

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Dayton Power and Light Company For)	Case No. 16-395-EL-SSO
Approval of Its Electric Security Plan.)	
)	
In the Matter of the Application of The)	
Dayton Power and Light Company for)	Case No. 16-396-EL-ATA
Approval of Revised Tariffs.)	
)	
In the Matter of the Application of The)	
Dayton Power and Light Company for)	Case No. 16-397-EL-AAM
Approval of Certain Accounting Authority)	
Pursuant to Ohio Rev. Code § 4905.13.)	

**OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP'S
MEMORANDUM CONTRA APPLICATIONS FOR REHEARING**

I. INTRODUCTION

On March 14, 2017, the Dayton Power and Light Company (DP&L), Staff of the Public Utilities Commission of Ohio (Staff), and thirteen additional Signatory Parties or Non-Opposing Parties filed with the Public Utilities Commission of Ohio (Commission) an Amended Stipulation (Stipulation), between diverse parties having substantial experience before the Commission. The Ohio Manufacturers' Association Energy Group (OMAEG) agreed to be a Non-Opposing Party to the Stipulation.

On October 20, 2017, the Commission issued an Opinion and Order adopting and modifying the Stipulation.¹ In response to a hypothetical concern that may or may not occur, the Commission improperly modified an expressly negotiated term of the Stipulation providing that

¹ Opinion and Order at ¶ 1 (October 20, 2017) (Order).

the Reconciliation Rider be nonbypassable instead of bypassable.²

On November 17, 2017 and November 20, 2017, several parties filed applications for rehearing contesting the Commission's modification to the Stipulation regarding the Reconciliation Rider. Additionally, the Office of the Ohio Consumers' Counsel (OCC) contested the Commission's approval of the settlement and the finding that the Stipulation, as a settlement package, satisfied the three criteria for consideration as to the reasonableness of a stipulation. Some of the pertinent issues raised on rehearing by the parties are discussed below.

II. ARGUMENT

A. The Economic Development Incentives Were Approved with Evidentiary Support.

In its third assignment of error, OCC argues that the Commission approved various economic development incentives without demonstrating a need or specific commitments by those receiving the incentives.³ In its brief, OCC claims that the Commission lacked record support, OCC did not offer any supporting evidence to substantiate its claims that the economic incentives are not needed or are improper. OCC also did not offer any of its own evidence that contradicted the record cited to and relied upon by the Commission.

The Commission did, however, properly determine in its Order that the economic development incentives were lawful.⁴ The Commission also appropriately noted that R.C. 4928.143(B)(2)(i) expressly allows provisions for economic development and job retention and does not require a demonstration of need or specific commitments.⁵

The Supreme Court of Ohio has held that a Commission order complies with R.C.

² Id. at ¶ 63.

³ OCC AFR at 6 (November 20, 2017).

⁴ Order at ¶ 123.

⁵ Id.

4903.09 so as long as there is a basic rationale and record supporting the order.⁶ First, the Commission cited to the statutory provisions that directly authorizes economic incentives.⁷ Second, the Commission's Order approving the economic development incentives was supported by ample record support. In discussing the criteria to be evaluated under stipulations, the Commission identified specific provisions in the Stipulation and discussed the specific benefits derived from the incentives that were provided, such as job retention, energy efficiency, and economic development payments to offset costs associated with rate design modifications.⁸

Additionally, OCC's claim that the incentives were improper because the Commission did not demonstrate need or specific commitments lacks merit.⁹ Nowhere in R.C. 4928.143(B)(2)(i) is there a requirement for the Commission to demonstrate need or that specific commitments exist prior to approving and implementing economic development incentives. In construing a statute, the Commission may not add or delete words. *See In re Application of Ohio Power Co.*, 140 Ohio St.3d 509, 2014-Ohio-4271, 20 N.E.3d 699, ¶ 24.

Based upon the record evidence, as well as the statutory language, the Commission concluded that the economic development incentives were expressly authorized by statute, that the statute does not require a demonstration of need or specific commitments, that the incentives are in the public interest, and that the economic development programs support the policy of the state to facilitate the state's effectiveness in the global economy.¹⁰

⁶ *Indus. Energy Users-Ohio*, 117 Ohio St.3d 486, 2008-Ohio-990, 885 N.E.2d 195, ¶ 30.

⁷ Order at ¶ 123 (citing R.C. 4928.143(B)(2)(i)).

⁸ Order at ¶¶ 81, 120-123.

⁹ OCC AFR at 6.

¹⁰ *Id.* at ¶¶ 8, 123.

Contrary to OCC's cursory claims,¹¹ the Commission's findings were supported by the record. Accordingly, the Commission should deny OCC's third assignment of error and affirm its Order approving the economic incentives.

B. The *Bypassable* Reconciliation Rider Negotiated in the Stipulation is Reasonable. Alternatively, The Commission Should Impose Conditions to Safeguard Against Potential Rate Shock.

Several parties, including OMAEG, requested rehearing on the Commission's material modification of the terms and provisions of the negotiated Stipulation, which provided that the Reconciliation Rider would be *bypassable*. The parties argue that the Commission's stated reasoning for modifying the Stipulation and making the Reconciliation Rider nonbypassable that "there is potential for escalating bill impacts as shopping increases" is unsupported by the record in violation of R.C. 4903.09 and against the manifest weight of evidence.¹² In fact, with the Reconciliation Rider being bypassable, the parties explain that DP&L projected that monthly rates would decrease for DP&L's residential standard service offer (SSO) customers.¹³

Notwithstanding the PUCO's modification, on rehearing, some parties also discuss alternatives to address the Commission's stated concern, such as imposing conditions to safeguard against any potential rate shock (i.e., a cap on the bypassable cost recovery).¹⁴ IGS proposes that if the ongoing costs and previously unrecovered costs are greater than 10 percent of the initially forecasted Reconciliation Rider rate, that surplus would be collected through a nonbypassable portion of the Reconciliation Rider.¹⁵ Similarly, Retail Energy Supply

¹¹ OCC AFR at 6.

¹² Order at ¶ 63.

¹³ See Interstate Gas Supply, Inc. (IGS) Application for Rehearing at 13 (November 20, 2017) (IGS AFR).

¹⁴ IGS AFR at 13-14.

¹⁵ IGS AFR at 14.

Association (RESA) proposed establishing a “trigger point” of 10 percent above the baseline to provide protections for non-shopping customers.¹⁶ RESA proposes that there be bypassable and nonbypassable components to the Reconciliation Rider. The nonbypassable component would only be used to collect the revenue requirements in excess of a set trigger point.¹⁷ As RESA notes, the Commission has previously established a similar structure to protect customers from recovery of certain deferred costs associated with bypassable riders when those deferred costs exceed ten percent of a baseline amount.¹⁸ Lastly, IEU proposed that the Commission initiate a new proceeding or conduct a review in the context of the Reconciliation Rider’s annual updates and order any modifications to the Reconciliation Riders rates at that time if the Commission determined that the bypassable Reconciliation Rider rates materially increased over the ESP term, causing the Reconciliation Rider rates to become unreasonable.¹⁹

In light of the Commission’s modification, OMAEG also proposed an alternative “circuit breaker” provision that would allow the Reconciliation Rider to be conditionally bypassable when a threshold is met.²⁰ Although OMAEG did not suggest a specific threshold amount, OMAEG finds the levels proposed by IGS and RESA to be reasonable. OMAEG also finds IEU’s approach to retain the bypassability of the Reconciliation Rider today and then revisit the issue through a new proceeding, or the annual audit proceedings, if the Reconciliation Rider rates become unjust and unreasonable to be a logical alternative.

¹⁶ RESA Application for Rehearing at 9-12 (November 20, 2017) (RESA AFR).

¹⁷ *Id.*

¹⁸ *Id.* at 10-11, citing *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case Nos. 12-426-EL-SSO, Opinion and Order at 35 (September 4, 2013), Entry Nunc Pro Tunc (September 6, 2013), and Entry on Rehearing at ¶ 33 (March 19, 2014).

¹⁹ IEU AFR at 5.

²⁰ OMAEG AFR at 12.

IV. CONCLUSION

Other than the Commission's modification rendering the Reconciliation Rider nonbypassable, the Stipulation meets the Commission's three-part test. Accordingly, OCC's application for rehearing challenging the Stipulation and economic incentives should be denied. Additionally, the Commission should consider adopting a provision set forth in the applications for rehearing whereby the Reconciliation Rider would initially be bypassable, but include conditions to safeguard customers and address potential rate shock concerns as discussed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served via electronic mail on the following parties on December 4, 2017.

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

Summary: Memorandum Ohio Manufacturers' Association Energy Group's Memorandum
Contra Applications For Rehearing electronically filed by Mrs. Kimberly W. Bojko on behalf of
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