we find that the issues of res judicata and collateral estoppel do not apply to those optimizations in which imprudence has been alleged. The stipulations have sufficiently preserved the right for the parties to challenge the calculations of an optimization contract and to challenge any fuel costs on the grounds of imprudence. However, consistent with the stipulations, we find that the parties may not challenge optimizations on the grounds that alternative ratemaking structures, alternative contracting approaches, or alternative hedging strategies could have resulted in a more favorable end-result for customers.

B. Prudency review of DP&L's decision not to exercise an option contract for high-sulfur coal and to purchase low-sulfur coal

DP&L contends that it prudently chose not to exercise a 2010 option for high-sulfur coal because the option was out of the money, which means the spot price on the market at the time was less than the option price. DP&L asserts that it based its analysis on the price of coal published in the ICAP United report for the week of October 29, 2010 (DP&L Ex. 1 at 33-34). DP&L also claims that it conducted a British thermal unit (Btu) adjustment to

reflect the difference in Btu content between the option coal and the comparable coal in the ICAP United report (Co. Ex. 1 at 33-34; Co. Ex. 2 at 22; Co. Ex. JNH-11). Even after the Btu adjustment, DP&L determined that the option was out of the money and chose not to exercise the option.

DP&L then claims that it was purchasing low-sulfur coal before and subsequent to its decision not to exercise the option contract for high-sulfur coal. DP&L asserts that its decision to purchase low-sulfur coal was made independent of its decision not to exercise the option for high-sulfur coal (DP&L Ex. 1 at 4). DP&L argues that purchasing the more-expensive low-sulfur coal was necessary to compensate for volumetric risk and to address a need for low-sulfur coal (DP&L Ex. 1 at 4; Tr. at 105, 121-122). According to DP&L, the conditions and circumstances at the time indicated that it would have an ongoing need for low-sulfur coal. DP&L notes that its tests demonstrated a need for low-sulfur coal because the best achievable outcome at Stuart Station was one unit capable of using 95 percent high-sulfur coal and a 50/50 ratio of high-sulfur to low-sulfur coal in the remaining three units (DP&L Ex. 1 at 20). DP&L argues that during 2010, everything known or that reasonably should have been known by the company indicated that it was going to have an ongoing, permanent need for substantial quantities of low-sulfur coal.

Staff and OCC each argue that DP&L's decision not to exercise the 2010 option for high-sulfur coal was not prudent. Staff and OCC assert in their arguments that DP&L should have adjusted for differences in sulfur dioxide (SO2) levels and transportation costs before choosing not to exercise the option contract (Tr. at 344-345, 347). Staff and OCC argue that this is what a reasonable person would have done. Staff further points out that the auditor noted in the 2011 audit that the decision to purchase low-sulfur coal instead of exercising the option for high-sulfur coal could increase DP&L's fuel costs in 2012 (St. Ex. 1, 1A at 1-9; *See In re The Dayton Power and Light Co.*, Case No. 09-1012-EL-FAC, Audit Report (April 29, 2011)). Additionally, Staff asserts that DP&L should have brought in experienced personnel or conducted an RFP before determining not to exercise the option, which Staff asserts is what a reasonable person would have done under the circumstances (Tr. at 111, 114, 195-196).

Additionally, Staff and OCC each contend that DP&L chose not to exercise the option contract as part of a broader scheme to conduct an optimization transaction to generate additional revenue for the company at the expense of customers (St. Ex. 1 at 1-9; Tr. at 329). They argue that subsequent to DP&L's choice not to exercise the option for high-sulfur coal, DP&L purchased a significant quantity of more-expensive low-sulfur coal. With the more-expensive low-sulfur coal considered as DP&L's existing position, Staff and OCC contend that DP&L subsequently replaced the more-expensive low sulfur coal with less-expensive high-sulfur coal to claim optimization gains, which became Optimizations 2012-B, 2012-C, 2012-D, and 2012-I (St. Ex. 1 at 1-16, 4-5 through 4-12). Further, Staff argues that DP&L had the obligation and the opportunity to perform studies

to determine if purchasing the more-expensive low-sulfur coal was the least costly method of dealing with any perceived volumetric risk, but DP&L failed to do so (Tr. at 107-108). Staff then asserts that DP&L should have tried to unwind the position when coal prices began going up, yet it failed to do so (Tr. at 109).

Commission Conclusion

Based upon the evidence in the record, we find that DP&L's choice not to exercise a 2010 option contract for high-sulfur coal, for delivery in 2012, was prudent. Initially, we recognize that a prudent decision is one which reflects what a reasonable person would have done in light of conditions and circumstances which were known or reasonably should have been known at the time the decision was made. *Cincinnati Gas & Elec. Co. v. Pub. Util. Comm.*, 86 Ohio St.3d 53, 58, 711 N.E.2d 670 (1999), citing *Cincinnati v. Pub. Util. Comm.*, 67 Ohio St. 3d 523, 530, 620 N.E.2d 826 (1993). Additionally, the Commission has previously found that prudence should be determined in a retrospective, factual inquiry. *In re Syracuse home Utils. Co.*, Case No. 86-12-GA-GCR, Opinion and Order (Dec. 30, 1986) at 10. Further, we find that while DP&L bears the burden of proof in this proceeding, the Commission will initially presume that DP&L's management decisions were prudent. *Syracuse*, Opinion and Order (Dec. 30, 1986) at 10. However, the presumption that a utility's decisions were prudent is rebuttable, and evidence produced by Staff or OCC in this proceeding may overcome that presumption. *Syracuse*, Opinion and Order (Dec. 30, 1986) at 10.

We find that DP&L has demonstrated that the 2010 option contract for delivery of high-sulfur coal in 2012 was out of the money; therefore, DP&L's decision not to exercise the option was prudent, based upon the circumstances known to DP&L at the time. An option is out of the money when the market price for coal at the time is less than the price of coal in the option contract (Tr. at 73; DP&L Ex. 1 at 4). While we agree with Staff and OCC that DP&L could have brought in experienced personnel or conducted an RFP before determining not to exercise the option contract, Staff and OCC have not presented any evidence that conducting an RFP was required by any rule or industry practice at the time of the transaction. Moreover, while DP&L could also have adjusted for differences in SO2 levels and transportation costs, we are not persuaded that these adjustments would have overcome the price difference to put the option in the money. Adjusting for transportation costs may not have made any difference at all, as both the option coal and the coal priced in the ICAP United report were in the lower Ohio River basin (Tr. at 349). We find that DP&L's conclusion that the option was out of the money was reasonable, based upon the conditions and circumstances known to DP&L at the time. Accordingly, we find that DP&L prudently chose not to exercise the option.

Further, we find that DP&L's decision to purchase low-sulfur coal in 2010 for delivery in 2012 was also prudent. This decision to purchase low-sulfur coal in 2010

resulted in Optimizations 2012-B, 2012-C, 2012-D, and 2012-I. The evidence in the record supports DP&L's assertion that it believed in 2010 that it would have an ongoing, permanent need for substantial quantities of low-sulfur coal (DP&L Ex. 1 at 20). We find that DP&L has demonstrated that it could not reasonably have known that it would be capable of burning as much high-sulfur coal in 2012 as it was ultimately able to burn. While we agree that DP&L could have issued an RFP or considered other, less expensive, options to address the low-sulfur volumetric uncertainty, this fact alone does not demonstrate imprudence. Accordingly, based upon what DP&L knew, or reasonably should have known at the time of its decision, the decision to purchase low-sulfur coal in 2010 for delivery in 2012 was prudent.

C. Additional optimizations

a. Optimization 2012-A

In Optimization 2012-A, DP&L claimed optimization gains for coal sold in 2009 for delivery in 2012 and a corresponding 2009 purchase of coal, at a slightly lower price, which was also for 2012 delivery (St. Ex. 1 at 4-4; Tr. at 237, 240). However, DP&L's Application for a Fuel Rider was not approved by the Commission until December 16, 2009, with the effective date of the tariffs being not earlier than January 1, 2010. *In re Dayton Power and Light Co.*, Case No. 09-1012-EL-FAC, Opinion and Order (Nov. 9, 2011). DP&L asserts that Optimization-A was a proper optimization and that DP&L should be permitted to recover the optimization gains. DP&L avers that the key underlying fact regarding Optimization-A is that the economic benefits of the optimization were realized while the fuel rider was in effect. DP&L asserts that Staff and OCC do not dispute that this transaction meets the definition of an optimization; rather, they assert that this optimization took place before the Fuel Rider and, therefore, optimization gains should not be allowed.

Staff and OCC each assert that Optimization 2012-A should be disallowed because it took place prior to DP&L's optimization program. Staff and OCC aver that even DP&L's witness admitted that the entire optimization transaction took place before DP&L's Fuel Rider went into effect and that this optimization is a particularly nuanced scenario (Tr. at 239-240). They then assert that the stipulations preserved the right to challenge the calculations of Optimization 2012-A, regardless of the fact that the optimization was executed prior to the Fuel Rider. However, Staff and OCC do not challenge the calculations or assert that Optimization 2012-A did not result in a favorable end-result for customers. Further, they do not contend that Optimization 2012-A did not meet the criteria for an optimization transaction. They also do not contend that the decision to conduct Optimization 2012-A was imprudent. Rather, OCC and Staff argue that because the Fuel Rider was not in effect, 100 percent of the optimization gains belong to customers instead of only 25 percent of the optimization gains pursuant to the Fuel Rider.

Commission Conclusion

We find that Staff and OCC did not preserve the ability to challenge Optimization 2012-A. In the 2011 stipulation, for the 2012 audit period, the parties explicitly reserved the right to challenge the calculations of any optimization of contracts for coal deliveries in 2012, regardless of the execution date of the optimization transaction. However, the stipulation provided that, with respect to optimizations, the parties would not be permitted to challenge the optimizations based on general views that alternative ratemaking structures, alternative contracting approaches taken prior to April 29, 2011, or alternative hedging strategies, could have resulted in a more favorable end-result for customers. *In re The Dayton Power and Light Co.*, Case No. 09-1012-EL-FAC, Stipulation and Recommendation (October 6, 2011); *In re The Dayton Power and Light Co.*, Case No. 09-1012-EL-FAC, Opinion and Order (November 9, 2011). OCC and Staff do not assert that the optimization was imprudent or resulted in additional costs being imposed upon customers. Instead, they assert that DP&L's share of the optimization gains belong to customers because the optimization took place prior to DP&L's optimization program. We find that the arguments raised regarding Optimization-A rest on the premise that alternative ratemaking structures could have been included in the Fuel Rider to exclude any optimization transaction that took place before the Fuel Rider was established, even though the benefits of those transactions would be realized during the pendency of the Fuel Rider. While OCC and Staff allege that the issue has been properly preserved, we disagree. Accordingly, we find that the 2011 stipulation precludes Staff and OCC from challenging Optimization 2012-A.

b. Optimizations 2012-J and 2012-K

In Optimizations 2012-J and 2012-K, DP&L sought optimization gains for not purchasing coal that it previously intended to purchase (Co. Ex. 3 at 24-25). DP&L asserts that the decision-making process for exercising the right to flex quantities down combined with the decision to buy replacement coal at a lower price is a transactional process that is the economic equivalent of the sale and replacement purchase for traditional optimization transactions (Co. Ex. 3 at 25). DP&L asserts that this transactional process is consistent with the underlying intent of the optimization program under the Fuel Rider and that these optimization gains should be allowed by the Commission.

Staff and OCC argue that Optimizations 2012-J and 2012-K should be disallowed in their entirety, as they are not optimizations at all. In these alleged optimizations, DP&L chose not to exercise options under existing contracts (DP&L Ex. 3 at 25). Therefore, DP&L did not sell any coal in its existing position; rather it chose not to purchase coal and then sought optimization gains for not purchasing coal that it previously intended to. Staff and OCC assert that this is inconsistent with DP&L's own analysis of what constitutes an

optimization: to sell coal in its portfolio and buy a less expensive replacement coal for delivery to DP&L (DP&L Ex. 3 at 3). They assert that DP&L reasonably chose not to exercise the option because it was out of the money, but DP&L should not receive optimization gains for complying with its obligation to minimize costs for jurisdictional customers. Staff avers that choosing the cheapest coal available at a given time is the minimal competency expected from a coal procurement operation. Staff believes that optimizations should only reward the Company when it goes beyond its normal obligation to minimize costs for jurisdictional customers by selling its existing coal and replacing it with a similar but less expensive coal.

The Commission finds that Optimizations 2012-J and 2012-K should be disallowed. The stipulations, the Fuel Rider, and DP&L's own testimony indicate that an optimization transaction is one in which DP&L sells coal in its existing portfolio and replaces it with a less expensive coal. In these optimizations, DP&L did not sell coal from its existing position. Rather, DP&L rightly chose not to exercise an option that was out of the money, and instead purchased less expensive coal from the market. This purchase of less expensive coal was consistent with DP&L's fundamental obligation to minimize the costs of fuel imposed upon jurisdictional customers. Accordingly, we find that the optimization gains from Optimizations 2012-J and 2012-K should be disallowed, as they are not optimizations at all.

c. Optimizations 2012-H and 2012-I

In Optimizations 2012-H and 2012-I, DP&L sold coal in its existing position and replaced it over a period of several months (St. Ex. 1 at 1-19, 1-20). OCC asserts that gains from Optimization 2012-H and 2012-I should be disallowed because the replacement coal was purchased in increments over several months and even up to a year later. OCC argues that selling coal in the existing portfolio without having replacement coal lined up was dangerous and should result in a disallowance.

DP&L argues that Optimizations 2012-H and 2012-I included a single coordinated optimization plan to sell forward contracts and replace them. DP&L asserts that there was no requirement that the replacement coal be lined up or under contract when the coal from the existing portfolio was used.

The Commission finds that it would be inappropriate to disallow gains from Optimizations 2012-H and 2012-I for similar reasons as Optimization 2012-A; the argument for disallowance is based upon a general view that disallowance would result in a more favorable end-result for customers and that alternative rate-making structures should have been included in the Fuel Rider. The 2011 stipulation provided that the parties would not be permitted to challenge optimizations based on arguments that alternative ratemaking structures, alternative contracting approaches taken prior to

April 29, 2011, or alternative hedging strategies, could have resulted in a more favorable end-result for customers. *In re The Dayton Power and Light Co.*, Case No. 09-1012-EL-FAC, Stipulation and Recommendation (October 6, 2011).

Additionally, we find that Optimizations 2012-H and 2012-I should be allowed because they were consistent with the Fuel Rider and the stipulations. The Fuel Rider and the stipulations contain no requirement that replacement coal be purchased simultaneous, or even near in time, to the sale of coal from the existing position. Accordingly, we find that gains from Optimizations 2012-H and 2012-I should be allowed.

D. Additional Audit Recommendations

The audit report filed in this case includes three additional management audit recommendations (St. Ex. 1 at 1-16). Management audit recommendation three states that DP&L should develop a fuel supply strategy that reduces its reliance on the spot market, reduces exposure to market price swings, and develops supply alternatives that allow for a more diversified supplier base. DP&L opposes this audit recommendation to the extent that it implies that DP&L is not currently taking appropriate actions in light of the risk it faces (DP&L Ex. 1 at 43). We find that management audit recommendation three should be adopted and DP&L should develop the recommended strategy and present its strategy to the auditor for the next management/performance audit.

Management audit recommendation four is that DP&L should develop guidelines for coal sales to affiliate companies. DP&L opposes this recommendation and asserts that sales or purchases of coal or other commodities between affiliates are subject to the same level of internal review as any other transaction and all employees are required to sign a conflict of interest policy and take ethics training (DP&L Ex. 1 at 44). Additionally, DP&L asserts that any transactions between affiliates continue to be subject to audit. However, the Commission believes that the auditor's recommendation should be adopted and that DP&L should develop guidelines for coal sales to affiliate companies. While transactions may be subject to the same level of internal review as other transactions, we believe that DP&L should analyze whether additional review is necessary for transactions between affiliates and provide its analysis to the auditor for the next management/performance audit. If DP&L's analysis concludes that guidelines for coal transactions between affiliates are not necessary, then it should demonstrate to the auditor that it is not receiving a competitive advantage from its affiliate.

Finally, management audit recommendation five suggests that DP&L evaluate the need for natural gas firm transportation rights, which DP&L does not oppose (DP&L Ex. 1 at 44). There is also a financial audit recommendation relating to physical coal inventory analyses that DP&L does not oppose (Staff Ex. 1 at 1-21). Accordingly, the Commission finds that both of these audit recommendations should be adopted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) DP&L is a public utility under R.C. 4905.02 and is subject to the jurisdiction of this Commission.

(2) This case relates to the Commission's review of DP&L's fuel costs and its fuel recovery mechanism for the calendar year 2012.

(3) On June 14, 2013, both a redacted and an unredacted version of the management/performance and financial audit of DP&L's fuel costs and its fuel recovery mechanism for the year 2012 were filed in this case.

(4) A hearing in this matter was held on December 9, 2013.

(5) The Commission finds that DP&L's choice not to exercise a 2010 option contract to purchase high-sulfur coal, for delivery in 2012, was prudent because it was out of the money.

(6) The Commission finds that DP&L's decision to purchase low-sulfur coal in 2010, for delivery in 2012, was prudent because DP&L did not know, and could not reasonably have known, that it would not need the low-sulfur coal in 2012. Therefore, Optimizations 2012-B, 2012-C, 2012-D, and 2012-I should be allowed.

(7) The Commission finds that Optimizations 2012-A, 2012-H, and 2012-I should be allowed because the 2011 stipulation precludes the parties from challenging the optimizations based on general views that alternative ratemaking structures, alternative contracting approaches taken prior to April 29, 2011, or alternative hedging strategies, could have resulted in a more favorable end-result for customers.

(8) The Commission finds that Optimizations 2012-J and 2012-K should be disallowed because they do not meet the requirements of proper optimization transactions.

(9) The Commission finds that the remaining management/performance and financial audit recommendations should be adopted.

ORDER:

It is, therefore,

ORDERED, That Optimizations 2012-A, 2012-B, 2012-C, 2012-D, 2012-H, and 2012-I be allowed. It is, further,

ORDERED, That Optimizations 2012-J and 2012-K be disallowed. It is, further,

ORDERED, That DP&L take all necessary steps to carry out the terms of this Opinion and 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

Thomas W. Johnson, Chairman

Steven D. Lesser

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

GAP/BAM/sc

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Secretary