

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	:	Case No. 16-649-EL-POR
The Dayton Power and Light Company for	:	
Approval of Its Energy Efficiency Portfolio	:	Case No. 16-1369-EL-WVR
Plan	:	

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**THE DAYTON POWER AND LIGHT COMPANY’S  
INITIAL BRIEF IN SUPPORT OF  
THE DECEMBER 13, 2016 STIPULATION AND RECOMMENDATION**

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**I.     Introduction**

The Stipulation and Recommendation filed on December 13, 2016<sup>1</sup> (“2016 Stipulation”) is a reasonable and fair resolution of this case. The 2016 Stipulation is the result of extensive discussions and negotiations between the Dayton Power and Light Company (“the Company”), Commission Staff, and a wide-range of capable and knowledgeable intervening parties. For a period of one year (through 2017), the 2016 Stipulation extends the Company’s very successful and cost-effective programs from its existing portfolio plan, unquestionably benefits the Company’s customers and advances the public interest.<sup>2</sup> The 2016 Stipulation also places a cap on the program costs, and a cap on shared savings that can be recovered by the Company for 2017. Finally, the 2016 Stipulation does not violate any important regulatory principal or practice, and in fact, it furthers Ohio's goals related to robust and successful energy efficiency programs among its investor-owned utilities.

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<sup>1</sup> See Joint Exhibit 1, as admitted at the February 7, 2017 Hearing.

<sup>2</sup> The Company will file a new three-year EE/POR Plan, covering Plan Years 2018-2020, on or before June 15, 2017. Joint Exhibit 1, 2016 Stipulation, at pg. 15

For all of the reasons detailed below, the 2016 Stipulation is a fair and reasonable settlement and should be approved and adopted by the Commission without modification.

## **II. Factual and Procedural Background**

This matter was initiated through the filing of the Company's Application for its Third Energy Efficiency Portfolio Plan ("Third EE/POR Plan") with the Commission on June 15 and 16, 2016.<sup>3</sup> The Company's Third EE/POR Plan was designed to cover Plan Years 2017 through 2019. As this matter progressed, the Company determined, through discussions with Commission Staff and the other parties to this case, that a one (1) year extension of the Company's existing Portfolio Plan Programs, subject to certain modifications, specifications and commitments, would best achieve the Company's goals, and the goals of other intervening parties, including Commission Staff.

This extension of the Company's existing Portfolio Plan Programs relates back to the Company's Second Energy Efficiency Portfolio Plan ("Second EE/POR Plan") that was filed with the Commission on April 15, 2013, and that covered Plan Years 2013 through 2015.<sup>4</sup> The Commission approved the Stipulation and Recommendation ("2013 Stipulation") related to the Company's Second EE/POR Plan on December 4, 2013.<sup>5</sup> By virtue of the signing of Ohio Senate Bill 310 (S.B. 310) on June 13, 2014, the Company was presented with the option of either continuing its Second EE/POR Plan for 2016, with no amendments, or filing a new Portfolio Plan. The Company chose to extend its Second EE/POR Plan for 2016.

Accordingly, over the course of a couple of months, the Company entered into settlement discussions and negotiations with all parties that had intervened in the case, including

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<sup>3</sup> See Company Exhibit 2, as admitted at the February 7, 2017 Hearing.

<sup>4</sup> See the Company's Exhibit 3, as admitted at the February 7, 2017 Hearing.

<sup>5</sup> See the OCC's Exhibit CS-7, as admitted at the February 7, 2017 Hearing.

Commission Staff.<sup>6</sup> Multiple drafts of the Stipulation and Recommendation were created and shared with all intervening parties, the Company invited further discussion of settlement, and these issues were discussed in great detail.<sup>7</sup> The result of this process was the 2016 Stipulation.

In addition to the Company, the signatory parties to the 2016 Stipulation included eight (8) of the eleven (11) intervening parties: (1) Commission Staff; (2) the Ohio Environmental Council and the Environmental Defense Fund (“OEC” and “EDF”); (3) Ohio Partners for Affordable Energy (“OPAE”); (4) Ohio Manufacturers Association Energy Group (“OMAEG”); (5) Ohio Hospital Association (“OHA”); (6) People Working Cooperatively (“PWC”); (7) The Kroger Company (“Kroger”); and (8) Interstate Gas Supply, Inc. (“IGS”).<sup>8</sup> Two other intervening parties, Industrial Energy Users – Ohio (“IEU-Ohio”) and the Environmental Law & Policy Center (“ELPC”)<sup>9</sup> agreed to not oppose the 2016 Stipulation.<sup>10</sup> Only the Office of the Ohio Consumers’ Counsel (“OCC”) had neither agreed to sign nor to oppose the 2016 Stipulation. Other than IGS and EDF, all of the parties identified above, including the OCC, were parties to the Company’s Second EE/POR Plan case and signatories to the 2013 Stipulation.

Pursuant to Attorney Examiner Bulgrin’s December 20, 2016 Entry, the Company and Commission Staff filed testimony in support of the 2016 Stipulation on January 13, 2017, and the OCC filed testimony in opposition to the 2016 Stipulation on January 30, 2017. Thereafter, in an effort to proceed as expeditiously as possible, the Company, Commission Staff and the

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<sup>6</sup> Testimony of Tyler Teuscher, pgs. 5-6, filed on January 13, 2017; Company Exhibit 1 admitted at the February 7, 2017 Hearing.

<sup>7</sup> Id.

<sup>8</sup> See Joint Exhibit 1, the December 13, 2016 Stipulation and Recommendation, pgs. 18-20.

<sup>9</sup> On March 9, 2017, ELPC filed a letter in the docket indicating that it takes issue with a single line set forth in Staff’s Testimony filed on January 13, 2017, and with an Opinion and Order issued in another electric distribution utility’s portfolio case, Case No. 16- 574-EL-POR. Nevertheless, page 2 of ELPC’s letter provides that its “assessment of the Stipulation package as a whole has not changed.”

<sup>10</sup> Teuscher Testimony at pg. 3.

OCC jointly agreed to submit the case to the Commission based on the previously filed testimony<sup>11</sup>, an agreed list of Exhibits, and forthcoming Briefs.<sup>12</sup>

### **III. Law and Argument**

O.A.C. Rule 4901-1-30 authorizes parties to Commission proceedings to enter into Stipulations. While not binding upon the Commission, the terms of such Stipulations are accorded substantial weight.<sup>13</sup> The fundamental issue that the Commission must consider and decide is whether that Stipulation is reasonable and should be adopted. In making this determination on reasonableness, the Commission has utilized the following criteria, which have been endorsed by the Ohio Supreme Court:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement package, as a whole, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?<sup>14</sup>

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<sup>11</sup> Commission Staff's Testimony was modified to remove one sentence, as reflected in the record of the February 7, 2017 Hearing.

<sup>12</sup> See Transcript for the February 7, 2017 Hearing.

<sup>13</sup> *Consumers' Counsel v. Public Util. Comm.*, (1992) 64 Ohio St.3d 123, at 125, citing *Akron v. Public Util. Comm.* (1978), 55 Ohio St.2d 155, at 157.

<sup>14</sup> *Id.* at 126.

**A. The 2016 Stipulation is the product of serious bargaining among capable and knowledgeable parties.**

The 2016 Stipulation clearly passes the first prong of the Commission's three criteria evaluation. The Commission has considered the following factors in deciding if this first prong has been met: (1) the level of participation in settlement discussions; (2) the level of expertise among the parties involved in those discussions; and (3) the interests represented by the signatory parties.<sup>15</sup> The Company participated in telephone conversations and e-mail exchanges with all intervening parties leading to the 2016 Stipulation.<sup>16</sup> Further, the Company circulated multiple drafts of the 2016 Stipulation to every party in the case that reflected the result of those settlement discussions, and invited comment from the parties.<sup>17</sup>

Second, each party in the case, whether that party ended up signing the 2016 Stipulation, not opposing the 2016 Stipulation, or otherwise, has been intimately involved in these types of proceedings and discussion before, and was represented by capable and knowledgeable negotiating counsel.<sup>18</sup> Finally, the signatory parties (and non-opposing parties) to the 2016 Stipulation represent an extremely wide range of interests – Commission Staff, environmental protection groups (OEC, EDF and ELPC<sup>19</sup>), low-income consumer and community advocates (OPAE and PWC), industrial and manufacturing groups (OMAEG and IEU-Ohio), healthcare (OHA), the certified retail electric service industry (IGS) and the retail commercial sector (Kroger). Further, Commission Staff's testimony supports this conclusion:

All parties were all involved in the development of the Stipulation that was filed on December 13, 2016. Each of the parties employs experts in the industry and is

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<sup>15</sup> *In re Application of Dayton Power and Light Co. for Approval to Modify its Competitive Bid True Up Rider*, Case No. 14-563-EL-RDR, Opinion and Order at pg. 5 (Sept. 9, 2015).

<sup>16</sup> Teuscher Testimony at p. 6.

<sup>17</sup> *Id.* at pg. 6.

<sup>18</sup> *Id.* at pgs. 5-6

<sup>19</sup> See Footnote 9.

represented by experienced and competent counsel who are knowledgeable of regulatory matters and practice regularly before the PUCO.<sup>20</sup>

Accordingly, the 2016 Stipulation clearly satisfies the first prong of the Commission's three criteria analysis.

**B. The 2016 Stipulation benefits ratepayers and is in the public interest.**

As described above, the 2016 Stipulation is, at its core, an extension of the Company's prior energy efficiency program portfolio, including the 2015 program budgets, with certain modifications, specifications and commitments. Therefore, the programs that the Company seeks to extend are programs that the vast majority of the parties to this case expressly agreed to as part of the Second EE/POR Plan.<sup>21</sup> This one year extension allows the Company to continue the programs without interruption, and the Company has further committed to file a new three-year portfolio plan by June 15, 2017.<sup>22</sup> It is crucial to understand that the Company's initial filing in this case – its Application for a Third EE/POR Plan – was a three-year plan, with higher costs and uncapped shared savings associated with it.<sup>23</sup> Instead, the Company has agreed to a cost cap for the Company's energy efficiency programs, and shared savings resulting from these programs, set at 4% of the Company's revenue for 2015.<sup>24</sup> The Company has also agreed to a hard cap on shared savings of \$4.5 million for 2017.<sup>25</sup>

The 2016 Stipulation provides the Company's residential and non-residential customers with energy efficiency and demand reduction programs which encourage and promote energy savings by providing incentives for lowering customer energy consumption and demand, which

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<sup>20</sup> Testimony of Kristin Braun of the PUCO, pg. 4, filed on January 13, 2017.

<sup>21</sup> See Company Exhibit 3.

<sup>22</sup> See 2016 Stipulation at pg. 15.

<sup>23</sup> See Company Exhibit 2

<sup>24</sup> See 2016 Stipulation at pg. 6.

<sup>25</sup> See 2016 Stipulation at pg. 12.

in turn will lower customer electric bills.<sup>26</sup> Customers, interest-groups and stakeholders will also benefit from the Company's energy efficiency collaborative, which has historically been well-received from participants. While certainly not an exhaustive list, through the extension of existing programs and/or the inclusion of new programs/commitments, residential and non-residential customers will benefit from the 2016 Stipulation in the following ways:<sup>27</sup>

- The Company provides in-store discounts on energy efficiency lighting, and the Company is transitioning these discounts solely to LED lighting. This program has traditionally been one of the most cost effective programs and one that residential customers can easily participate in.
- Sourcing of funds to low-income customer groups, such as OPAE and PWC, for the continued weatherization and energy efficiency services for low-income customers.
- HVAC Rebates –the Company provides rebates on energy efficiency heating and cooling systems through an existing regional network of contractors.
- School Education – this program is designed to educate students about the value of using energy wisely through an already developed classroom curriculum. Take-home energy savings kits are provided to students as well.
- Appliance Recycling – customers save on their electric costs by receiving rebates from the Company for turning in their older working refrigerators and freezers, which are then recycled in an environmentally responsible manner.
- Incentives for smart thermostats, which promote energy efficiency, customer awareness and connectivity with energy usage.
- Continuation of the Company's ongoing combined heat and power and waste energy recovery initiative.
- Rapid Rebates – the Company provides prescriptive rebates on almost 70 different measures, such as lighting, motors, HVAC systems and compressed air equipment, and customers can apply on-line through an already developed web interface.
- Custom Rebates – for savings projects not included in the Rapid Rebates program, the Company offers customers with rebates through it custom program, such as for new construction or other specialized projects.

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<sup>26</sup> Teuscher Testimony at pg. 6.

<sup>27</sup> See the 2016 Stipulation and Company Exhibit 2.

- Working with the OHA to conduct energy efficiency audits, promote energy efficiency programs to OHA member hospitals, and conduct energy efficiency training.
- Working with OMAEG to communicate energy efficiency programs to its manufacturing members, assist in their participation and conduct useful training,

Another intrinsic and fundamental benefit to consumers is that, because the 2016 Stipulation is essentially an extension of the Company's existing programs, the infrastructure and mechanisms are already in place for the smooth and efficient administration of these programs – the people who run the programs are in place, the systems (applications/forms) have been created, and the marketing and websites have been developed. Further, these energy efficiency programs have been independently evaluated and scored on an annual basis in Case Nos. 14-0738-EL-POR (Plan Year 2013), 15-0777-EL-POR (Plan Year 2014), and 16-851-EL-POR (Plan Year 2015).<sup>28</sup> As the Commission and any intervening parties can see, the Company has exceeded its statutorily required energy efficiency and peak demand reduction benchmarks every year, and the plans have been independently scored as cost-effective.

Against this backdrop, Commission Staff agrees that the 2016 Stipulation benefits ratepayers and is in the public interest.<sup>29</sup> Accordingly, the 2016 Stipulation clearly satisfies the second prong of the Commission's three criteria analysis.

**C. The 2016 Stipulation does not violate any important regulatory principal or practice.**

As explained above, the Company's Application for its Third EE/POR Plan that was initially filed in this case was consistent with Commission rules, and was designed to comply in all material respects with the requirements of O.A.C. 4901:1-39-04. The idea for a one year extension of the Company's already existing energy efficiency programs grew out of this initial

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<sup>28</sup> The Company will file its Update Report for Plan Year 2016 in the next few months.

<sup>29</sup> Braun Testimony at pg. 5.



filing.<sup>30</sup> The 2016 Stipulation represents that one year extension of the Company's already existing energy efficiency programs, subject to the express modifications, specifications and commitments contained therein. The Company's energy efficiency programs, which had been implemented and administered for Plan Years 2013 through 2016, have been incredibly successful, as evidenced by the Company's annual updated status reports, as identified above. These programs were approved by the Commission and the signatory parties to the 2013 Stipulation.

The 2016 Stipulation furthers the State's policies and goals related to robust and successful energy efficiency programs among its investor owned utilities. *See*, O.R.C. § 4928.02; O.R.C. § 4928.66. The portfolio programs proposed by the 2016 Stipulation include a wide range of programs that encourage innovation and market access for cost-effective energy efficiency and peak demand reduction for all customer classes.<sup>31</sup> These programs are designed to achieve the benchmarks for peak demand reduction and meet or exceed the statutory benchmarks for energy efficiency.<sup>32</sup> The Company, through the implementation of these programs, has historically exceeded these statutory energy efficiency benchmarks.

Further, pursuant to O.A.C. 4901:1-39-07(A), the Company is legally entitled to recover shared savings and lost distribution revenues that result from the statutorily mandated energy efficiency portfolio programs. The Commission has expressly authorized recovery of lost distribution revenues and/or shared savings for the Company, and other utilities, in prior cases. *See, e.g., In re Duke Energy Ohio, Inc.*, Case No. 15-534-EL-RDR, Opinion and Order (October 26, 2016); *In re Dayton Power and Light Company*, Case No. 13-833-EL-POR, Opinion and Order (December 4, 2013); *In re Duke Energy Ohio, Inc.*, Case No. 11-4393-EL-RDR, Opinion

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<sup>30</sup> Teuscher Testimony at pg. 7.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

and Order (August 15, 2012). As explained earlier, the Company's initial portfolio plan was a three-year plan, with higher overall costs and an uncapped shared savings recovery. The Company has agreed to cap its shared savings for 2017 at \$4.5 million.

Lost distribution revenue recovery is expressly authorized by O.A.C. § 4901:1-39-07(A), and is a mechanism specifically designed to allow a utility, such as the Company, to be made whole – to recoup declines in sales that are directly attributable to measurable and verifiable energy efficiency programs. Lost distribution revenues represent the sales that would have come from customer consumption if the Company had not implemented the energy efficiency programs that led directly to reduced customer energy consumption. Essentially, allowing a utility to recover lost distribution revenues, thereby making the utility whole, incentivizes the utility to continue to research, create and administer energy efficiency programs that will result in reduced energy consumption and usage. The Company continues to offer and operate successful cost-effective energy efficiency programs, and its consumers are enjoying the benefits of those programs; thus, the Company should be afforded the reciprocal benefit of the bargain in the form of verifiable and measurable recovery for the sustained loss of lost distribution revenues. Further, the Company's recovery of lost distribution revenues for 2016 and 2017 are directly measurable and verifiable by the Commission and an independent 3<sup>rd</sup> party evaluator. The Company is not seeking a windfall, and any statement or implication to the contrary is baseless.

Finally, Commission Staff agrees that the 2016 Stipulation “complies with all relevant and important principles and practices.”<sup>33</sup> Accordingly, the 2016 Stipulation clearly satisfies the third prong of the Commission's three criteria analysis.

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<sup>33</sup> Braun Testimony at pg. 5.

#### **IV. Conclusion**

The testimony submitted in support of the 2016 Stipulation establishes that it is a fair and reasonable resolution of this case. The 2016 Stipulation clearly satisfies the Commission's three criteria for approval as it: (1) is the result of serious bargaining among capable, knowledgeable parties; (2) benefits the Company's customers and is in the public interest; and (3) does not violate any important regulatory principle or practice.

For these reasons the Company respectfully requests that the 2016 Stipulation be approved and adopted, without modification.

Respectfully submitted,

*/s/ Jeremy M. Grayem*

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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served upon the following via electronic mail on March 10<sup>th</sup>, 2017.

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**Case No(s). 16-0649-EL-POR, 16-1369-EL-WVR**

Summary: Brief The Dayton Power and Light Company's Initial Brief in Support of The December 13, 2016 Stipulation and Recommendation electronically filed by Mr. Jeremy M. Grayem on behalf of Dayton Power & Light