BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of its Energy Efficiency and Peak Demand Reduction Portfolio Plan.	))))	Case No. 16-649-EL-POR

REPLY BRIEF OF OHIO PARTNERS FOR AFFORDABLE ENERGY

I. Introduction

Ohio Partners for Affordable Energy ("OPAE") respectfully submits to the Public Utilities Commission of Ohio ("Commission") this reply brief in the proceeding to consider the above-captioned application of The Dayton Power and Light Company ("DP&L") for approval of its Energy Efficiency and Peak Demand Reduction Portfolio Plan ("Plan"). OPAE is a signatory party to the Stipulation and Recommendation ("Stipulation") filed December 13, 2016 in this proceeding. Pursuant to the Stipulation, instead of the three-year Plan for 2017 through 2019 as originally filed, DP&L is now seeking in this application only a one-year extension, through 2017, of its current plan with modifications set forth in the Stipulation. DP&L will file a three-year portfolio plan for the years 2018 through 2020 by June 15, 2017.

II. OCC's Arguments against the Stipulation are without Merit.

The Office of the Ohio Consumers' Counsel ("OCC") argues that there are no details of the Distribution Decoupling Rider ("DDR") in DP&L's Electric Security Plan ("ESP") proceeding and that the details of the DDR were to be

established in this proceeding. OCC Brief at 10. OCC states that when and how DP&L might seek to implement a DDR remains unknown and uncertain. Id. at 11. OCC believes that consumers will continue to pay lost revenues to DP&L "for a potentially unlimited number of years into the future." Id. OCC also argues that, under the Stipulation, if the Commission does not approve a new portfolio plan for 2018 or beyond, DP&L can continue its 2017 programs indefinitely and can continue to charge customers for program costs, utility profits, and lost revenues for an unlimited time in the future. Id. at 14.

In response to OCC, DP&L has requested approval of its DDR in its pending ESP case, Case No. 16-395-EL-SSO. The DDR is proposed to be established and set at zero upon approval of the ESP. The DDR will be implemented after DP&L's pending distribution base rate case, Case No. 15-1830-EL-AIR. The Stipulation states that DP&L will be permitted to recover lost distribution revenues incurred during 2016 and going forward through DP&L's Energy Efficiency Rider ("EER") until lost revenues are incorporated in the DDR. Stipulation at 11. The Stipulation states that the amount of lost revenues will be reset consistent with the outcome of DP&L's pending distribution base rate case, Case No. 15-1830-EL-AIR. Id. at 13. Until the DDR is approved in the ESP case and implemented in the base rate case, DP&L will recover lost revenues through the EER along with program costs. Therefore, as the Stipulation makes clear, these issues are being addressed in other pending cases before the Commission. If OCC finds that the failure to resolve Commission proceedings harms ratepayers, OCC should identify the reasons for the failure.

OCC also argues that the Stipulation asks the Commission to authorize DP&L to charge customers for lost distribution revenues as a result of energy efficiency programs in 2016. OCC believes that an order approving the Stipulation would authorize DP&L to increase customer rates based on lost revenues in 2016, which, according to OCC, is contrary to the prohibition on retroactive ratemaking. OCC Brief at 17.

In response to OCC, DP&L will collect its 2016 program costs and lost distribution revenues through the EER, a cost-recovery rider subject to true-ups on an annual basis. The prohibition against retroactive ratemaking refers to base rates, not rider rates subject to annual true-ups.

Finally, OCC argues that DP&L was authorized to charge customers for lost revenues in its last energy efficiency portfolio proceeding, Case No. 13-833-EL-POR, through December 31, 2015. OCC Brief at 18. When Senate Bill 310 froze Ohio's energy efficiency mandates for 2015 and 2016, a utility could continue its current programs or request a modification to its portfolio for 2015 and 2016. DP&L continued its then-current portfolio through 2016 with no amendments for the duration that the Commission originally approved. Id. at 19. According to OCC, this does not mean that DP&L's authority to charge customers for lost revenues was extended through 2016. According to OCC, charging for lost revenues through 2016 would be an amendment to the 2013-2015 plan; therefore, approval of the Stipulation would permit an amendment to DP&L's 2013-2015 portfolio plan in violation of SB 310. Id. at 20.

In response to OCC, SB 310, which became effective on September 12, 2014, requires in pertinent part:

> SECTION 6. (A) If an electric distribution utility has a portfolio plan that is in effect on the effective date of this section, the utility shall do either of the following, at its sole discretion:
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> (1) Continue to implement the portfolio plan with no amendments to the plan, for the duration that the Public Utilities Commission originally approved, subject to divisions (D) and (E) of this section;
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> (2) Seek an amendment of the portfolio plan under division (B) of this section.
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> …….
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> SECTION 7. (A) The Public Utilities Commission shall neither review nor approve an application for a portfolio plan if the application is pending on the effective date of this section.
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> (B) *Prior to January 1, 2017, the Commission shall not take any action with regard to any portfolio plan* or application regarding a portfolio plan, except those actions expressly authorized or required by Section 6 of this act and actions necessary to administer the implementation of existing portfolio plans. [Emphasis added.]

The Stipulation complies with the law. DP&L continued its 2013-2015 portfolio plan, which was approved on December 4, 2013 and was in effect on September 12, 2014, the effective date of SB 310, with no amendments for the duration the Commission originally approved, 2013-2015. Under SB 310, the Commission was prohibited prior to January 1, 2017, by Section 7, from taking any action on any portfolio plan or application except to administer the existing plan. The Commission took no action prior to January 1, 2017.

This Stipulation is submitted pursuant to an application filed on June 15, 2016 for a new portfolio Plan for 2017-2019. The Stipulation continues for one year DP&L's existing programs and lost distribution revenues consistent with the existing programs, but the Stipulation is submitted in this proceeding, which is to

consider the application submitted June 15, 2016 for the Plan period 2017-2019. In approving the Stipulation, the Commission is not taking action on a plan that was in effect on June 13, 2014, the effective date of SB 310. The Plan to which the Stipulation applies and on which the Commission will be taking action was not even filed until June 15, 2016 so that it was not in effect on the effective date of SB 310, and is not in effect now. The Commission's action will take place well after January 1, 2017. Even if the Stipulation is an agreement for the continuation of the existing programs for one year while the ESP and base rate cases are pending, in approving the Stipulation, the Commission will not be acting on a Plan that was in effect on June 14, 2014 prior to January 1, 2017.

III. The Environmental Law & Policy Center does not oppose Commission approval of the Stipulation.

The Environmental Law & Policy Center ("ELPC") opposes the Stipulation because the Staff of the Commission's testimony in support of the Stipulation addresses the cost cap agreed to in the Stipulation. According to ELPC, there is no record evidence of the benefits or detriments of a cost cap and whether a cost cap would end up costing customers more than it saves by depriving them of energy savings or lowering program quality. ELPC Brief at 2. ELPC urges the Commission not to reach the question of the merits of a cost cap in approving the Stipulation.

OPAE agrees with ELPC that there is no record evidence on the merits or detriments of the cost cap. For this Stipulation, the cost cap is only one part of a

package and does not prevent the Stipulation as a package from benefiting ratepayers and the public interest. The record here provides no basis for determining that a cost cap would be good policy beyond the specific contents of this settlement package and the Commission's order should reflect only approval of the Stipulation as a package.

IV. Conclusion

The Commission should find that the Stipulation and Recommendation meets the Commission's three-part test for the reasonableness of stipulations. The Commission should approve the Stipulation in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Reply Brief of Ohio Partners for Affordable Energy will be served electronically by the Commission's Docketing Division on the parties listed below who are electronically subscribed on this 24th day of March 2017.

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Summary: Reply Brief electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy