

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the )  
Dayton Power and Light Company for a ) Case No. 09-1986-EL-POR  
Finding that DP&L has Satisfied Program )  
Portfolio Filing Requirements. )

OPINION AND ORDER

The Commission, having considered the record in this matter, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Judi L. Sobecki, 1065 Woodman Drive, Dayton, Ohio 45432, on behalf of Dayton Power and Light Company.

Mike DeWine, Ohio Attorney General, by Werner L. Margard, Thomas W. McNamee, and Devin Parram, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

Janine Migden-Ostrander, Ohio Consumers' Counsel, by Terry L. Etter, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215.

Nolan Moser, 1207 Grandview Avenue, Suite 201, Columbus, Ohio 43212, on behalf of Ohio Environmental Council.

McNees, Wallace, and Nurick, LLC, by Samuel C. Randazzo and Joseph E. Oliker, 21 East State Street, Columbus, Ohio 43215, on behalf of Industrial Energy Users-Ohio.

OPINION:

I. HISTORY OF PROCEEDINGS

Dayton Power and Light Company (DP&L) is a public utility by virtue of Section 4905.02, Revised Code, and an electric light company as defined by Section 4905.03(A)(3), Revised Code. DP&L is, therefore, subject to the jurisdiction of the Commission pursuant to Sections 4905.04 and 4905.05, Revised Code.

On December 23, 2009, DP&L filed an application for approval of DP&L's energy efficiency and peak demand reduction program portfolio plan for 2010 through 2012,

pursuant to Rule 4901:1-39-04, Ohio Administrative Code (O.A.C.). In its application, DP&L explains that its customer conservation and energy management (CCEM) programs were approved by the Commission in the stipulation filed in its electric security plan (ESP) proceeding. *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, et al., Opinion and Order (June 24, 2009) at 5 (*ESP Case*). DP&L reasoned that, since the Commission-approved CCEM programs substantially comply with the energy efficiency and peak demand reduction program portfolio requirements, the Commission should find that DP&L is in compliance with Rule 4901:1-39:04, O.A.C.

To the extent that the program planning and portfolio requirements of Rules 4901:1-39-03 and 4901:1-39-04, O.A.C., were not technically satisfied by DP&L's CCEM programs, DP&L requested that the Commission waive such requirements. Specifically, DP&L requested waivers of Rules 4901:1-39-03(A), 4901:1-39-04(C)(3), 4901:1-39-04(C)(4) and 4901:1-39-04 (C)(5)(I), O.A.C. These rules require that the electric utility conduct a market assessment of potential energy savings and peak demand reductions from the adoption of energy efficiency and demand-response measures while also providing descriptions of the utility's existing customer conservation and energy management programs, the utility's measurement and verification plan, and the utility's efforts to coordinate its conservation and energy management programs with similar programs offered by other utilities.

By entry issued on May 19, 2010, the Commission granted DP&L's request for waivers of the filing requirements of paragraphs (C)(3), (4), and (5)(I) of Rule 4901:1-39-04, O.A.C., concluding that DP&L provided a thorough description of its CCEM programs in the application filing in its ESP proceeding. The Commission denied DP&L's request for waivers of Rules 4901:1-39-03(A) and 4901:1-39-04(A), O.A.C., stating that the market assessment was essential to the consideration of the proposed program portfolio and that the application should include supporting testimony. DP&L was directed to file its market assessment and supporting testimony within sixty days.

On July 15 and 16, 2010, DP&L filed supplements to its original application. By entry issued on October 25, 2010, the attorney examiner set the procedural schedule for this matter and directed DP&L to publish legal notice of the evidentiary hearing scheduled for December 14, 2010, pursuant to Rule 4901:1-39-04(E), O.A.C. Motions to intervene filed by the Industrial Energy Users-Ohio (IEU-Ohio), the Ohio Consumers' Counsel (OCC), and the Ohio Environmental Council (OEC) were granted by entry issued on December 9, 2010. The hearing commenced as scheduled on December 14, 2010, but, at the request of the parties, was continued indefinitely in order to permit the parties to continue settlement negotiations.

DP&L, Staff, OCC, and OEC (Signatory Parties) filed a stipulation and recommendation (stipulation) resolving all issues in the case on March 22, 2011. The

stipulation states that IEU-Ohio is not a signatory party to the stipulation, but does not oppose it. A hearing was held on March 29, 2011, in order to consider the stipulation.

## II. APPLICABLE LAW

Section 4928.66(A)(1), Revised Code, provides, in pertinent part:

- (a) Beginning in 2009, an electric distribution utility shall implement energy efficiency programs that achieve energy savings equivalent to at least three-tenths of one per cent of the total, annual average, and normalized kilowatt-hour sales of the electric distribution utility during the preceding three calendar years to customers in this state. The savings requirement, using such a three-year average, shall increase to an additional five-tenths of one per cent in 2010, seven-tenths of one per cent in 2011, eight-tenths of one per cent in 2012, nine-tenths of one per cent in 2013, one per cent from 2014 to 2018, and two per cent each year thereafter, achieving a cumulative, annual energy savings in excess of twenty-two per cent by the end of 2025.
- (b) Beginning in 2009, an electric distribution utility shall implement peak demand reduction programs designed to achieve a one per cent reduction in peak demand in 2009 and an additional seventy-five hundredths of one per cent reduction each year through 2018. In 2018, the standing committees in the house of representatives and the senate primarily dealing with energy issues shall make recommendations to the general assembly regarding future peak demand reduction targets.

Further, in accordance with Section 4928.66, Revised Code, the Commission adopted rules in Chapter 4901:1-39, O.A.C., Energy Efficiency and Demand Reduction Benchmarks, which became effective December 10, 2009.

## III. DP&L'S APPLICATION

In its application, DP&L explains that its energy efficiency and demand response (EEDR) plan is contained within the CCEM program approved by the Commission. DP&L notes that the approved CCEM program is supported by the testimony of fourteen witnesses, and the EEDR plan describes a range of cost effective energy efficiency and peak demand reduction programs.

Within the EEDR plan, DP&L explains that it plans to implement a robust and flexible portfolio of energy efficiency and demand response solutions. Specifically, the EEDR plan focuses on three primary elements: a residential portfolio, a non-residential portfolio, and education and market transformation activities. See *ESP Case*, Application Part 2 (October 10, 2008) at 47.

DP&L states that its residential portfolio offers customers the opportunity to control their energy costs and usage. The plan will focus on residential lighting, heating, ventilation, and air conditioning (HVAC) diagnostics and tune-ups, HVAC rebates, and residential appliance recycling and rebates. It also proposes residential low income affordability measures.

The non-residential portfolio includes individual technology and device incentives, including non-residential prescriptive rebates and custom rebates, direct load control and time-of-use pricing. In addition to the residential and non-residential portfolios, DP&L plans to implement educational outreach initiatives and explore partnering with energy efficiency vendors and channel partners.

In its supplemental program portfolio plan, DP&L submitted expert testimony and assessments of electric energy potential. The supplement also contained evaluation, measurement and verification plans, which expanded on DP&L's three primary elements from the EEDR plan.

#### IV. STIPULATION

As previously noted, DP&L filed a Stipulation, which was entered into by the Signatory Parties. In the pertinent parts of the Stipulation, the Signatory Parties agree that DP&L will provide a comprehensive evaluation of the cost-effectiveness and feasibility of developing the following areas for potential inclusion in DP&L's updated energy efficiency and peak demand reduction program portfolio plan, to be filed by April 15, 2013 in accordance with Rule 4901:1-39-04, O.A.C.:

- (1) A joint gas and electric home performance program with Vectren Energy Delivery of Ohio;
- (2) A shared savings incentive structure for over-compliance with annual energy efficiency and peak demand reduction benchmarks;
- (3) An increase in funding for DP&L's residential appliance rebate program to make the program more attractive to third-party implementers; and

- (4) A direct load control program using a single-way communication system.

In addition, DP&L shall present findings and conclusions from the evaluations to the Energy Efficiency Collaborative (Collaborative) created as part of the settlement in the *ESP Case*. The findings shall be presented to the Collaborative at one of the regularly scheduled meetings taking place prior to the end of calendar year 2011.

If DP&L's evaluations, including input and review from Collaborative members, reveal that the home performance program and/or the residential appliance rebate program are cost-effective and feasible, DP&L may ask for Commission approval to implement the program changes. The Signatory Parties further agree that DP&L's program portfolio as previously approved by the Commission in the *ESP Case*, and as supplemented by this stipulation, substantially complies in all material respects with the requirements of Rule 4901:1-39-04, O.A.C.

#### V. DISCUSSION OF THE STIPULATION

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. See, *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, at 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves almost all of the issues presented 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., *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). 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.*, 68 Ohio St.3d 547 (1994) (citing *Consumers' Counsel*, supra, 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 (*Id.*).

The signatory parties state that the stipulation is the product of lengthy, arm's length bargaining among all parties to the proceeding. The signatory parties also maintain that the stipulation is supported by adequate data and information, represents a reasonable resolution of all issues in this proceeding, is made by parties representing a wide range of interests, and violates no regulatory principle or practice (Jt. Ex. 1 at 2.)

Emily W. Rabb, supervisor of regulatory operations at DP&L, explains that the settlement discussions involved a diverse set of interests, each of whom was represented by experienced, knowledgeable, and competent counsel. Ms. Rabb states that all signatory parties have participated in numerous proceedings before the Commission and are knowledgeable in regulatory matters. Further, Ms. Rabb provides that the issues in the case were discussed in great detail through multiple meetings, telephone conversations, and email exchanges over the course of several weeks, with all negotiations being conducted at arm's length (DP&L Ex. 4 at 7-8).

Ms. Rabb states that the stipulation benefits DP&L customers and the public interest by providing residential and non-residential customers with energy efficiency and peak demand reduction programs. Specifically, these programs will provide incentives for lowering customer consumption and demand, which in turn will lower customer bills. With respect to the third criterion, Ms. Rabb provides that the stipulation does not violate any important regulatory practice or principle, and is consistent with Commission rules. It is designed to comply with the requirements of Rule 4901:1-39-04, O.A.C. (DP&L Ex. 4 at 8.)

## VI. CONCLUSION

Based on our review of the three-pronged test, the Commission finds the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is clearly met. The Commission finds that the stipulation filed in this case appears to be the product of serious bargaining among capable, knowledgeable parties. All parties to the stipulation have been involved in numerous cases before the Commission and have consistently provided extensive and helpful information to the Commission. In addition, the stipulation also meets the second criterion. As a package, the stipulation advances the

public interest by resolving all the issues raised in this matter without resulting in extensive litigation. Finally, the stipulation meets the third criterion because it does not violate any important regulatory principle or practice. *Consumers' Counsel*, supra, at 126. Accordingly, we find that the stipulation is reasonable and should be adopted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On December 23, 2009, DP&L filed an application for a finding that DP&L has satisfied program portfolio filing requirements. DP&L also requested waivers of Rules 4901:1-39-03, 4901:1-39-04, O.A.C.
- (2) By entry issued May 19, 2010, DP&L's request for waivers were granted in part and denied in part.
- (3) On July 15 and 16, 2010, DP&L filed supplements to its original application.
- (4) On December 9, 2010, motions to intervene by Industrial Energy Users-Ohio (IEU-Ohio), the Ohio Consumers' Counsel (OCC), and the Ohio Environmental Council (OEC) were granted.
- (5) On December 14, 2010, an evidentiary hearing in this matter commenced, but was continued indefinitely in order to permit the parties to continue settlement negotiations.
- (6) On March 22, 2011, DP&L, Staff, OCC, and OEC filed a stipulation and recommendation resolving all issues in the case. While not a signatory to the stipulation, IEU does not oppose it.
- (7) A hearing was held on March 29, 2011, in order to consider the stipulation.
- (8) At the hearing, the stipulation was admitted into the record, intending to resolve all issues in this case.
- (9) The stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.
- (10) DP&L's energy efficiency and peak demand reduction program portfolio plan for 2010 through 2012 is reasonable and should be approved.

It is, therefore,

ORDERED, That the stipulation and recommendation submitted in this case be approved and adopted in its entirety. It is, further,

ORDERED, That DP&L's application for approval of its energy efficiency and peak demand reduction program portfolio plan for 2010 through 2012 be approved. It is, further,

ORDERED, That DP&L take all necessary steps to carry out the terms of the stipulation and this order. It is, further,

ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this opinion and order be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Paul A. Centolella

  
Steven D. Lesser

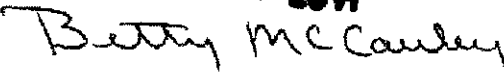
  
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Entered in the Journal

**APR 27 2011**

  
Betty McCauley  
Secretary