

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

OPINION AND ORDER

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

APPEARANCES:

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

Mike DeWine, Ohio Attorney General, by Thomas W. McNamee, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

Bruce J. Weston, Interim Ohio Consumers' Counsel, by Kyle L. Kern and Larry Sauer, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215.

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

Calfee, Halter and Griswold, LLP, by Kevin P. Shannon, 1400 Key Bank Center, 800 Superior Avenue, Cleveland, Ohio 44114, on behalf of FirstEnergy Solutions Corp.

OPINION:

I. Background

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 October 30, 2009, DP&L filed an application to establish a fuel rider pursuant to the stipulation approved by the Commission in DP&L's electric security plan (ESP) proceeding. *In the Matter of the Application of The Dayton Power & Light Company For*

Approval of its Electric Security Plan, Case No. 08-1094-EL-SSO, et al., Opinion and Order (June 24, 2009). The stipulation provided for DP&L to implement an avoidable fuel recovery rider to recover fuel and purchased power costs.

On November 10, 2010, the Commission issued an entry selecting Energy Ventures Analysis, Inc. (EVA or Auditor) to perform a management/performance and financial audit. Consistent with the Commission's order, the 2010 audit report was filed on April 29, 2011 (Commission Ordered Exhibit 1).

Motions to intervene filed by the Industrial Energy Users-Ohio (IEU-Ohio), the Ohio Consumers Counsel (OCC), and FirstEnergy Solutions (FES) were granted by entries issued on December 16, 2009, and September 26, 2011. DP&L, Staff, IEU-Ohio, and OCC (signatory parties) filed a stipulation and recommendation (stipulation) resolving all issues in the case on October 6, 2011 (Joint Exhibit 1). The stipulation states that FES is not a signatory party to the stipulation, but neither supports nor opposes it. A hearing was held on October 19, 2011, in order to consider the stipulation.

II. Summary of the Audit Report and Stipulation

The audit report submitted by EVA presents the results of EVA's management/performance and financial audit of DP&L's fuel and purchased power rider for 2010.

The following is a summary of the recommendations from the audit report, followed by a summary of the stipulation addressing those recommendations. The Commission notes that the summaries are in no way intended to replace or supplement the text of either the audit report or stipulation.

A. Management Audit

- (1) Audit Report - DP&L should remove costs associated with Accounts 403 and 512, which add approximately \$3.4 million dollars to DP&L's Fuel Rider, as DP&L has not demonstrated the costs are incremental to blending (Comm. Ex. 1 at 1-6).

Stipulation - The parties agree that DP&L will credit the Fuel Rider in the amount of \$3.4 million dollars to reverse the effect of DP&L's inclusion of Accounts 403 and 512 for the year 2010 in its calculations (Jt. Ex. 1 at 5).

- (2) Audit Report - DP&L should, except for limited circumstances, revise its standard operating procedures for coal procurement for all non-NYMEX coal purchases (Comm. Ex. 1 at 1-6).

Stipulation - DP&L shall revise its existing coal and limestone procurement standard operating procedure to include general guidelines that a request for proposal will be issued for all non-NYMEX coal purchases, except as specified in the stipulation. In addition, the parties agree that DP&L will develop a written procurement strategy for DP&L's expected coal requirements and quality, which shall be developed in time for review by the 2011 Audit Report (Jt. Ex. 1 at 6).

- (3) Audit Report - DP&L has not demonstrated that all of its optimizations have achieved a net decrease in costs to the retail ratepayer. Further, DP&L should develop clear policies that limit optimization sharing to those circumstances in which the optimization improves upon an existing position to the benefit of jurisdictional customers (Comm. Ex. 1 at 1-6).

Stipulation - 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 (Jt. Ex. 1 at 8).

- (4) Audit Report - DP&L should develop a hedging strategy considering the type of coal it expects to burn and the quantity of that coal, and should not enter into NYMEX hedges that exceed its expected low sulfur coal requirements (Comm. Ex. 1 at 1-6).

Stipulation - 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. DP&L's financial hedging strategy shall be developed in time for review by the auditor for the 2011 audit report (Jt. Ex. 1 at 7).

- (5) Audit Report - DP&L should separate the trading personnel from personnel dedicated to the procurement of jurisdictional coal to prevent a conflict of interest, to the extent DP&L wishes to continue trading (Comm. Ex. 1 at 1-7).

Stipulation - 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 (Jt. Ex. 1 at 8).

- (6) Audit Report - DP&L should attempt to negotiate sulfur penalties into its coal supply agreements and include such penalties in its RFPs (Comm. Ex. 1 at 1-7).

Stipulation - In future contract negotiations, whether entered into as part of a RFP process or otherwise, DP&L will make reasonable commercial efforts to incorporate sulfur penalties and rights for volumetric flexibility (Jt. Ex. 1 at 7).

- (7) Audit Report - DP&L should institute a development program for its coal procurement personnel (Comm. Ex. 1 at 1-7).

Stipulation - The parties agree that DP&L will institute a development program for its coal procurement personnel (Jt. Ex. 1 at 8).

- (8) Audit Report - DP&L should revise its procedures to establish a threshold at which a discrepancy in physical inventory would trigger a thorough investigation (Comm. Ex. 1 at 1-7).

Stipulation - DP&L will revise its procure to establish a threshold at which a discrepancy in physical inventory will trigger a thorough investigation by DP&L in time for review by the auditor for the 2011 audit period (Jt. Ex. 1 at 8).

B. Financial Audit

- (1) Audit Report - DP&L should incorporate its best estimates of the impact of ongoing customer supplier switching into its Fuel Rider kWh sales forecasts to improve accuracy of its forecast Fuel Rider rates, and to minimize under-collection build-up for customers choosing an alternative supplier (Comm. Ex. 1 at 1-11).

Stipulation - 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 for the 2011 audit period (Jt. Ex. 1 at 9).

- (2) Audit Report - DP&L should prepare explanations of differences between forecast and actual Fuel Rider revenues and costs (Comm. Ex. 1 at 1-11).

Stipulation - The parties agree that DP&L will prepare explanations of differences between forecast and actual Fuel Rider revenues and costs (Jt. Ex. 1 at 9).

- (3) Audit Report - DP&L's corrections for optimization trades in its calculations should be done in a manner that recognizes the retail Fuel Rider ratios applicable in the months in which DP&L originally reflected such optimization costs (Comm. Ex. 1 at 1-11).

Stipulation - The parties agree that the corrections for optimization trades made in 2011 shall be documented and available for review by the auditor for the 2011 audit report (Jt. Ex. 1 at 9).

- (4) Audit Report - DP&L should annually update the ratio used to allocate emission allowance sales gains and losses (Comm. Ex. 1 at 1-11).

Stipulation - No later than December 31, 2011, DP&L shall propose a method for periodically updating the ratio used to determine emission allowance sales proceeds, and make the methodology available for review by the auditor (Jt. Ex. 1 at 9).

- (5) Audit Report - DP&L should provide a better audit trail to trace its purchase power costs from vendor invoices to the general ledger and Fuel Recovery 2010 Oracle Report (Comm. Ex. 1 at 1-11).

Stipulation - The parties agree that DP&L will provide a better audit trail for tracing its purchase power costs, and make this process available for review for the 2011 audit report (Jt. Ex. 1 at 10).

- (6) Audit Report - DP&L shall conduct an internal audit to specifically review the Fuel Rider processes and calculations (Comm. Ex. 1 at 1-11).

Stipulation - The parties agree that DP&L will internally audit its Fuel Rider processes and calculations during calendar year 2011 (Jt. Ex. 1 at 10).

In addition to addressing recommendations from the audit report, the stipulation provides that the parties agree that 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. Further, the parties agree that DP&L will withdraw its application in Case No. 93-1000-EFR, and recover the current emission fee balance through the Fuel Rider (Jt. Ex. 1 at 10-11).

III. Analysis 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, was made by parties representing a wide range of interests, and violates no regulatory principle or practice. (Jt. Ex. 1 at 2-4.)

Nathan C. Parke, manager of regulatory operations at DP&L, explains that numerous hours were devoted to the negotiating sessions among parties representing a wide spectrum of diverse interests. Mr. Parke states that all signatory parties have participated in numerous proceedings before the Commission and are knowledgeable in regulatory matters. Further, Mr. Parke provides that all of the signatory parties were represented by skilled individuals with years of experience in regulatory matters before the Commission, and all negotiations were conducted at arm's length. (DP&L Ex. 1 at 4-5.)

Mr. Parke states that the stipulation benefits the public interest in that it provides a credit to the Fuel Rider for past collections of depreciation and maintenance costs related to fuel handling equipment. Further, Mr. Parke notes that the stipulation removes these collections from the Fuel Rider going forward. With respect to the third criterion, Mr. Parke provides that the stipulation does not violate any important regulatory practice or principle. (DP&L Ex. 1 at 5-6.)

IV. 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 stipulation represents a just and reasonable resolution of the issues raised in this proceeding, and violates no regulatory principle or precedent. Further, we find that the stipulation 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 Staff, to resolve the aforementioned issues. Accordingly, the Commission concludes that the stipulation should be adopted in its entirety.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On October 30, 2009, DP&L filed an application to establish a fuel rider pursuant to the stipulation approved by the Commission in DP&L's electric security plan (ESP) proceeding.

- (2) On November 10, 2010, the Commission issued an entry selecting EVA to perform a management/performance and financial audit.
- (3) Consistent with the Commission's order, the 2010 audit report was filed on April 29, 2011.
- (4) Motions to intervene filed by IEU-Ohio, OCC, and FES were granted by entries issued on December 16, 2009, and September 26, 2011.
- (5) The signatory parties filed a stipulation resolving all issues in this case on October 6, 2011. While not a signatory party, FES does not take a position on the stipulation.
- (6) A hearing was held on October 19, 2011, in order to consider the stipulation.
- (7) At the hearing, the stipulation was admitted into the record, intending to resolve all issues in this case.
- (8) The stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

ORDER:

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 take all necessary steps to carry out the terms of the stipulation and this order. It is, further,

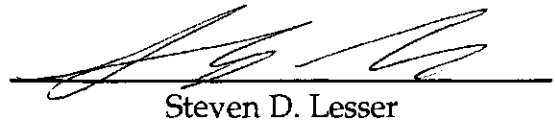
ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

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

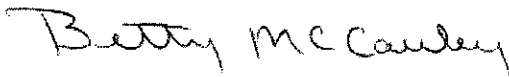

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Secretary