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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of )  
The Dayton Power and Light Company ) Case No. 09-1012-EL-FAC  
to Establish a Fuel Rider )

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**STIPULATION AND RECOMMENDATION**

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Rule 4901-1-30, Ohio Administrative Code (O.A.C.) provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding and agreement of the Parties that have signed below (Parties)<sup>1</sup> and to recommend that the Public Utilities Commission of Ohio (Commission) approve and adopt this Stipulation and Recommendation (Stipulation), which resolves all of the issues raised by Parties in this case relative to establishing The Dayton Power and Light Company's (DP&L's) Fuel Rider for the audit period of January 1, 2010 through December 31, 2010.

This Stipulation is supported by adequate data and information, documented for the record in these proceedings (as agreed to by the Parties) as follows: (1) DP&L quarterly Fuel Rider filings; (2) the Application filed in this case; and (3) the Management/Performance and Financial Audit of the Fuel and Purchased Power Rider of The Dayton Power and Light Company (2010 Audit Report) filed on April 29, 2011.<sup>2</sup> The Commission Staff shall move for the admission of the 2010 Audit Report to the evidentiary record in the above-captioned case,

<sup>1</sup> FirstEnergy Solutions Corp. ("FES"), was granted intervention in this proceeding by Entry dated September 26, 2011. While not a signatory to this Stipulation, FES has indicated it neither supports nor opposes the Stipulation.

<sup>2</sup> The Commission order that approved an audit of the Fuel Rider also provides for an audit for the January 1, 2011 through December 2011 period (2011 Audit Period). An audit report for the year 2011 will be released during 2012 (2011 Audit Report).

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and the Parties agree not to oppose the introduction of such document into the record. DP&L shall move for the admission to the evidentiary record of its quarterly Fuel Rider filings and the Application. The Stipulating Parties agree not to oppose the introduction of such documents into the record.

The Stipulation represents a just and reasonable resolution of the issues raised in these proceedings; violates no regulatory principle or precedent; and is the product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process, encouraged by this Commission and undertaken by the Parties representing a wide range of interests, including the Commission Staff, to resolve the aforementioned issues. Although this Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission. For purposes of resolving all issues raised by these proceedings, the Parties stipulate, agree and recommend as set forth below.

Except for purposes of enforcement of the terms of this Stipulation, this Stipulation (and the information and data contained therein or attached) and Commission rulings that adopt the Stipulation shall not be cited as precedent in any future proceeding for or against any Party, or the Commission itself. This Stipulation is a reasonable compromise involving a balancing of competing positions, and it does not necessarily reflect the position that one or more of the Parties would have taken if these issues had been fully litigated. This Stipulation shall not be interpreted to reflect the positions that a Party would take regarding an individual provision in this Stipulation standing alone.

This Stipulation is expressly conditioned upon its adoption by the Commission in its entirety and without material modification. In the event the Commission issues an order that

does not adopt the Stipulation in its entirety without material modification,<sup>3</sup> any Party may file an application for rehearing or terminate and withdraw from the Stipulation by filing a notice with the Commission, including service to all parties, in the docket within thirty (30) days of the Commission's order. Other Parties to this Stipulation agree that they will not oppose or argue against any other Party's application for rehearing that seeks to uphold the original, unmodified Stipulation. In the event the Commission issues an entry on rehearing that does not adopt the Stipulation in its entirety without material modification, any Party may terminate and withdraw from the Stipulation by filing a notice with the Commission, including service to all Parties, in the docket within thirty (30) days of the Commission's entry on rehearing (or other entry or order subsequent to the original order that does not adopt the Stipulation in its entirety without material modification). Upon the filing of a notice of termination and withdrawal, the Stipulation shall immediately become null and void.

Prior to the filing of a notice of termination and withdrawal, the Party wishing to terminate agrees to work in good faith with the other Parties to achieve an outcome that substantially satisfies the intent of the Stipulation and, if a new agreement is reached that includes the Party wishing to terminate, then the new agreement shall be filed for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful in reaching a new agreement that includes all Parties to the present Stipulation, the Commission will convene an evidentiary hearing such that the Parties will be afforded the opportunity to present evidence through witnesses, to cross-examine witnesses, to present rebuttal testimony, and to brief all issues that the Commission shall decide based upon the record and briefs as if this Stipulation had never been executed. Some, or all, of

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<sup>3</sup> Any Party has the right, in its sole discretion, to determine what constitutes a "material" modification for the purposes of that Party withdrawing from the Stipulation.

the Parties may submit a new agreement to the Commission for approval if the discussions achieve an outcome they believe substantially satisfies the intent of the present Stipulation.

All the Parties fully support this Stipulation and urge the Commission to accept and approve the terms herein.

The Parties agree that the settlement and resulting Stipulation is a product of serious bargaining among capable, knowledgeable parties. This Stipulation is the product of an open process in which all parties were represented by experienced counsel. The Stipulation represents a comprehensive compromise of issues raised by Parties with diverse interests. DP&L, the Office of the Ohio Consumers' Counsel (OCC), Industrial Energy Users-Ohio (IEU-Ohio), and the Commission Staff<sup>4</sup> have signed the Stipulation and adopted it as a reasonable resolution of all issues. The Parties believe that the Stipulation that they are recommending for Commission adoption presents a fair and reasonable result.

The Parties agree that the settlement, as a package, benefits customers and is in the public interest. Except as modified below, the Stipulation adopts all of the recommendations in the 2010 Audit Report that was prepared by Energy Ventures Analysis, Inc. and filed on April 29, 2011. Parties agree that the settlement package does not violate any important regulatory principle or practice.

WHEREAS, all of the related issues and concerns raised by the Parties have been addressed in the provisions of this Stipulation, and reflect, as a result of such discussions and compromises by the Parties, an overall reasonable resolution of all such issues. This Stipulation is the product of the discussions and negotiations of the Parties, and is not intended to reflect the views or proposals that any individual Party may have advanced acting unilaterally.

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<sup>4</sup> The Commission Staff is a party for the purpose of entering into this Stipulation by virtue of O.A.C. 4901-1-10(C).

Accordingly, this Stipulation represents an accommodation of the diverse interests represented by the Parties, and is entitled to careful consideration by the Commission;

WHEREAS, this Stipulation represents a serious compromise of complex issues and involves substantial benefits that would not otherwise have been achievable; and

WHEREAS, the Parties believe that the agreements herein represent a fair and reasonable resolution of the issues raised in the case set forth above concerning DP&L's Application to establish its Fuel Rider;

NOW, THEREFORE, the Parties stipulate, agree and recommend that the Commission make the following findings and issue its Opinion and Order in these proceedings approving this Stipulation in accordance with the following:

1. The Parties agree that in the first quarterly filing after a Commission order adopting this Stipulation, DP&L will credit the Fuel Rider in the amount of \$3.4 million dollars (i.e. customers will receive a reduction in otherwise calculated rates) to reverse the effects of DP&L's inclusion of Accounts 403 (Depreciation Expense on Coal Handling Equipment) and 512 (Maintenance on Coal Handling Equipment) for the year 2010 in its calculations. The auditors for the 2011 Audit Period will report on whether this adjustment was correctly performed. DP&L will also credit the Fuel Rider (i.e. customers will receive a reduction in otherwise calculated rates) in the earliest quarterly filing practicable for the amounts included in that rider from Accounts 403 and 512 in year 2011. The auditors for the 2011 Audit Period will report on whether this adjustment was correctly performed. DP&L will delete Accounts 403 and 512 from the calculation of the Fuel Rider for the duration of the current electric security plan (ESP), and the auditors for the 2011 Audit Period will report on DP&L's compliance with this change in the calculation, and DP&L will make this information available to the Parties.

2. The Parties agree that:

(a) DP&L will revise its existing Coal and Limestone Procurement standard operating procedure to include general guidelines that a request for proposal (RFP) will be issued for purchases of all non-NYMEX coal except in the following four circumstances:

- i. DP&L determines that its inventory levels have fallen or are expected to fall to unacceptably low levels and it does not have sufficient time to conduct an RFP;
- ii. DP&L is offered coal at distressed prices;
- iii. DP&L has determined a specific reason why an RFP is inappropriate; or
- iv. The amount of coal to be acquired is either less than 25,000 tons for a contract of any duration or is being purchased in the current month for delivery in the current month or immediately subsequent three-month period.

For any and all uses of the foregoing four exceptions, DP&L will fully document the circumstances and its reasoning, and DP&L will provide this documentation to the auditor as well as to the Parties<sup>5</sup> in time for review by the auditor for the 2011 Audit Report. The auditor will review DP&L's decision to not issue an RFP for the purpose of the auditor assessing and reporting on the prudence of DP&L's decision-making. The RFPs will be widely distributed and advertised in coal industry periodicals. The coal specifications in the RFP will reflect maximum/minimum qualities that could

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<sup>5</sup> Documentation as referenced in this paragraph will be provided to the Parties subject to any need for a protective agreement.

be burned in the event that specific qualities are requested. The specifications will be updated periodically as appropriate. DP&L will evaluate all bids taking into account the quality-adjusted delivered and consumed costs, supply and supplier diversification objectives, counter-party risk evaluation, and any other factors deemed to be appropriate. DP&L will document the entire RFP procurement process including its reasons for the selection of coal suppliers.

(b) In future contract negotiations, whether entered into as part of an RFP process or otherwise, DP&L will make reasonable commercial efforts to incorporate sulfur penalties and rights for volumetric flexibility. The sulfur penalties and rights for volumetric flexibility will be developed into DP&L's contracts in time for review by the auditor for the 2011 Audit Report. The auditor for the 2011 Period shall review and report on the adequacy of DP&L's proposed penalties developed for DP&L's contracts, and DP&L will make this information available to the Parties.

3. The Parties agree that DP&L will develop a written procurement strategy (which may or may not include financial hedging). The strategy should be for DP&L's expected coal requirements and quality. If DP&L chooses to incorporate financial hedging, DP&L must demonstrate in its procurement strategy why the use of financial hedging is in the best interest of jurisdictional customers compared to the other alternatives DP&L has available, including staggered contract dates, larger open positions, and resale options under high sulfur coal contracts. The strategy shall be developed in time for review by the auditor for the 2011 Audit Report, and will be provided also to the Parties. The auditor for the 2011 Period shall review and report on the adequacy of DP&L's policies in this regard.

4. (a) The Parties agree that DP&L will continue to refine the optimization analysis to demonstrate the benefits to jurisdictional customers from optimizing a then-existing position, which will be available for review by the auditor for the 2011 Audit.

(b) It is agreed that on and after the execution date of this Stipulation, sales of coal made by DP&L from purchases entered into after April 29, 2011, shall be treated as optimizations only if replaced with a coal with a similar sulfur content.<sup>6</sup> The jurisdictional share of transactions that are considered optimizations shall continue to be shared as per the stipulation adopted by the Commission in Case No. 08-1094-EL-SSO.

5. The Parties agree that no person involved in the purchase of fuel for DP&L's jurisdictional customers will have a performance goal that includes an optimization goal.

6. The Parties agree that DP&L will "institute a development program for its coal procurement personnel."<sup>7</sup> The development program shall be developed in time for review by the auditor for the 2011 Audit Period (and will be provided also to the Parties), and the auditor shall review and report on the adequacy of DP&L's development program for its coal procurement personnel.

7. The Parties agree that DP&L will "revise its procedure to establish a threshold at which a discrepancy in physical inventory will trigger a thorough investigation" by DP&L.<sup>8</sup> The auditor for the 2011 Audit Period will review and report on the adequacy of DP&L's

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<sup>6</sup> For clarity: A sale of NYMEX coal already under contract that is replaced with a low sulfur CAPP coal would be considered an optimization, as would a sale of a high sulfur coal under contract that is replaced with another high sulfur coal.

<sup>7</sup>Id. at 1-6, Recommendation #24.

<sup>8</sup>Id. at 1-6, Recommendation #25.



implementation of this recommendation, and DP&L will make this information available to the Parties.

8. The Parties agree that DP&L will “incorporate its best estimate of the impacts of ongoing customer supplier switching into its Fuel Rider kWh sales forecasts.”<sup>9</sup> The auditor for the 2011 Audit Period will review and report on DP&L’s compliance with this requirement, and DP&L will make this information available to the Parties.

9. The Parties agree that DP&L will “prepare explanations of differences between forecast and actual Fuel Rider revenues, and between forecast and actual Fuel Rider costs”<sup>10</sup> in time for the review by the auditor for the 2011 Audit, and will provide these explanations to the Parties.

10. The Parties agree that DP&L’s “reflection of corrections for optimization trades in its calculations should be done in a manner that recognizes the retail Fuel Rider ratios that were applicable in the months in which DP&L had originally reflected such optimization costs”<sup>11</sup> and any such corrections made in 2011 shall be documented and available for review by the auditor for the 2011 Audit Report, and DP&L will make this information available to the Parties.

11. No later than December 31, 2011, DP&L will propose a method for periodically updating the ratio used to determine the jurisdictional share of emission allowance sales proceeds, and make its methodology available for review by the auditor, and DP&L will make this methodology available to the Parties.

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<sup>9</sup>Id. at 1-10, Recommendation #25.

<sup>10</sup>Id. at 1-11, Recommendation #26.

<sup>11</sup>Id. at 1-11, Recommendation #27.

12. The Parties agree that DP&L will “provide a better audit trail for tracing its purchase power costs from vendor invoices to the general ledger”<sup>12</sup> and make this process available for review by the auditor for the 2011 Audit Report, and DP&L will make this information available to the Parties.

13. The Parties agree that DP&L will internally audit its Fuel Rider processes and calculations during calendar year 2011 and, in the event there is a Fuel Rider thereafter, on a biennial basis.

14. The Parties agree that the Commission Staff will conduct or cause to be conducted a financial and managerial audit in 2013, based on the twelve-month period ending December 31, 2012, regarding fuel and purchased power costs incurred in 2012. Such audit shall be conducted by an independent third-party auditor or Staff, at the Commission’s discretion. If conducted by a third-party auditor, such auditor shall be engaged by and report to the Commission Staff, and DP&L will pay for the audit, the costs of which will be estimated based on the winning auditor’s bid and recovered in 2012 through the fuel recovery rider. DP&L’s performance shall be subject to evaluation and review by interested parties (including audit, inquiry by means of discovery, and a hearing) unless no Party objects to forgoing the evaluation and review process.

15. The Parties agree that DP&L will withdraw its application in Case No. 93-1000-EFR, and recover the current balance through the Fuel Rider. Collection of the balance will be by the same allocation method used to determine Distribution Tariff D29 (such tariff will be cancelled). In years where a Fuel Rider exists, DP&L will recover these fees through the Fuel Rider going forward, and will no longer recover emission fees through a separate rider. DP&L

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<sup>12</sup>Id. at 1-11, Recommendation #29.

retains the right to request recovery through some other mechanism for years where no Fuel Rider exists, subject to an opportunity for due process including discovery and a hearing.

16. The Parties further agree that nothing in this Stipulation supersedes, or in any manner invalidates, any other agreement or provisions within any other agreement, including (but not limited to) provisions in a stipulation adopted by the Commission in Case No. 08-1094-EL-SSO. Except with respect to paragraph 14, this Stipulation shall terminate on December 31, 2012, unless extended by written agreement of the Settling Parties.

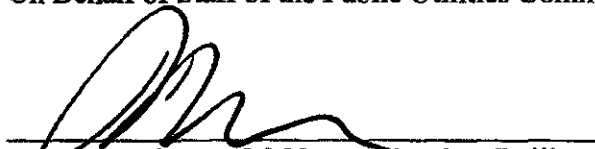
The undersigned Parties hereby stipulate and agree and each represents that it is authorized to enter into this Stipulation and Recommendation this 5<sup>th</sup> day of October 2011.

On Behalf of The Dayton Power and Light Company



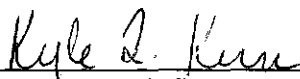
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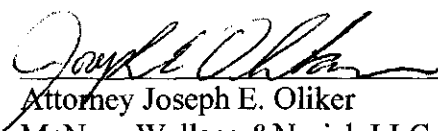
On Behalf of the Office of the Ohio Consumers' Counsel



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## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Stipulation and Recommendation was served on the following this 5th day of October 2011, by regular U.S. Mail or by electronic delivery.



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