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Via E-File

May 5, 2017

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

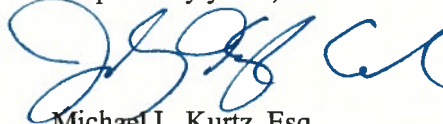
In re: Case Nos. 16-0395-EL-SSO, 16-0396-EL-ATA and 16-0397-EL-AAM

Dear Sir/Madam:

Please find attached the POST-HEARING BRIEF OF THE OHIO ENERGY GROUP (OEG) e-filed today in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,

A handwritten signature in blue ink, appearing to be "Michael L. Kurtz", written over a horizontal line.

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Jody Kyler Cohn, Esq.
BOEHM, KURTZ & LOWRY

MLKkew

Encl.

Cc: Certificate of Service
Bryce McKenney, Attorney Examiner
Gregory Price, Attorney Examiner

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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

**POST-HEARING BRIEF OF THE
THE OHIO ENERGY GROUP**

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May 5, 2017

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**POST-HEARING BRIEF OF THE
THE OHIO ENERGY GROUP**

The Ohio Energy Group (“OEG”) submits this Brief in support of its recommendations to the Public Utilities Commission of Ohio (“Commission”) in these proceedings. OEG’s members who are participating in these proceedings and who take service on The Dayton Power and Light Company (“DP&L” or “Company”) system are: Cargill Incorporated and General Motors LLC. OEG’s recommendations are set forth below.

INTRODUCTION

On February 22, 2016, DP&L filed its initial application in these proceedings. Nearly a year later, on January 30, 2017, the Company submitted an initial Stipulation and Recommendation in this proceeding. That Stipulation and Recommendation was not fair, just or reasonable, particularly the proposal to establish a DIR-B that would have required customers to pay \$610 million over 33 years for \$175 million of unnecessary capital expenditures.¹ That Stipulation also did not require any financial contribution from AES Corp., the ultimate parent of DP&L and DPL Inc. Given its significant flaws, the initial Stipulation and Recommendation received only meager support from parties to this case, with several parties and Commission Staff simply refusing to sign

¹ Direct Testimony and Exhibits of Lane Kollen in Response to Stipulation, Case Nos. 16-395-EL-SSO *et al.* (February 27, 2017)(“Kollen Testimony”) at 6:15-17.

on. At that point, it looked as though this case was heading toward heated litigation on a heavily contested settlement.

This case took a significant turn, however, when Staff decided to restart negotiations with DP&L in order to craft a far more reasonable settlement. Under Staff's leadership, the parties engaged in productive discussions to modify the document in ways that allowed many more parties, including OEG, Kroger, IEU-Ohio, and OMAEG to either sign on or not oppose. On March 24, 2017, DP&L submitted the Amended Stipulation and Recommendation ("Stipulation") that is now before the Commission for consideration.²

The Stipulation resolves these proceedings in a manner that is either explicitly supported by or, at minimum, not opposed by a multitude of entities, including: the Company, DPL Inc., Commission Staff, the City of Dayton, the Retail Energy Supply Association, Edgemont Neighborhood Coalition, Interstate Gas Supply, Inc./IGS Energy, People Working Cooperatively, the Ohio Hospital Association, Ohio Partners for Affordable Energy, the Kroger Company, Enernoc, Inc, Honda of America, Mfg. Inc., Industrial Energy Users-Ohio, the Ohio Manufacturers' Association Energy Group, and Mid-Atlantic Renewable Energy Coalition and OEG.

The Stipulation not only enjoys widespread support among the parties, but it also satisfies the Commission's traditional standard for reviewing proposed settlements. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings.³ While not binding on the Commission, the terms of stipulations are accorded substantial weight.⁴ The ultimate issue for the Commission's consideration is whether the agreement, which embodies significant 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?

² Joint Ex. 1 (Amended Stipulation and Recommendation).

³ FirstEnergy ESP Order at 24; Duke ESP Order at 41 (citing *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)).

⁴ Opinion and Order, Case No. 11-3549-EL-SSO (November 22, 2011) ("Duke ESP Order") at 41; Opinion and Order, Case No. 12-1230-EL-SSO (July 18, 2012) ("FirstEnergy ESP Order") at 24 (citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992) and *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978))).

- (3) Does the settlement package violate any important regulatory principle or practice?⁵

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to customers and public utilities.

As discussed below, the Stipulation: 1) is the product of serious bargaining among capable, knowledgeable parties; 2) benefits customers and the public interest as a package; and 3) does not violate any important regulatory principle or practice. Accordingly, the Commission should approve the Stipulation without modification.

ARGUMENT

I. The Stipulation Satisfies the Commission's Three-Prong Test For Determining Whether A Settlement Is Reasonable And Should Be Adopted.

A. The Stipulation Is The Product Of Serious Bargaining Among Capable And Knowledgeable Parties.

The parties either explicitly supporting or not opposing the Stipulation represent a wide variety of diverse interests, including the interests of the utility, Commission Staff, municipal customers, competitive retail electric suppliers, low-income advocates, industrial customers, commercial customers, demand response providers, hospitals, and renewable energy advocates. Most if not all of those parties have significant experience in Commission proceedings and each was represented by competent counsel. Moreover, the parties to these proceedings had ample time to review and analyze issues surrounding DP&L's proposed ESP, and were well-acquainted with those issues during the course of settlement discussions. In those discussions, significant compromises were made on behalf of many of the parties in order to reach a reasonable settlement in these proceedings. The Stipulation therefore satisfies the first prong of the Commission's test.

B. The Stipulation As A Package Benefits Customers And The Public Interest.

In several major ways, the Stipulation is superior to DP&L's litigation position in this hearing. It reduces the Company's requested Distribution Modernization Rider ("DMR") from \$145 million per year for seven years

⁵ Duke ESP Order at 41; FirstEnergy ESP Order at 24 (citing *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, (68 Ohio St.3d 559, 629 N.E.2d 423 (1994) and *Consumers' Counsel* at 126).

(totaling \$1.015 billion) to \$105 million for three years with the possibility of two additional years (totaling \$315 million, or \$525 million, at most).⁶ Further, DPL Inc. commits not to make dividend payments to its parent company, AES Corporation, or to AES Generation during the term of the ESP.⁷ DPL Inc. also agrees not to make contractually-required tax-sharing payments to AES Corporation. Instead, AES will irreversibly convert current and non-current DPL Inc. tax-sharing liabilities to an additional equity investment in DPL Inc. prior to and during the term of the DMR.⁸ And DP&L agrees to completely withdraw its Clean Energy Rider proposal.⁹

The Stipulation is also vastly superior to the January 30, 2017 Stipulation and Recommendation that DP&L submitted in this proceeding. Staff's rejection of the proposed DIR-B was essential. As explained in OEG's pre-filed testimony, DIR-B would have cost customers \$610 million over 33 years for \$175 million of unnecessary capital expenditures.¹⁰ Over the first five years of the ESP, DIR-B would have actually harmed the credit metrics of DP&L and DPL Inc., contrary to the driving force behind this proceeding. The elimination of DIR-B was critical in ensuring that the Stipulation now before the Commission for consideration is reasonable. Moreover, the requirement that AES convert DPL Inc.'s tax-sharing liabilities to an additional equity investment, which OEG recommended in testimony, adds substantial value to the Stipulation that could not be achieved through litigation. The agreed-upon equity conversion does not require additional cash investment in DPL Inc. by AES Corporation and would significantly improve DPL Inc.'s credit metrics.

Moreover, the Stipulation includes provisions important to large energy-intensive customers in DP&L's territory, particularly the proposed modifications to DP&L's Economic Development Rider that are designed to promote Ohio's ability to create and retain jobs.¹¹ Large customers may also benefit from the proposed TCRR-N pilot, which allows transmission costs to be allocated more consistently with cost causation principles.¹² Additionally, a number of the supplemental provisions in the Stipulation would bolster the customer benefits that could be derived from this proceeding, including DP&L's shareholder-funded economic development grants

⁶ Joint Ex. 1 at 4-5.

⁷ Id. at 3.

⁸ Joint Ex. 1 at 3-4.

⁹ Id. at 21.

¹⁰ ("Kollen Testimony") at 6:15-17.

¹¹ Joint Ex. 1 at 9-10; DP&L Ex. 3 (Direct Testimony of Sharon Schroder in Support of Amended Stipulation and Recommendation) at 12:19-13:2.

¹² Joint Ex. 1 at 14-17.

commitments,¹³ contributions and job training for the City of Dayton as well as the pledge to maintain DP&L's operating headquarters in Dayton,¹⁴ and funding for low-income, elderly, and disabled customers in DP&L's service territory.¹⁵ The Stipulation therefore satisfies the second prong of the Commission's test.

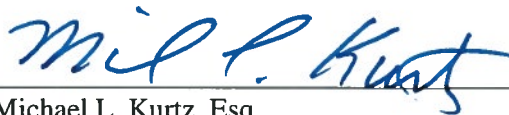
C. The Stipulation Does Not Violate Any Important Regulatory Principle Or Practice.

None of the individual provisions of the Stipulation is inconsistent with or violates any important Commission principle or practice. Rather, as discussed below, the Stipulation advances important policies and principles, including facilitating the state's effectiveness in the global economy, ensuring the availability to customers of adequate and reliable service, protecting at-risk populations, promoting innovation in technology for infrastructure, and facilitating retail shopping. The Stipulation therefore satisfies the third prong of the Commission's test.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Commission should approve the Stipulation.

Respectfully submitted,



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May 5, 2017

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¹³ Id. at 10-11.

¹⁴ Id. at 27-32.

¹⁵ Id. at 33 and 36.

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or ordinary mail, unless otherwise noted, this 5th day of May, 2017 to the following:


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Summary: Brief Post-Hearing Brief of The Ohio Energy Group (OEG) electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group