

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The)	
Dayton Power & Light Company For)	Case No. 16-0395-EL-SSO
Approval of Its Electric Security Plan)	
)	
In the Matter of the Application of The)	
Dayton Power & Light Company For)	Case No. 16-0396-EL-ATA
Approval of Revised Tariffs)	
)	
In the Matter of the Application of The)	
Dayton Power & Light Company For)	Case No. 16-0397-EL-AAM
Approval of Certain Accounting Authority)	
Pursuant to Ohio Rev. Code § 4905.13		

**POST-HEARING BRIEF OF HONDA OF AMERICA MFG., INC.
AND THE CITY OF DAYTON**

I. INTRODUCTION

In this proceeding, The Dayton Power & Light Company (“DP&L”) seeks to establish a standard service offer in the form of an electric security plan (“ESP”). The ESP that is currently pending before the Public Utilities Commission of Ohio (“Commission”) is the product of an Amended Stipulation and Recommendation (“Amended Stipulation”) signed by DP&L, DPL Inc., Commission Staff, and nine intervening parties, including the City of Dayton (“City”). In addition, four other intervening parties, including Honda of America Mfg., Inc. (“Honda”), agreed not to challenge the Amended Stipulation. While the opposing parties may argue the Amended Stipulation is not perfect, the Amended Stipulation is the product of serious negotiation among capable, knowledgeable parties, benefits customers and the public interest as a package, and does not violate any important regulatory principle or practice.

The Amended Stipulation allows DP&L to modernize the distribution grid and cultivate desperately needed economic development through the use of various incentives (e.g., Automaker Incentive and the Ohio Business Incentive), grants (e.g., Economic Development grant fund), sustainability projects/initiatives, residential energy education and reduction programs, and job training programs. The total benefits of the Amended Stipulation in the aggregate, including the quantitative and qualitative benefits, demonstrate that it is considerably more favorable in the aggregate as compared to the expected results of a market rate offer (“MRO”).

Consequently, the Commission should reject the opposing intervenors’ objections and approve the Amended Stipulation without modification.

II. LEGAL STANDARD

Pursuant to Section 4928.141(A) of the Ohio Revised Code, each electric distribution utility is required to provide a standard service offer in accordance with Sections 4928.142 or 4928.143. Section 4928.143(C)(1) provides that the Commission:

[S]hall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code.

The Commission considers both quantitative and qualitative factors in its analysis.¹ Specifically, all provisions of a proposed ESP are considered as a “total package.”² As set forth

¹ See *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, Opinion and Order at 94 (Feb. 25, 2015) (“AEP ESP3 Order”); *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order at 56 (July 18, 2012) (“FirstEnergy ESP3 Order”); See also *In re Columbus Southern Power Co.*,

below, the total benefits of the Amended Stipulation in the aggregate, including the quantitative and qualitative benefits, demonstrate that it is considerably more favorable in the aggregate as compared to the expected results of an MRO under Section 4928.142 of the Revised Code.

Rule 4901-1-30 of the Ohio Administrative Code provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The approval of a stipulation requires a Commission finding that the stipulation at issue is reasonable.³ A finding of reasonableness is contingent upon a proposed stipulation satisfying each prong of the three-prong test. Specifically, a reasonable stipulation must: (1) be a product of serious bargaining among capable, knowledgeable parties; (2) as a package, benefit customers and the public interest; and (3) not violate any important regulatory principle or practice.⁴ Under its precedent, the Commission traditionally gives substantial weight to the terms of a stipulation.⁵

III. THE AMENDED STIPULATION SATISFIES ALL THREE PARTS OF THE COMMISSION’S TEST FOR APPROVAL OF A STIPULATION.

The Amended Stipulation satisfies all three factors identified above, and thus, the Commission should find that it is reasonable and approve it without modification. First, the

128 Ohio St. 3d 402, 2011-Ohio-958, ¶ 27 (“Moreover, while it is true that the commission must approve an electric security plan if it is ‘more favorable in the aggregate’ than an expected market-rate offer, that fact does not bind the commission to a strict price comparison. On the contrary, in evaluating the favorability of a plan, the statute instructs the commission to consider ‘pricing *and all other* terms and conditions.’ Thus, the commission must consider more than price in determining whether an electric security plan should be modified.”) (emphasis in original).

² See *AEP ESP3* Order at 94.

³ See, e.g., *FirstEnergy ESP3* Order at 24; *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Opinion and Order at 20 (Aug. 25, 2010).

⁴ See *Consumers’ Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126 (1992). See also *AK Steel Corp. v. Pub. Util. Comm.*, 95 Ohio St.3d 81, 82-83 (2002); Case No. 12-1230-EL-SSO, Opinion and Order at 24 (July 18, 2012) (citing *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559 (1994)).

⁵ “Rule 4901-1-30, O.A.C, authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight.” *FirstEnergy ESP3* Order at 24 (citing *Consumers’ Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125 (1992) and *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157 (1978)).

Amended Stipulation was the result of weeks of intensive negotiations in which extensive and lengthy discussions among all parties occurred. The interested parties to this proceeding, including signatory and non-signatory parties, attended numerous settlement conferences to discussion resolution of their issues and attempt a proposed stipulation. The negotiation process was fair, transparent, and open to all parties.

The signatory parties also represent a diverse group and cross section of customers and market participants. The consumer groups who have signed the Amended Stipulation include the largest municipality in DP&L's service territory (i.e., the City of Dayton), groups representing low-income, elderly, and disabled homeowners, as well as large commercial and industrial groups including manufacturers, hospitals, and wholesale and retail marketers. In addition, the Commission Staff was at the bargaining table to the end and signed the Amended Stipulation. The Staff's mandate includes protecting the interests of the public at large, including residential customers. Accordingly, the Amended Stipulation represents a fair and balanced compromise among diverse groups of consumers and market participants, which was vigorously and extensively negotiated.

Second, the Amended Stipulation, as a package, benefits customers and the public interest by allowing DP&L to modernize the distribution grid and facilitate desperately needed economic development through the deployment of incentives (e.g., Automaker Incentive and the Ohio Business Incentive), grants (e.g., Economic Development grant fund), sustainability projects/initiatives, residential energy education and reduction programs, and job training programs. Moreover, the Amended Stipulation provides DP&L, through a Distribution Modernization Rider ("DMR"), the ability to access the capital market at a favorable rate to ensure investment in the distribution system. Accessing the capital market, on favorable terms,

will enable DP&L to obtain the funds to jumpstart these distribution and modernization programs. Altogether, this represents a significant benefit to rate payers and the public interest.

Third, the Amended Stipulation does not violate any important regulatory principle or practice. The Amended Stipulation furthers the policies of the state codified in Section 4928.02, Revised Code. Specifically, the Amended Stipulation will help ensure the availability of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service. This is particularly true where the Amended Stipulation provides for a Distribution Modernization Infrastructure Plan, which will set forth proposals for new technological advancements, including the deployment of advanced metering infrastructure and other system wide distribution automation. This also enhances and encourages innovation and efficient access to information regarding the operation of the transmission and distribution systems consistent with Section 4928.02. The Amended Stipulation further provides protections for at-risk populations - also consistent with Section 4928.02 - through the deployment of job training programs, special hiring outreach for Ohio residents (specifically those who graduate from Sinclair Community College), annual funding to programs targeted to assist low-income, elderly, and disabled customers, and other economic development programs for low-income residents. Finally, the Amended Stipulation facilitates the state's effectiveness in the global economy by offering critical economic development incentives for global businesses operating in Ohio like Honda via the Automaker Incentive or the Ohio Business Incentive.

Overall, the Amended Stipulation is the product of serious negotiation among capable, knowledgeable parties, benefits customers and the public interest as a package, and does not violate any important regulatory principle or practice. Accordingly, the Commission should find the Amended Stipulation is reasonable, and approve it without modification.

IV. THE AMENDED STIPULATION IS MORE FAVORABLE IN THE AGGREGATE AS COMPARED TO THE EXPECTED RESULTS OF AN MRO.

In order to approve an ESP, Section 4928.143(C)(1), Revised Code, requires that the Commission find:

“ . . . the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code.”

This test requires that the Commission consider both quantitative and qualitative aspects of the Amended Stipulation as compared to an MRO. This is addressed in the testimony of Staff witness Patrick Donlon and DP&L witness Jeffrey Malinak. As set forth in greater detail in Mr. Donlon’s and Mr. Malinak’s testimonies, the Amended Stipulation provides numerous quantitative and qualitative benefits via a modernized distribution grid, offering of innovative services, promoting economic development in DP&L’s service territory, protecting the long-term financial integrity of DP&L and its parent corporation DPL Inc., and securing the diversity of supply and suppliers for customers.⁶ In sum, the Amended Stipulation is more favorable in the aggregate than an MRO application.

V. CONCLUSION

The evidence presented in the proceeding clearly demonstrates that all three prongs regarding the approval of stipulations have been satisfied and that the Amended Stipulation is more favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO. Thus, for the reasons set forth above, the Commission should approve the Amended Stipulation without modification.

⁶ See PUCO Staff Exhibit No. 2, Direct Testimony of Patrick Donlon, pp. 5-6; DP&L Exhibit No. 2A, Direct Testimony of Jeffrey Malinak.

Date: May 5, 2017

Respectfully submitted,

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ATTORNEYS FOR HONDA AND CITY OF
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CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 5th day of May, 2017. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ N. Trevor Alexander

One of the Attorneys for Honda and City of
Dayton

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Case No(s). 16-0395-EL-SSO, 16-0396-EL-ATA, 16-0397-EL-AAM

Summary: Brief Post-Hearing Brief of the City of Dayton and Honda of America Mfg., Inc. electronically filed by Mr. Trevor Alexander on behalf of Honda of America Mfg., Inc. and City of Dayton