

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of ) The Dayton Power and Light Company ) For Approval of its Electric Security ) Plan. )	Case No. 08-1094-EL-SSO
In the Matter of the Application of ) The Dayton Power and Light Company ) For Approval of Revised Tariffs. )	Case No. 08-1095-EL-ATA
In the Matter of the Application of ) The Dayton Power and Light Company ) For Approval of Certain Accounting ) Authority Pursuant to Section 4905.13, ) Revised Code. )	Case No. 08-1096-EL-AAM
In the Matter of the Application of ) The Dayton Power and Light Company ) For Approval of its Amended ) Corporate Separation Plan. )	Case No. 08-1097-EL-UNC

OPINION AND ORDER

The Commission, considering the above-entitled applications, hereby issues its opinion and order in this matter.

APPEARANCES:

Faruki, Ireland & Cox, P.L.L., by Charles J. Faruki, Jeffrey S. Sharkey, and R. Holtzman Hedrick, 500 Courthouse Plaza, S.W., 10 Ludlow Street, Dayton, Ohio 45402, and Judi L. Sobecki, 1065 Woodman Drive, Dayton, Ohio 45432, on behalf of Dayton Power and Light Company.

Richard Cordray, Ohio Attorney General, by Duane W. Luckey, Section Chief, and Thomas Lindgren and Thomas McNamee, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Jacqueline Lake Roberts, Michael E. Idzkowski, Richard Reese, and Gregory J. Poulos, Assistant

Consumers' Counsel, Office of Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215, on behalf of the residential consumers of Dayton Power and Light Company.

Chester, Willcox & Saxbe, LLP, by John W. Bentine, Mark S. Yurick, and Matthew S. White, 65 East State Street, Suite 1000, Columbus, Ohio 43215-4213, on behalf of The Kroger Company.

McNees, Wallace & Nurick, LLC, by Samuel C. Randazzo, Lisa G. McAlister and Joseph M. Clark, 21 East State Street, Columbus, Ohio 43215, on behalf of Industrial Energy Users-Ohio.

Henry W. Eckhart, 50 West Broad Street, Suite 2117, Columbus, Ohio 43215, and Robert Ukeiley, 435R Chestnut Street, Suite 1, Berea, Kentucky 40403, on behalf of The Sierra Club.

Boehm, Kurtz & Lowry, by David F. Boehm and Michael L. Kurtz, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202, on behalf of Ohio Energy Group.

David C. Rinebolt, 231 W. Lima Street, Findlay, Ohio 45839, on behalf of Ohio Partners for Affordable Energy.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff and Stephen M. Howard, 52 East Gay Street, Columbus, Ohio 43216-1008, and Cynthia A. Fonner, Constellation Energy Group, Inc., 550 West Washington Street, Suite 3000, Chicago, Illinois 60661, on behalf of Constellation NewEnergy, Inc., and Constellation Energy Commodities Group, Inc.

Bricker & Eckler, LLP, by Thomas J. O'Brien, 100 South Third Street, Columbus, Ohio 43215, and Richard L. Sites, 155 East Broad Street, 15th Floor, Columbus, Ohio 43215-3620, on behalf of Ohio Hospital Association.

Larry Gearhardt, 280 North High Street, P.O. Box 182383, Columbus, Ohio 43218-2383, on behalf of Ohio Farm Bureau Federation.

Craig I. Smith, 2824 Coventry Road, Cleveland, Ohio 44120, on behalf of Cargill, Inc.

Vorys, Sater, Seymour & Pease, by M. Howard Petricoff, 52 East Gay Street, Columbus, Ohio 43215, on behalf of Honda of America Mfg., Inc.

Bricker & Eckler, LLP, by Thomas J. O'Brien, 100 South Third Street, Columbus, Ohio 43215, on behalf of Ohio Manufacturers' Association.

Schottenstein, Zox & Dunn Co., LPA, by Christopher L. Miller, Gregory H. Dunn and Andre T. Porter, 250 West Street, Columbus, Ohio 43215, on behalf of the city of Dayton.

Bell & Royer Co., LPA, by Barth E. Royer, 33 South Grant Avenue, Columbus, Ohio 43215-3927, and Nolan Moser and Todd Williams, Ohio Environmental Council, 1207 Grandview Avenue, Suite 201, Columbus, Ohio 43212-3449, on behalf of Ohio Environmental Council.

Bell & Royer Co., LPA, by Barth E. Royer, 33 South Grant Avenue, Columbus, Ohio 43215-3927, and Gary A. Jefferies, Dominion Resources Services, Inc., 501 Martindale Street, Suite 400, Pittsburgh, Pennsylvania 15212-5817, on behalf of Dominion Retail, Inc.

Ellis Jacobs, Advocates for Basic Legal Equality, Inc., 333 W. Third Street, Suite 500B, Dayton, Ohio 45402, on behalf of the Edgemont Neighborhood Coalition.

## OPINION:

### I. HISTORY OF THE PROCEEDING:

The Dayton Power & Light Company (DP&L) is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.

On September 3, 2003, in Case No. 02-2279-EL-ATA, et al., the Commission approved a stipulation which extended DP&L's market development period to December 31, 2005, and provided for a rate stabilization plan from January 1, 2006, through December 31, 2008 (RSP Stipulation). The RSP Stipulation also provided for the creation and implementation of a rate stabilization surcharge (RSS). *In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for the Dayton Power and Light Company*, Case No. 02-2279-EL-ATA, et al., Opinion and Order (September 2, 2003).

Further, on April 4, 2005, in Case No. 05-276-EL-AIR, DP&L filed its application to establish the RSS. On December 28, 2005, the Commission approved, with modifications, a stipulation which, among other terms, established a rate stabilization charge (RSC), and extended the RSP to December 31, 2010. *In re Dayton Power and Light Company*, Case No. 05-276-EL-AIR, Opinion and Order (December 28, 2005).

On October 10, 2008, DP&L filed an application for a standard service offer (SSO) in the form of an electric security plan (ESP), pursuant to Section 4928.143, Revised Code. A supplement to the application was filed by DP&L on December 5, 2008. A technical conference regarding the application was held on December 15, 2008.

Motions to intervene were filed by The Kroger Company (Kroger), Industrial Energy Users-Ohio (IEU-Ohio), The Sierra Club, the Office of the Ohio Consumers' Counsel (OCC), Ohio Energy Group (OEG), Ohio Partners for Affordable Energy (OPAE), Constellation NewEnergy, Inc., and Constellation Energy Group, Inc. (Constellation), Ohio Hospital Association (OHA), Ohio Farm Bureau Federation (OFBF), Cargill, Inc. (Cargill), Honda of America Mfg., Inc. (Honda), Ohio Manufacturer's Association (OMA), the City of Dayton (Dayton), Ohio Environmental Council (OEC), Dominion Retail, Inc. (Dominion), and the Edgemont Neighborhood Coalition (Edgemont). Those motions were granted by the attorney examiner on February 5, 2009.

Public hearings were held in Dayton, Ohio on February 26, 2009, and in Wilmington, Ohio on March 4, 2009. Three witnesses testified at the public hearings.

On February 24, 2009, a stipulation (Stipulation) was filed with the Commission by DP&L, IEU-Ohio, Kroger, OPAE, OCC, OEC, Dominion, OMA, OHA, Honda, Constellation, Dayton, Sierra Club, Edgemont, and Staff (Signatory Parties). The evidentiary hearing commenced on February 11, 2009, and concluded on February 24, 2009, during which testimony was received from two witnesses on behalf of DP&L in support of its application and the Stipulation and one witness on behalf of Cargill in partial opposition to the Stipulation.

Post hearing briefs were timely filed by DP&L, IEU-Ohio, Staff and Cargill. Reply briefs were filed by DP&L, Cargill and Constellation.<sup>1</sup>

## II. SUMMARY OF THE STIPULATION

The Stipulation was intended by the Signatory Parties to resolve all outstanding issues in this proceeding. The Stipulation includes, *inter alia*, the following provisions:

- (1) The Signatory Parties agree to extend DP&L's current rate plan through December 31, 2012.
- (2) DP&L will implement an avoidable fuel recovery rider to recover fuel and purchased power costs. The rider will initially be set at \$0.0197/kWh, which amount will be subtracted from DP&L's generation rates. No later than November 1, 2009, DP&L will make a filing with the Commission to establish the fuel rider to become effective January 1, 2010. DP&L will file quarterly adjustments for recovery of fuel and purchased

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<sup>1</sup> On April 13, 2009, Constellation filed a motion for leave to file its reply brief one day out of time. The Commission finds that this motion is reasonable and should be granted.

power, subject to an annual audit by Staff or an independent third-party auditor.

- (3) The current RSC will continue as an unavoidable charge through 2012.<sup>2</sup> Customers of government aggregations who elect not to pay the RSC in 2011 and 2012 will return to electric utility service at market-based rates rather than at the SSO rate under the applicable tariff.
- (4) DP&L shall present to the Commission independent business cases for its AMI and Smart Grid plans for review and approval. DP&L will delay implementation of its Infrastructure Investment Rider until reviewed by Staff and approved by the Commission. The IIR will recover any prudently incurred costs related solely to DP&L's approved AMI and Smart Grid plans.
- (5) DP&L will implement an energy efficiency rider (EER) to recover costs related to DP&L programs implemented to achieve compliance with the energy efficiency and peak demand reduction targets established under Am. Sub. Senate Bill 221 (SB 221). Lost revenues due to the implementation of energy efficiency and peak demand reduction programs shall not include lost generation revenue and shall be limited to \$72 million over seven years.
- (6) DP&L will implement an avoidable alternative energy rider (AER).
- (7) For the IIR, the EER, and the AER, carrying charges will be applied to any over- or under-recovery at DP&L's cost of debt approved by the Commission in DP&L's most recent proceeding.
- (8) DP&L will establish a collaborative process to address energy efficiency and demand response programs.
- (9) DP&L's distribution base rates shall be frozen through December 31, 2012, subject to DP&L's right to seek emergency rate relief under Section 4909.16, Revised Code, and to apply to the Commission for approval of separate riders to recover: the

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<sup>2</sup> Although the Stipulation characterizes this charge as the "RSS" charge, the Signatory Parties clearly intended to mean the existing "RSC" charge approved by the Commission in *Dayton Power and Light Co.*, Case No. 05-276-EL-AIR.

costs of complying with changes in tax or regulatory laws and regulations, which take effect after the date of the Stipulation; and the cost of storm damage.

- (10) DP&L may apply to the Commission for approval of separate rate riders to recover: the cost of complying with new environmental legislation or regulation related to climate change or carbon-related emissions or storage; environmental costs required to keep the Hutchings Generating Station in operation and available to customers, to the extent such costs are cost effective; transmission cost recover rider (TCRR) costs; and regional transmission organization costs not recovered in the TCRR.
- (11) The significantly excessive earnings test codified in Section 4928.143(F), Revised Code, shall not be applicable to DP&L for the years 2009 through 2011.

### III. EVALUATION OF THE STIPULATION

Rule 4901-1-30, Ohio Administrative Code, authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such agreements are accorded substantial weight. *See Consumers' Counsel v. Pub. Util. Comm.* (1982), 64 Ohio St.3d 123, 125, *citing Akron v. Pub. Util. Comm.* (1978), 55 Ohio St.2d 155. This concept is particularly valid where the stipulation is supported or unopposed by the vast majority of parties in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., Dominion Retail v. Dayton Power and Light*, Case No. 03-2405-EL-CSS, et al., Opinion and Order (February 9, 2005); *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR, Order on Remand (April 14, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-179-EL-AIR, Opinion and Order (January 31, 1989). The ultimate issue for our consideration is whether the agreement, which embodies considerable 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?

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

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1997), 68 Ohio St.3d 547 (quoting *Consumers' Counsel*, 64 Ohio St.3d at 126). The Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

DP&L, IEU-Ohio, and Staff each represent that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. No party to this proceeding argues that the Stipulation did not meet the first prong of the Commission's three-prong test for the review of stipulations.

In considering whether there was serious bargaining among capable and knowledgeable parties, the Commission evaluates the level of negotiations that appear to have occurred and takes notice of the experience and sophistication of the negotiating parties. In this case, it is clear from the record that all parties had the opportunity to participate in the negotiations (DP&L Ex. 2 at 10). The Signatory Parties all routinely participate in complex cases before the Commission and are all represented by counsel who practice before the Commission on a regular basis. Moreover, the Signatory Parties represent a diversity of interests including the electric utility, residential consumers, low-income customers, commercial and industrial customers, environmental advocates, and a competitive retail electric service provider, as well as Staff (DP&L Ex. 2 at 9). Therefore, the Commission finds that the first prong of the test is met by the Stipulation.

- (2) Does the settlement, as a package, benefit ratepayers and the public interest?

DP&L argues that the Stipulation, as a package, benefits ratepayers and the public interest. DP&L notes that the Stipulation extends its electric security plan through December 31, 2012, and also freezes distribution rates through December 31, 2012. Moreover, the Stipulation provides that the fuel cost recovery rider will not be implemented until 2010 and limits the fuel recovery rider to fuel costs above \$0.0197/kWh. Further, DP&L states that, under the Stipulation, it will implement AMI and Smart Grid, subject to Commission review, as well as energy efficiency and demand response programs. The recovery of lost revenues will exclude lost generation revenues and will be limited to \$72 million over seven years. Finally, DP&L notes that it will form an energy

efficiency collaborative and that it will assist mercantile customers in implementing energy efficiency and demand response programs (DP&L Ex. 2 at 11-12).

IEU-Ohio contends that, as a package, the Stipulation will benefit customers, competitive suppliers and the electric utility. Moreover, IEU-Ohio believes that adoption of the Stipulation eliminates uncertainty confronting DP&L's customers and competitive suppliers regarding the price and reliability of electricity for the period extending through 2012. Further, IEU-Ohio notes additional benefits that could not be guaranteed or necessarily achieved through litigation: the distribution rate freeze; no recovery of fuel costs by DP&L for 2009; the requirement that DP&L present a business case for its AMI and Smart Grid plan to the Commission for review and approval; a collaborative process to address energy efficiency and demand response programs; and the limiting of carrying charges to DP&L's cost of debt.

Staff argues that the Stipulation should be approved without modification. The Staff believes that the Stipulation benefits ratepayers and the public interest. The Staff notes that the record demonstrates many benefits of the Stipulation, including the extension of the existing rate plan to 2012, that distribution rate freeze, the development of a mechanism to implement AMI and Smart Grid, the establishment of the collaborative for energy efficiency and demand response programs, and the implementation of alternative energy rider to fund alternative energy acquisitions.

Cargill believes that the Stipulation should be modified before it is approved by the Commission. Under the Stipulation, the RSC will be avoidable by aggregation customers during 2011 and 2012, if such customers agree to return to DP&L's provider-of-last-resort (POLR) service at market-based rates rather than tariffed rates. Cargill argues that *all* shopping customers should be able to avoid the RSC in 2011 and 2012, if they agree to return to POLR service at market-based rates rather than tariffed rates.

Cargill contends that making the RSC avoidable for all shopping customers would benefit ratepayers and advance the public interest. Cargill claims that DP&L acknowledges that the RSC compensates DP&L for being the POLR (Cargill Ex. 1 at 4). Cargill notes that the Commission had earlier approved the Duke Energy-Ohio ESP that allows non-residential shopping customers to avoid standby charges by agreeing not to return to the SSO for the balance of the three-year term of the ESP. *In re Duke Energy Ohio*, Case No. 08-920-EL-SSO, et al., Opinion and Order, (December 17, 2008) at 27. Cargill also claims that the Commission recently modified the ESP proposed by Columbus Southern Power Company and Ohio Power Company to make their proposed POLR charges avoidable if shopping customers agreed to return at market-based rates rather than tariffed rates. *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 08-917-EL-SSO, et al., Opinion and Order (March 18, 2009) (hereinafter, *AEP-Ohio*) at 38, 40. Cargill believes that the Stipulation provides an outcome inconsistent with the decision in *AEP-Ohio* by not allowing shopping customers to avoid RSC charges and return at



market-based rates; instead, shopping customers who are not part of a governmental aggregation must continue to pay RSC charges and return at SSO rates during 2011 and 2012 under the Stipulation.

Finally, Cargill argues that the Stipulation does not substitute for the exercise of Commission judgment. Cargill notes that the Stipulation is only a recommendation which is in no sense legally binding upon the Commission. *Consumers' Counsel*, 64 Ohio St.3d at 125. Cargill further states that the Stipulation does not substitute for the exercise of Commission judgment as to the public interest, based upon its specialized expertise on factual matters and accumulated expertise in interpreting statutes. *Monongahela Power Co. v. Pub. Util. Comm.* (2004), 104 Ohio St.3d 571, 578.

DP&L replies that Cargill has failed to address the significant customer benefits contained in the undisputed provisions of the Stipulation. DP&L also distinguishes the Commission's holding in *AEP-Ohio*, arguing that the Commission's decision in that case was not subject to the three prong test for reviewing stipulations. DP&L claims that the Stipulation is a package of compromises in which all of the Signatory Parties made significant concessions and that the Commission should not alter the balance among competing interests in order to address Cargill's concerns.

Further, DP&L argues that Cargill's position is not mandated by SB 221 or any other regulatory requirement. DP&L states that the only requirement in SB 221, as codified in Section 4928.20(J), Revised Code, provides that customers of governmental aggregations may elect not to receive standby service and, if they so elect, return to electric utility service at market rates. DP&L contends that the Stipulation conforms to this provision by providing that, after 2010, customers of governmental aggregations have the option to avoid the RSC, if they agree to return at market rates.

Constellation notes that it supports the Stipulation because it believes that, taken as a whole, the Stipulation is in the best interests of the public. However, Constellation cautions that its support for the Stipulation as a whole should not be interpreted as support for any single provision of the Stipulation standing alone.

After review of the Stipulation and supporting and opposing views on the provisions of the Stipulation, the Commission finds that the Stipulation, as a package, benefits ratepayers and the public interest and should be adopted by the Commission without modification. The Stipulation will ensure rate certainty by extending the existing rate plan through December 21, 2012 (Joint Ex. 1 at 3). Moreover, the Stipulation will freeze distribution rates through December 31, 2012, except for specific, limited exceptions (Joint Ex. 1 at 10-11). The Stipulation will promote energy efficiency by requiring DP&L to implement energy efficiency and peak demand reduction programs in consultation with an energy efficiency collaborative (Joint Ex. 1 at 7-9). Further, DP&L's recovery of lost revenues due to the implementation of energy efficiency and peak demand reduction

programs will not include lost generation revenue and will be limited to \$72 million over seven years. Additionally, the Stipulation promotes the policy of this state, as codified in Section 4928.02(D), Revised Code, by providing for Commission review of DP&L's proposals for AMI and Smart Grid implementation (Joint Ex. 1 at 5).

The Commission does not believe that the modifications proposed by Cargill are necessary or appropriate. The Signatory Parties have clearly indicated their belief that the Stipulation strikes a reasonable balance under which all parties receive substantial benefits pursuant to the Stipulation, but no party receives everything it may have sought in litigation (DP&L Ex. 2 at 6). As we have previously stated, no stipulation will ever totally satisfy every party, and the fact that a stipulation does not incorporate additional features or commitments advocated by a non-signatory party does not necessarily mean that a stipulation is not in the public interest. *Consumers' Counsel v. Western Reserve Telephone Co.*, Case No. 92-1525-TP-CSS, et al., Opinion and Order (March 30, 1994) at 123-124.

With respect to Cargill's argument that the Commission should follow our holding in *AEP-Ohio*, the Commission notes that, in this case, we must determine whether, the Stipulation, *as a package*, benefits ratepayers and the public interest. Our holding in *AEP-Ohio* addressed a single provision in a case which was not stipulated and is not binding upon the Commission with respect to this case.

Therefore, upon careful consideration of the record in this proceeding, the Commission finds that the Stipulation, as a package, benefits ratepayers and the public interest.

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

DP&L, IEU-Ohio, and Staff each argue that the Stipulation does not violate any important regulatory principle or practice. No party to this proceeding alleges any violation of an important regulatory principle or practice.

The Commission finds that the Stipulation meets the third criterion. The uncontroverted testimony in the record of this proceeding demonstrates that the Stipulation does not violate any important regulatory principle or practice (DP&L Ex. 2 at 12). Accordingly, the Commission finds that the Stipulation does not violate any important regulatory principle or practice.

In addition, the Commission must consider the applicable statutory test for approval of an ESP as part of our review of whether the Stipulation conforms with important regulatory principles. Section 4928.143(C)(1), Revised Code, provides that the Commission should approve, or modify and approve, an application for an ESP if it finds that the ESP, 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, Revised Code. The record of this proceeding demonstrates that the ESP is, in fact, more favorable in the aggregate than would otherwise apply under Section 4928.142, Revised Code.

DP&L witness Niemann testified that the rates contained in the ESP proposed in the Stipulation are more favorable in the aggregate than the equivalent market rates for 2009 through 2012 (DP&L Ex. 3 at 12). Mr. Niemann testified that he evaluated projected market rates for full requirements, including energy, capacity, transmission service, and related products and estimated the aggregate customers' costs that could be expected in a full requirements market rate offer (MRO). Mr. Niemann stated that he compared the resulting average market rates to the projected ESP rates under the Stipulation and determined that the projected ESP rates are in the aggregate lower than the estimated costs for equivalent services under an MRO (DP&L Ex. 3 at 3, 10-12). Mr. Niemann further testified that the methodology used by DP&L to estimate MRO rates is reasonable and conservative (DP&L Ex. 3 at 4, 12). No party in this proceeding offered testimony disputing Mr. Niemann's testimony.

Therefore, based upon the evidence in the record in this proceeding, the Commission finds that the ESP, 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, Revised Code. Accordingly, we find that the Stipulation should be adopted.

#### V. TARIFFS

As part of its investigation in this proceeding, Staff reviewed the proposed tariff provisions to implement the ESP, and Staff has recommended that the tariffs be approved by the Commission. The Commission finds that the tariffs filed on February 24, 2009, are reasonable, and should be approved.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) DP&L is an electric light company within the meaning of Sections 4905.03(A)(4) and 4928.01(A)(7), Revised Code, and, as such, is a public utility as defined by Section 4905.02, Revised Code, subject to the jurisdiction and supervision of the Commission.
- (2) DP&L's application was filed pursuant to, and this Commission has jurisdiction over the application under the provisions of Sections 4928.141 and 4928.143, Revised Code.

The application complies with the requirements of these statutes.

- (3) Intervention was granted to: Kroger, IEU-Ohio, The Sierra Club, OCC, OEG, OPAE, Constellation, OHA, OFBF, Cargill, Honda, OMA, Dayton, OEC, Dominion, and Edgemont.
- (4) A technical conference was held on December 15, 2008.
- (5) Local public hearings were held on February 26, 2009, and March 4, 2009, pursuant to published notice.
- (6) The evidentiary hearing commenced on February 11, 2009, and concluded on February 24, 2009.
- (7) On February 24, 2009, a Stipulation was filed, which purports to resolve all of the issues raised by these proceedings.
- (8) The ultimate issue for the Commission's consideration is whether the agreement, which embodies considerable time and effort by the Signatory Parties, is reasonable and should be adopted. In considering the reasonableness of the Stipulation, the Commission has used the following criteria:
  - (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
  - (b) Does the settlement, as a package, benefit ratepayers and the public interest?
  - (c) Does the settlement package violate any important regulatory principle or practice?
- (9) The Stipulation was the product of serious bargaining among capable, knowledgeable parties representing a diversity of interests.
- (10) The Stipulation, as a package, benefits ratepayers and the public interest.
- (11) The Stipulation does not violate any important regulatory principle or practice.

- (12) The Stipulation submitted by the Signatory Parties is reasonable and, as indicated herein, shall be adopted by the Commission.
- (13) The ESP, 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, Revised Code.

ORDER:

ORDERED, That the Stipulation presented in these proceedings be adopted. It is, further,

ORDERED, That the application of DP&L filed on October 10, 2008, as supplemented on December 5, 2008, be approved. It is, further

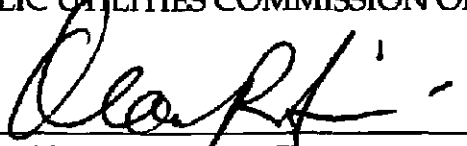
ORDERED, That DP&L file in final form four complete copies of tariffs consistent with this Opinion and Order. One copy shall be filed with this case docket, one shall be filed with the DP&L's TRF docket, and the remaining two copies shall be designated for distribution to the Rates and Tariffs Division of the Commission's Utilities Department. DP&L shall also update its respective tariff previously filed electronically with the Commission's Docketing Division. It is, further,

ORDERED, That the effective date of the new tariffs shall be a date not earlier than both the date of this Opinion and Order and the date upon which four complete printed copies of final tariff are filed with the Commission. The new tariffs shall be effective for services rendered on or after such effective date. It is, further,

ORDERED, That DP&L shall notify all effected customers via a bill message or via a bill insert within 30 days of the effective date of the tariffs. A copy of the customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least 10 days prior to its distribution to customers. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Alan R. Schriber, Chairman

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Paul A. Centolella

  
Ronda Hartman Fergus


  
Valerie A. Lemmie

  
Cheryl L. Roberto

GAP/KWB:ct

Entered in the Journal

**JUN 24 2009**

  
Renee J. Jenkins  
Secretary