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BEFORE THE

PUBLIC UTILITIES COMMISSION OF OHIO

THE DAYTON POWER AND LIGHT COMPANY

CASE NO. 08-1094-EL-SSO
08-1095-EL-ATA
08-1096-EL-AAM
08-1097-EL-UNC

TESTIMONY OF DONA R. SEGER-LAWSON IN SUPPORT OF THE STIPULATION AND RECOMMENDATION

- ☐ **MANAGEMENT POLICIES, PRACTICES, AND ORGANIZATION**
- ☐ **OPERATING INCOME**
- ☐ **RATE BASE**
- ☐ **ALLOCATIONS**
- ☐ **RATE OF RETURN**
- ☐ **RATES AND TARIFFS**
- ■ **OTHER**

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ON BEHALF OF
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I. INTRODUCTION

Q. Please state your name.

A. Dona R. Seger-Lawson.

Q. Did you sponsor Direct testimony in this matter?

A. Yes, I did.

Q. What is the purpose of this testimony?

A. The purpose of this testimony is to provide facts showing that the Commission should approve the Stipulation and Recommendation ("Stipulation") filed in this matter on February 24, 2009, because it is the product of serious negotiations among knowledgeable parties, benefits customers and the public interest, and does not violate any important regulatory principle or practice.

Q. Can you provide an overview of the terms and benefits of the Stipulation?

A. Yes. By way of background, DP&L's current rate plan is set to expire in 2010. To provide stable prices to customers, the Stipulation extends DP&L's current rate plan -- including its base generation rates and base distribution rates -- to 2012. The Stipulation thus provides rate stability to DP&L's customers for an additional two years beyond DP&L's current rate plan. The Stipulation also provides that DP&L will implement certain riders to recover costs of fuel, alternative energy, energy efficiency and demand response programs, and AMI/Smart Grid (if approved by the Commission).

The Signatory Parties to the Stipulation represent a diverse set of interests. The Signatory Parties include DP&L, customers (residential, low-income, industrial, commercial), Competitive Retail Electric Service (CRES) Providers, environmental groups, and the Commission's Staff.

As demonstrated below, the Commission should approve the Stipulation because it provides reasonably-priced, stable rates for DP&L's customers, while compensating DP&L for the costs and risks of complying with Senate Bill 221 ("SB 221").

II. BACKGROUND

Q. When were DP&L's current rates approved?

A. DP&L's current rates were set in PUCO Case No. 05-276-EL-AIR as a result of a Stipulation and Recommendation ("2005 RSP Stipulation). The 2005 RSP Stipulation extended DP&L's then-existing rate plan through December 31, 2010. Among other things, the 2005 RSP Stipulation froze DP&L's base generation rate through December 31, 2010, froze DP&L's base distribution rate through December 31, 2008, established a non-bypassable Rate Stabilization Surcharge, and established a bypassable Environmental Investment Rider.[1]

[1] The 2005 RSP Stipulation provided that the EIR was to be partially unavoidable. 2005 RSP Stipulation, ¶ I.D.3. In its order approving the 2005 RSP Stipulation, the Commission made the entire EIR avoidable. 2005 RSP Order, p. 9.

The Commission modified and approved the 2005 Stipulation on November 3, 2005, and the Supreme Court of Ohio affirmed that Commission Order.[2]

Q. Are you familiar with SB 221?

A. Yes. I understand that, among other points, SB 221 (1) requires utilities to provide a standard service offer to customers (Ohio Rev. Code § 4928.141); (2) implements certain energy efficiency and demand response reduction targets (Ohio Rev. Code § 4928.66); and (3) implements certain alternative energy targets (Ohio Rev. Code § 4928.64).

Q. Section 4928.143(D) of the Ohio Revised Code states:

"Regarding the rate plan requirement of division (A) of section 4928.141 of the Revised Code, if an electric distribution utility that has a rate plan that extends beyond December 31, 2008, files an application under this section for the purpose of its compliance with division (A) of section 4928.141 of the Revised Code, that rate plan and its terms and conditions are hereby incorporated into its proposed electric security plan and shall continue in effect until the date scheduled under the rate plan for its expiration, and that portion of the electric security plan shall not be subject to commission approval or disapproval under division (C) of this section, and the earnings test provided for in division (F) of this section shall not apply until after the expiration of the rate plan. However, that utility may include in its electric security plan under this section, and the commission may approve, modify and approve, or disapprove subject to division (C) of this section, provisions for the incremental recovery or the deferral of any costs that are not being recovered under the rate plan and that the utility incurs during that continuation period to comply with section 4928.141, division (B) of section 4928.64, or division (A) of section 4928.66 of the Revised Code."

Can you explain whether that provision applies to DP&L?

[2] Office of the Ohio Consumers' Counsel v. Public Utils. Comm'n, 114 Ohio St. 3d 240, 2007-Ohio-4276 (2007).

A. Yes. That section applies to "an electric distribution utility that has a rate plan that extends beyond December 31, 2008." At the time SB 221 was enacted, DP&L was the only Ohio electric utility that had a rate plan that extended beyond December 31, 2008.

Q. Did DP&L make a filing with the Commission pursuant to SB 221?

A. Yes. To comply with SB 221, on October 10, 2008, DP&L filed its Electric Security Plan (ESP) Application in this matter.

Q. Can you describe the other principal components of DP&L's Application?

A. Yes. As explained in the Book I Testimony of DP&L witness Marrinan, DP&L has experienced a significant increase in fuel costs since DP&L's fuel cost recovery was last reviewed in 2005. In its Application, DP&L sought to defer fuel costs that exceeded the amount that is in current rates.

DP&L's Application also included a plan to implement a number of proven energy efficiency and demand response programs to achieve the targets in Ohio Rev. Code § 4928.66. Those programs are fully described in the Book II Testimony of DP&L witness Bubp.

DP&L's Application also included a plan to implement Advanced Metering Infrastructure (AMI) and Smart Grid, which would improve the reliability of DP&L's distribution system and allow DP&L to implement time-of-use rates, peak time rebates and critical peak pricing. The nature and the amount of the investment are described in the Book II Testimony of DP&L witness Teuscher; the pricing programs are described in the Book II Testimony of DP&L witness Bubp.

Finally, near term, DP&L intends to purchase Renewable Energy Credits (RECs) to comply with Ohio Rev. Code § 4928.64. DP&L's plans to comply with the renewable energy requirements in Section 4928.64 are fully described in the Book III Testimony of DP&L witness Stephenson.

Q: Can you explain whether DP&L is authorized to recover or defer fuel costs under Section 4928.143(D)?

A: Yes. As explained above, Ohio Rev. Code § 4928.143(D) applies to DP&L. Section 4928.143(D) permits DP&L to recover or defer costs incurred in 2009-2010 that are not being recovered under DP&L's existing rate plan and that are incurred to comply with Section 4928.141. At the time SB 221 was enacted, and still today, the only significant cost that falls within that description was fuel. This portion of Section 4928.143(D) thus appears to have been enacted to permit DP&L to recover or defer fuel costs.

III. THE STIPULATION AND RECOMMENDATION

Q. Are you familiar with the Stipulation in this case?

A. Yes. I was one of the principal negotiators for DP&L in the lengthy settlement negotiations, in which the following parties participated: the Company, the Commission's Staff, The Office of the Ohio Consumers' Counsel ("OCC"), Industrial Energy Users - Ohio ("IEU-OH"), the Kroger Company, Ohio Partners for Affordable

Energy ("OPAE"), The Ohio Environmental Council, Ohio Manufacturers' Association, Dominion Retail, Inc., The Ohio Hospital Association, Cargill, Incorporated, Honda of America Mfg., Inc., Constellation NewEnergy, Inc., Constellation Energy Commodities Group, Inc., the City of Dayton, the Sierra Club, and the Edgemont Neighborhood Coalition.

Q. Can you describe the negotiations that led to the Stipulation?

A. Yes. On February 6, 2009, DP&L circulated a written settlement offer to all parties in the case. Over the next several weeks, the Signatory Parties had numerous, extensive negotiation sessions at the Commission, and exchanged numerous written drafts and written comments. All parties were invited to participate in the settlement negotiations.

The result of the negotiations was a compromise. Every Signatory Party receives substantial benefits under the Stipulation, but no Signatory Party received everything that it may have wanted or wished for. The Stipulation strikes a reasonable balance.

Q. Can you describe the interests of the parties that signed the Stipulation?

A. Yes. The Stipulation was signed by DP&L, DP&L's customers (residential, low-income, industrial, commercial), DP&L's competitors, and environmental groups. The Commission's Staff also signed the Stipulation. The Stipulation thus represents a wide range of interests, including the interests of all of DP&L's customers.

Q. Can you describe the principal terms of the Stipulation?

A. Yes. The principal terms of the Stipulation are:

1. DP&L's existing rate plan (established in PUCO Case No. 05-276--EL-AIR) will be extended to 2012. Stipulation, ¶ 1.

2. DP&L's distribution rates will be frozen through December 31, 2012, subject to limited exceptions. Stipulation, ¶ 18.

3. DP&L will file its business case for implementing AMI and Smart Grid. Stipulation, ¶ 4.

4. Beginning in 2010, DP&L will be permitted to implement a fuel rider that will allow DP&L to recover fuel costs that it incurs in 2010-2012 that are above 1.97¢ per kWh. Stipulation, ¶ 2.

5. DP&L will implement its energy efficiency and demand response programs, and will recover the costs through the EER. DP&L will participate in a collaborative to address such programs. Stipulation, ¶¶ 5, 11.

6. DP&L will implement the Alternative Energy Rider (AER) to recover DP&L's alternative energy costs. Stipulation, ¶ 6.

Q. You stated earlier that all parties made concessions in the Stipulation. Can you describe some of the major concessions made by DP&L?

A. Yes. First, by agreeing to extend its rate plan through 2012 (Stipulation, ¶ 1), DP&L sacrificed its right to provide a market rate offer in 2011 under Ohio Rev. Code § 4928.142. As explained in the Testimony of Scott Niemann in Support of the Stipulation, DP&L's ESP is projected to offer rates more favorable than those available in the market. Sacrificing its right to offer a market rate is thus a significant concession by DP&L.

Second, DP&L agreed to a base distribution rate freeze through December 31, 2012. Stipulation, ¶ 18.

Third, as demonstrated above, Section 4928.143(D) would authorize DP&L to recover or defer 2009 and 2010 fuel costs. In the Stipulation, DP&L agreed: (1) not to recover fuel costs in 2009; and (2) recover fuel costs only to the extent they exceed 1.97¢ per kWh. Stipulation, ¶ 2.

Fourth, Ohio Rev. Code § 4928.143(B)(2)(h) permits DP&L to receive shared savings and to decouple rates. DP&L agreed not to receive shared savings in the Stipulation and eliminated the levelized aspect of DP&L's rate design. Stipulation, ¶ 4.c.

Q. The Stipulation, pages 1 to 3, begins with a number of introductory paragraphs and "whereas" clauses. Have you reviewed those clauses, and are the facts in them accurate?

A. Yes, I reviewed them, and they are factually accurate. The purpose of the introductory paragraphs and whereas clauses is to set forth the policy and factual bases under which the parties negotiated and entered into the Stipulation. I adopt the facts and policy considerations set forth in those clauses as a part of my testimony in support of the Stipulation.

Q. Did you provide any information to DP&L witness Niemann for his testimony in support of the Stipulation?

A. Yes. Mr. Niemann compares the avoidable charges under the Stipulation to expected market rates. I provided DP&L's avoidable rates to Mr Niemann, which are comprised of DP&L's base generation rate, the fuel rider, the Environmental Investment Rider, and transmission and ancillary services rates.

IV. THE COMMISSION'S CRITERIA FOR EVALUATING STIPULATIONS

Q. What criteria does the Commission use to decide whether to approve a Stipulation and Recommendation?

A. The Commission has in the past applied, and should use in considering this Stipulation, the following three regulatory principles or criteria: First, is the Stipulation a product of serious bargaining among capable, knowledgeable parties? Second, taken as a package, does the Stipulation benefit ratepayers and the public interest? Third, does the Stipulation violate any important regulatory principle or practice?

A. The Stipulation is the Product of Serious Bargaining among Knowledgeable Parties

Q. Turning to the first criterion or principle, was the Stipulation the product of serious bargaining among capable, knowledgeable parties?

A. Yes. The settlement negotiations involved a diverse group of experienced parties. Numerous negotiating sessions were held. Negotiations continued into the evenings at times. The Signatory Parties to the Stipulation represent a wide spectrum of diverse interests including, without limitation, the interests of a regulated utility, residential customers, low-income customers, industrial and commercial customers, environmental groups and CRES Providers. In addition, the Commission's Staff is a Signatory Party. All of the Signatory Parties were represented by skilled men and women with years of experience in regulatory matters before this Commission who possessed extensive information, and the negotiations were at arm's length. All had the benefit of experienced legal counsel. Countless hours were devoted to the negotiating process.

Q. Did all parties have an opportunity to participate in the negotiations?

A. Yes. As described above, there were a series of settlement conferences at the Commission and all parties were invited to participate. A telephone bridge was established for several of those sessions to accommodate those parties who could not travel to a particular session. In addition, there were a series of settlement proposals that were circulated to all parties.

Q. Have conditions changed significantly since the 2005 RSP Stipulation was approved?

A. Yes, they have. Not only have fuel costs increased, as I explained earlier, but also, as the Commission knows, the enactment of SB 221 significantly changed the regulatory requirements in Ohio. Among other facts, SB 221 required the filing of an ESP and set targets for Ohio electric utilities to meet (Sections 4928.64 and 4928.66). These changed conditions require the modification of the 2005 RSP Stipulation and justify the Stipulation in this case.

Q. Can you explain how the Stipulation addresses the RSS charge from the 2005 RSP Stipulation?

A. Yes. Section I.C.2 of the 2005 RSP Stipulation provided that the RSS would be "unavoidable." The 2005 RSP Stipulation was approved by the Commission (December 28, 2005 Opinion & Order, Case No. 05-276-EL-AIR) and that Order was affirmed by the Supreme Court of Ohio (Ohio Consumers Counsel v. Public Utilities Commission of Ohio, 114 Ohio St.3d 340 (2007)). Section 4928.143(D) of the Ohio Revised Code provides that DP&L's "rate plan and its terms and conditions are hereby incorporated into [DP&L's] proposed electric security plan and shall continue in effect until the date scheduled under the rate plan for its expiration."

Paragraph 3 of the Stipulation thus maintains the RSS as an unavoidable charge through December 31, 2012, when DP&L's rate plan is set to expire. The only exception is that Section 4928.20(J) provides that "customers that are a part of a government aggregation . . . may elect not to receive standby service . . . . [T]he electric distribution utility shall not charge any such customer . . . for the standby service. Any such customer that returns to the utility shall pay the market price of power . . . ." Paragraph 3 of the Stipulation thus implements Section 4928.20(J) for 2011-2012.

B. <u>The Stipulation Benefits the Public Interest</u>

Q. Turning to the second criterion or principle, can you list customer benefits of the Stipulation?

A. Yes. The principal customer benefits are as follows:

1. DP&L's ESP is extended through December 31, 2012. Stipulation, ¶ 1. As explained in the Testimony of Scott Niemann in Support of the Stipulation, DP&L's ESP rates are more favorable than projected market rates.

2. DP&L's distribution rates shall remain frozen through December 31, 2012. Stipulation, ¶ 18.

3. The fuel recovery rider will not be implemented until 2010, and will be limited to fuel costs above 1.97¢ per kWh. Stipulation, ¶ 2.

4. DP&L will implement AMI and Smart Grid, subject to Commission review of DP&L's business case. Stipulation, ¶ 4.

5. DP&L shall not retain savings resulting from the AMI and Smart Grid programs, if implemented. Stipulation, ¶ 4.c.

6. DP&L will implement energy efficiency and demand response programs. Stipulation, ¶ 5.

7. DP&L's recovery of lost revenues shall exclude lost generation revenues and shall be limited to $72 million over a seven year period. Stipulation, ¶ 5.

8. DP&L's carrying charges are limited to DP&L's cost of debt. Stipulation, ¶¶ 7-8.

9. DP&L will form an energy efficiency collaborative to advise and consult regarding energy efficiency and peak demand reduction targets. Stipulation, ¶ 11.

10. DP&L will assist mercantile customers to implement energy efficiency and demand response programs. Stipulation, ¶ 12.

C. <u>The Stipulation Does Not Violate any Important Regulatory Principle</u>

Q. With respect to the third criterion or principle, does the Stipulation violate any important regulatory principle or practice?

A. No. The Stipulation does not violate any important regulatory principle or practice. As explained by the Book I Testimony of DP&L witness Kelly, DP&L's Application is consistent with and advances the state policies in Ohio Rev. Code § 4928.02.

V. CONCLUSION

Q. Does this conclude your testimony in support of the Stipulation?

A. Yes, it does.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Testimony of Dona R. Seger-Lawson in Support of the Stipulation and Recommendation has been served via electronic mail upon the following counsel of record, this 23rd day of February, 2009:

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