

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The )  
Dayton Power and Light Company to ) Case No. 11-5730-EL-FAC  
Establish a Fuel Rider )

OPINION AND ORDER

The Public Utilities Commission of Ohio, having considered the record in this matter and the stipulation and recommendation submitted by the signatory parties, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

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

The Office of the Ohio Consumers' Counsel, by Maureen R. Grady and Kyle Kern, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215-3485, on behalf of the residential customers of The Dayton Power and Light Company.

Calfee, Halter, and Griswold, LLP, by N. Trevor Alexander, 1100 Fifth Third Center, 21 East State Street, Columbus, Ohio 43215-4243, on behalf of FirstEnergy Solutions.

McNees, Wallace, and Nurick, LLC, by Joseph E. Olikier and Samuel C. Randazzo, Fifth Third Center, Suite 1700, 21 East State Street, Columbus, Ohio 43215-4288, on behalf of Industrial Energy Users-Ohio.

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

OPINION:

I. Background

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

On September 22, 2010, the Commission issued an entry ordering Commission Staff (Staff) to issue a request for proposal for the audit services necessary to review and report on the management and financial aspects of DP&L's fuel costs and its fuel recovery mechanism. The audit periods to be reviewed were the twelve months ending December 31, 2010 (Audit 1), and the twelve months ending December 31, 2011 (Audit 2) (*In the Matter of the Application of The Dayton Power and Light Company to Revise its Fuel Adjustment Clause*, Case No. 09-1012-EL-FAC).

On November 9, 2011, the Commission issued an opinion and order approving a stipulation submitted by the parties that, among other things, provided 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 (Audit 3), regarding fuel and purchased power costs incurred in 2012 (Case No. 09-1012-EL-FAC).

On November 10, 2010, the Commission issued an entry in Case No. 09-1012-EL-FAC, selecting Energy Ventures Analysis, Inc. (EVA) to perform the management/performance and financial audit. Consistent with the Commission's order, the audit report for Audit 1 was filed on April 29, 2011. On February 27, 2012, the attorney examiner issued an entry in this case finding that EVA should submit a draft audit report to Staff by April 13, 2012, and should file its final audit report by April 27, 2012. The attorney examiner further found that for Audit 3 the auditor should submit a draft report to Staff by April 19, 2013, and should file its final audit report by May 3, 2013.

By entry issued on August 27, 2012, the attorney examiner granted the motion for protective order filed by DP&L on April 27, 2012, and set the procedural schedule setting this matter for hearing on October 15, 2012. On October 1, 2012, the attorney examiner granted the motions to intervene filed by the Ohio Consumers' Counsel (OCC), Industrial Energy Users-Ohio (IEU-Ohio), and FirstEnergy Solutions Corporation (FES). On October 9, 2012, the attorney examiner granted a motion by DP&L to extend the procedural schedule and reschedule the hearing to November 5, 2012. The hearing convened on November 5, 2012, and the parties indicated that they were working on a stipulation. The case was then continued to allow the parties to continue to work towards a stipulation in this matter. The hearing reconvened on December 20, 2012, at the offices of the Commission. At the hearing, DP&L submitted a stipulation and recommendation, which was filed in this docket on December 5, 2012, and was marked for admission as Joint Exhibit 1.<sup>1</sup> The stipulation was signed by DP&L, Staff, and OCC. FES and IEU-Ohio neither opposed nor supported the stipulation. In addition, numerous other exhibits were entered into the record without objection (Joint Ex. 1; Tr. at 6, 7).

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<sup>1</sup> Joint Ex. 1 is hereby admitted into the record.

## II. Summary of the Audit Report and Stipulation

The audit report submitted by Energy Ventures Analysis, Inc. (EVA) and Larkin & Associates, PLLC (Larkin) presents the results of the management/performance and financial audit of the fuel and purchased power rider of DP&L for the year 2011. In the audit report, EVA and Larkin discuss DP&L's Fuel Procurement in Chapter III, Optimizations in Chapter IV, Plant Performance in Chapter V, and Fuel Adjustment Clause Rider (Fuel Rider) Component in Chapter VI (Comm. Ordered Ex. 1).

As stated previously, a stipulation, signed by DP&L, Staff, and OCC, has been submitted. The stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. The stipulation includes provisions that address the recommendations set forth in the audit report.

The following is a summary of the stipulation addressing the recommendations in the audit report. The Commission notes that these summaries are not inclusive of the entire stipulation and are in no way intended to replace or supplement the text of either the audit report or the stipulation.

### A. Credit to Benefit Standard Service Offer Customers

- (a) In the first quarterly filing after the Commission issues this Opinion and Order, DP&L will credit the Fuel Rider in the amount of \$2.0 million dollars, and the auditors for the 2012 audit period will report on whether the adjustment was correctly performed.

### B. Optimization Provisions

- (a) For the 2012 audit period, DP&L will not treat as an optimization and will not seek recovery of a 75 percent charge-back of optimization gains with respect to any sale or purchase of fuel for a co-owned power plant that DP&L does not operate.
- (b) For the 2012 audit period, DP&L will not treat as an optimization and will not seek recovery

of a 75 percent charge-back of any optimization gains associated with a sale or transfer of fuel between one station operated by DP&L and another station operated by DP&L.

- (c) For the 2011 and 2012 audit period, the use of a methodology that includes recording of 100 percent of accounting gains and losses in FERC Account 456 for recovery through the Fuel Rider, and the charge-back of 75 percent of optimization gains, is consistent and compliant with the Commission's previously approved 25 percent sharing method.
- (d) The 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 similar sulfur content.
- (e) Except where otherwise excluded or precluded, fuel sales and procurement purchases that result in an improvement on then-existing position may be optimization transactions for which the 75 percent charge-back mechanism applies.
- (f) Optimization gains can occur where there is an accounting loss and, absent a finding of imprudence, the existence of an accounting loss does not preclude the transactions from being defined as optimization transactions for which a 75 percent charge-back is made, provided that the fuel sales and replacement purchases result in an improvement on the then-existing position.
- (g) Beginning January 1, 2013, and continuing until directed otherwise by the Commission, DP&L will cease the charge-back of 75 percent of any fuel optimization transaction.

- (h) DP&L will continue to include demurrage differences analysis in its evaluation of optimization trades.

C. Additional Provisions

- (a) DP&L will document in writing its efforts to reduce its use of low-sulfur coals below 25 percent at Stuart station in a cost-effective manner and will document its efforts to achieve increased fuel flexibility at the Killen station.
- (b) DP&L will develop its own trend line analysis for residential customer switching that will be used in projecting Fuel Rider kilowatt-hour sales forecasts.
- (c) DP&L will revise certain standard operating procedures.
- (d) The stipulation does not supersede or invalidate any provisions in the stipulation adopted by the Commission in Case No. 08-1094-EL-SSO and the stipulation adopted by the Commission in Case No. 09-1012-EL-FAC. Furthermore, except where indicated or if extended by the signatory parties, this stipulation shall terminate on December 31, 2013.

CONCLUSION:

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. *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves almost all 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. *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 559, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). Additionally, the Court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. *Consumers' Counsel* at 126.

DP&L witness Nathan C. Parke testifies that the stipulation is a product of serious bargaining among capable, knowledgeable parties and is the product of an open process. Mr. Parke further explains that the knowledge and capability of the stipulating parties and their attorneys is readily apparent, and that the stipulating parties have years of experience in regulatory matters before the Commission. Moreover, Mr. Parke indicates that all parties to this proceeding had an opportunity to participate and express their opinions during the negotiation process. Upon review of the terms of the stipulation, based on our three-prong standard of review, we find that the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is met (DP&L Ex. 8 at 4, 5; Tr. at 11, 12).

Mr. Parke points out the stipulation benefits ratepayers and is in the public interest because it addresses the issues and the recommendation contained in the audit report, including providing a credit to the Fuel Rider and clarifying the optimization methodology. Upon review of the stipulation, the Commission finds that, as a package, it satisfies the second criterion (DP&L Ex. 8 at 5, 6; Tr. at 11, 12).

With regard to the third criterion, Mr. Parke asserts that the stipulation does not violate any important regulatory principle or practice. Accordingly, the Commission finds that there is no evidence that the stipulation violates any important regulatory principle or practice and, therefore, the stipulation meets the third criterion (DP&L Ex. 8 at 6; Tr. at 11, 12).

Therefore, the Commission finds that the stipulation entered into by the parties is reasonable and should be adopted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) DP&L is a public utility under Section 4905.02, Revised Code, and is subject to the jurisdiction of this Commission.
- (2) This case relates to the Commission's review of DP&L's fuel costs and its fuel recovery mechanism for the calendar year 2011.
- (3) On April 27, 2012, both a redacted and an unredacted version of the management/performance and financial audit of DP&L's fuel costs and its fuel recovery mechanism for the year 2011 were filed in this case.
- (4) By entry issued on October 1, 2012, OCC, IEU-Ohio, and FES were granted intervention in this case.
- (5) A hearing in this matter was held on December 20, 2012.
- (6) At the hearing, a stipulation was submitted, intending to resolve all the issues in this case. The stipulation was signed by DP&L, Staff, and OCC. IEU-Ohio and FES neither opposed nor supported the stipulation.
- (7) 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 of the parties be adopted and approved. It is, further,

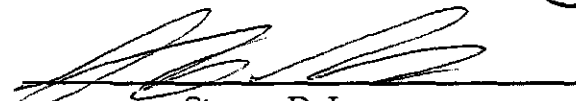
ORDERED, That DP&L take all necessary steps to carry out the terms of the stipulation and this order. It is, further,

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,

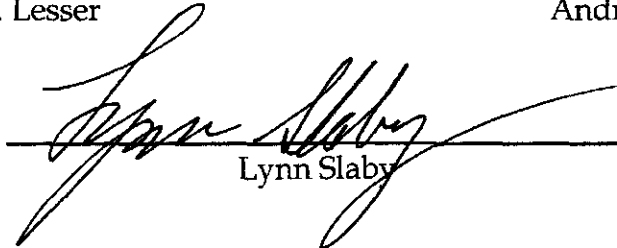
ORDERED, That a copy of this opinion and order be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Steven D. Lesser

  
Andre T. Porter

  
Lynn Slaby

BAM/sc

Entered in the Journal **JAN 23 2013**



Barcy F. McNeal  
Secretary