BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2013 through 2015.)	Case No. 13-833-EL-POR Case No. 13-837-EL-WVR

OPINION AND ORDER

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

APPEARANCES:

Judi L. Sobecki, The Dayton Power and Light Company, 1065 Woodman Drive, Dayton, Ohio 45432.

Mike DeWine, Ohio Attorney General, by Thomas G. Lindgren, 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, Ohio Consumers' Counsel, by Kyle L. Kern, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215-3485, on behalf of the residential utility consumers of The Dayton Power and Light Company.

McNees, Wallace & Nurick, LLC, by Matthew R. Pritchard, 21 East State Street, 17th Floor, Columbus, Ohio 43215, on behalf of Industrial Energy Users-Ohio.

Carpenter, Lipps & Leland, LLP, by Rebecca L. Hussey, 280 North High Street, Suite 1300, Columbus, Ohio 43215, on behalf of EMC Development Company, Inc.

Williams, Allwein and Moser, LLC, by Christopher J. Allwein, 1373 Grandview Avenue, Suite 212, Columbus, Ohio 43212, on behalf of the Sierra Club.

Colleen L. Mooney, 231 West Lima Street, Findlay, Ohio 45840, on behalf of Ohio Partners for Affordable Energy.

Trent A. Dougherty, 1207 Grandview Avenue, Suite 201, Columbus, Ohio 43212-3449, on behalf of the Ohio Environmental Council.

Gregory J. Poulos, 471 East Broad Street, Suite 1520, Columbus, Ohio 43215, on behalf of EnerNOC, Inc.

Robert A. Brundrett, 33 North High Street, Columbus, Ohio 43215, on behalf of the Ohio Manufacturers Association Energy Group.

OPINION:

I. HISTORY OF PROCEEDINGS

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

On April 15, 2013, DP&L filed an application for approval of its energy efficiency and peak demand reduction (EE/PDR) program portfolio plan for 2013 through 2015, pursuant to Rule 4901:1-39-04, Ohio Administrative Code (O.A.C.).

Motions to intervene were timely filed by the Ohio Consumers' Counsel (OCC), the Ohio Hospital Association (OHA), Ohio Energy Group (OEG), Ohio Partners for Affordable Energy (OPAE), the Environmental Law and Policy Center (ELPC), Sierra Club, Ohio Advanced Energy Economy (AEE), OMA Energy Group (OMA), Industrial Energy Users - Ohio (IEU-Ohio), EMC Development Company (EMC), and People Working Cooperatively, Inc. (PWC). On August 21, 2013, after the intervention deadline had passed, EnerNOC, Inc. (EnerNOC) filed a motion to intervene and memorandum in support.[1]

By entry issued on April 17, 2013, the attorney examiner established a procedural schedule pursuant to Chapter 4901:1-39, O.A.C., scheduling a hearing for September 26, 2013, and deadlines for filing objections, testimony, and for intervention. On June 14, 2013, and again on July 17, August 7, and August 21, 2013, DP&L filed motions to modify the procedural schedule to extend the deadlines for filing objections and testimony. The attorney examiner granted each of the motions to extend the deadlines for filing objections and testimony. The hearing commenced, as scheduled, on September 26, 2013, but, at the request of the parties, was continued indefinitely in order to permit the parties to continue settlement negotiations.

1 The motions to intervene filed by the parties, including EnerNOC, are hereby granted.

DP&L, Staff, OCC, OHA, OEG, OPAE, ELPC, AEE, OMA, IEU-Ohio, EMC, PWC, and EnerNOC filed a stipulation and recommendation (stipulation) resolving all issues in the case on October 2, 2013. On October 21, 2013, Sierra Club filed a notice to be considered a signatory party to the stipulation (Sierra Club Ex. 1). A hearing was held on October 22, 2013, 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.
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> (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 regarding energy efficiency programs in Chapter 4901:1-39, O.A.C.

III. SUMMARY OF DP&L'S APPLICATION

In its application, DP&L proposed to continue its existing EE/PDR program portfolio plan, while making additional changes to it. DP&L proposed to continue residential programs in DP&L's existing EE/PDR program portfolio plan including residential lighting, residential HVAC rebates, residential appliance recycling, residential low income affordability, and residential school education. DP&L also proposed to continue non-residential programs in DP&L's existing EE/PDR program portfolio plan including rapid rebates (prescriptive rebates), custom rebates, mercantile self-direct rebates, and PJM demand response. DP&L then proposed to continue or establish cross-sector programs including a customer education program, a pilot program, and transmission and distribution infrastructure improvements. DP&L noted in its application that the customer education program would be the continuation of an approved program currently being implemented, the pilot program is a proposed new program, and the transmission and distribution infrastructure improvement program would be a new program pursuant to Section 4928.66(A)(2)(d), Revised Code. (DP&L Ex. 1 at 3-4.)

DP&L's application also proposed a shared savings mechanism that would provide an after-tax benefit of 87 percent to DP&L's customers and 13 percent to DP&L, based on the utility cost test. DP&L's application indicated that it would be eligible for shared savings if it exceeds the benchmarks of Sections 4928.66(A)(1)(a) and 4928.66(A)(1)(b), Revised Code. (DP&L Ex. 1 at 4-5.)

Further, DP&L's application proposed that its existing cost recovery mechanism, which is the energy efficiency rider (EER), be continued in substantially the same form. DP&L proposed to timely file its updated EER in a separate docket in the EER true-up proceeding, without the inclusion of any projected shared savings. However, DP&L sought authority to recover any shared savings resulting from the incentive mechanism. DP&L proposed that when, and if, the proposed shared savings mechanism is approved, DP&L will update its EER within 30 days of the Commission's order. Finally, no costs related to transmission and distribution infrastructure projects would be included for recovery through the EER. (DP&L Ex. 1 at 5-6.)

Finally, DP&L's application proposed waivers of certain Commission rules and requirements. DP&L requested that it be permitted to use an annualized accounting methodology for savings generated, instead of the pro-rated accounting methodology established in Case No. 08-888-EL-ORD, Entry on Rehearing. Further, DP&L requested that Rule 4901:1-3905(C), O.A.C., be waived for each year of its EE/PDR program portfolio plan so that DP&L may file its annual portfolio status report by May 15 of each year. (DP&L Ex. 1 at 6-7.)

IV. SUMMARY OF THE STIPULATION

As previously noted, DP&L filed a stipulation, which was signed by DP&L, Staff, OCC, OHA, OEG, OPAE, ELPC, AEE, OMA, IEU-Ohio, EMC, PWC, EnerNOC, and Sierra Club (signatory parties). Pursuant to the stipulation, the signatory parties agree, inter alia, to the following:

(a) DP&L will implement the energy efficiency programs as described in its application, except as modified by the provisions contained within the stipulation and recommendation. DP&L will also expand the scope of its government audit program to include all commercial and industrial customer classes, place the pilot program on the agenda for each of its quarterly energy efficiency collaborative meetings, and adopt incentives for LED lighting from the residential lighting program incentive budget. (Jt. Ex. 1 at 9-10.)

(b) DP&L will source to OPAE the residential low-income affordability program for the remainder of 2013. DP&L will source 100 percent of the customer funded residential low-income affordability program to OPAE for years 2014 and 2015. All funding provided by OPAE will be net of DP&L costs. (Jt. Ex. 1 at 5.)

(c) DP&L will reserve from its business programs budgets $75,000 per year for the

2014 and 2015 program years for OHA to conduct hospital energy audits, promote energy efficiency and DP&L programs to its members, and conduct energy efficiency training. DP&L and OHA will partner on the development and deployment of the energy star portfolio manager pilot program initiative. (Jt. Ex. 1 at 5-6.)

(d) DP&L will work with OMA to communicate energy efficiency programs to manufacturers. DP&L will provide $30,000 annually to OMA from shareholder funds for the term of DP&L's program portfolio plan. OMA will work with DP&L to verify energy savings totaling one half of one percent, or more, of combined retail annual energy sales averaged over the OMA members' 2010 to 2012 baseline. Furthermore, DP&L will provide a one-time payment of $30,000 from shareholder funds toward cost-sharing research with OMA. (Jt. Ex. 1 at 6-7.)

(e) For the term of the 2013 to 2015 program portfolio plan, DP&L acknowledges that mercantile customers who self-direct their projects and apply for an receive an exemption from the EER, or who elect to receive a cash payment in lieu of an exemption through the Commission's EEC pilot program, maintain the rights to the energy efficiency capacity for purposes of bidding the capacity into PJM auctions but may elect to voluntarily commit the right to bid the energy efficiency capacity to DP&L, such that DP&L could bid the energy efficiency capacity into PJM auctions. Furthermore, the demand response capabilities of customers shall count towards DP&L's compliance with the peak

demand reduction benchmarks. If the mercantile exemptions negatively impact the actual capacity that DP&L can use to meet its PJM auction commitments, DP&L may purchase replacement capacity in the incremental auctions to cover the shortfall. (Jt. Ex. 1 at 7-8.)

(f) DP&L agrees to provide PWC $200,000 annually for 2014 and 2015 from its pilot program to deliver customer-funded weatherization and energy efficiency services to low income customers. (Jt. Ex. 1 at 8.)

(g) DP&L's EER rate design for non-residential tariff classes will be a combination of distribution revenue and kWh sales. Specifically, 30 percent of the non-residential EER costs will be allocated to non-residential tariff classes based on the most recent 12 months of distribution revenue. The other 70 percent of the non-residential EER costs will be allocated to non-residential tariff classes based on the most recent 12 months of billed kWh sales. Furthermore, DP&L and OEG agree that OEG members may elect to opt-out of DP&L's energy efficiency programs and subsequent payment of the EER to the extent permitted by law. (Jt. Ex. 1 at 8-9.)

(h) DP&L will consider the cost-effectiveness and feasibility of developing a combined heat and power (CHP) and waste energy recovery (WER) program for potential inclusion in DP&L's updated EE/PDR program portfolio plan. OEC will present a proposal concerning a potential CHP and WER program that will be evaluated by DP&L. DP&L will also reserve $250,000 from the pilot program budget for customer

incentive payments for CHP and WER. (Jt. Ex. 1 at 9.)

(i) DP&L's existing EER will continue in substantially the same form, with carrying costs equal to 5.86 percent on any over or under-recovered balances, except that: the shared savings incentive for over compliance will be included in the forecasted EER rate, the costs for DP&L's pilot program will be added to forecasted program costs to be included in the forecasted EER rate, the rate design will be amended, and the EER will be updated to incorporate the changes within the stipulation. (Jt. Ex. 1 at 10-11.)

(j) DP&L will implement a shared savings mechanism that will provide an after-tax net benefit of 87 percent to DP&L's customers and 13 percent to DP&L, based on the utility cost test, when DP&L exceeds its energy efficiency requirements by 15 percent. If DP&L exceeds its energy efficiency requirements by 10 to 15 percent, the corresponding shared savings incentive percent will be 10 percent. Similarly, if DP&L exceeds its energy efficiency requirements by five to 10 percent, the corresponding shared savings incentive percent will be 7.5 percent. Finally, when DP&L exceeds its energy efficiency requirements by less than five percent, the corresponding shared savings incentive percent will be five percent. Furthermore, any shared savings benefit recovered by DP&L will be capped at $13.5 million. (Jt. Ex. 1 at 11-12.)

(k) The shared savings calculation will use the total gross, annualized savings against the benchmark requirements. The mercantile

self-direct program, residential low-income affordability program, pilot program, and transmission and distribution infrastructure improvements will not be included in the calculation of the shared savings incentive. DP&L may only count savings for shared savings one time and only in the year in which the savings were generated. In a year in which previous years' over-compliance is used to comply with the benchmarks, shared savings will be based only on impacts generated in the current year. Additionally, DP&L may only count savings for compliance one time during the plan timeframe of 2013 to 2015, but may count any portion of over-compliance in the year of compliance or bank any portion of over-compliance for use in connection with a subsequent year. (Jt. Ex. 1 at 12.)

(l) Lost revenue will be capped at $72 million over the term of the 2013-2015 EE/PDR program portfolio plan, which means that DP&L will collect no more than $72 million dollars total of lost distribution revenues related to its EE/PDR program portfolio plans through December 31, 2015. Furthermore, DP&L will not be permitted to collect lost distribution revenues from customers relating to this portfolio plan if the Commission does not authorize it in its next portfolio plan. Additionally, if DP&L files a base distribution rate case where its basic volumetric rate design is not altered and new distribution rates take effect before December 31, 2015, DP&L will reset its distribution rates for purposes of collecting lost distribution revenue. If DP&L files a distribution revenue decoupling application in its next distribution rate case, and the Commission approves it before

December 31, 2015, then any approved lost distribution revenue recovery for customers whose revenue is decoupled will cease as of the time that such approved decoupling mechanism becomes effective. (Jt. Ex. 1 at 12-13.)

(m) The proceeds from the PJM auctions will be shared between DP&L and DP&L's customers with 80 percent of the net auction proceeds credited to DP&L's customers through the EER. Furthermore, DP&L will bid at least 75 percent of the program portfolio megawatts, which are eligible to be bid, into PJM BRAs occurring during the term of the EE/PDR program portfolio plan. DP&L will also bid projected megawatts from the 2016 program year into each PJM BRA occurring during the term of the EE/PDR program portfolio plan. DP&L also agrees to work with the energy efficiency collaborative to explore the potential to bid projected megawatts from years beyond 2013-2015, including the projected megawatts from the 2017 program year. If DP&L falls short of the energy efficiency and peak demand reduction resources that cleared the PJM BRA for any year, and to avoid payment of penalties, DP&L may purchase replacement capacity in the incremental auctions. However, parties to the stipulation recognize PJM's authority over the auctions and agree that DP&L will not be penalized for determinations made by PJM that result in megawatt values falling below the agreed-upon thresholds. (Jt. Ex. 1 at 14-15.)

(n) The signatory parties support DP&L's request for waiver from the Commission to file the annual portfolio status report on

May 15 instead of March 15 of each year. Further, the parties support DP&L's request for waiver from the Commission to the part-year reporting convention requirement and allow DP&L to use the annualized reporting convention for purposes of benchmark compliance year. DP&L will also work with Vectren Energy Delivery of Ohio to further develop EE/PDR joint delivery programs. Finally, DP&L will open dialogue with the Ohio Energy Resources Division of the Ohio Development Services Agency, as well as the Ohio Air Quality Development Authority. (Jt. Ex. 1 at 16-17.)

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 agreements are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.* (1992), 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 unopposed by any party and resolves 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:

(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?

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.* (1994), 68 Ohio St.3d 559, *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, benefits customers and the public interest, 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 1, 2.)

Emily W. Rabb, supervisor of regulatory operations at DP&L, explains that the stipulation is the product of serious bargaining among capable, knowledgeable parties. Ms. Rabb states that all parties to the stipulation were represented by experienced, knowledgeable counsel, most of whom have appeared before the Commission in numerous other proceedings, and all of whom are experienced negotiators and knowledgeable about the subject matters at issue. Further, Ms. Rabb provides that the issues in the case were discussed in great detail through numerous meetings, telephone conversations, and email exchanges over the course of several months, with all negotiations being conducted at arm's length. (DP&L Ex. 3 at 7.)

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 encourage and promote energy savings by providing incentives for lowering customer energy consumption and demand, which in turn will lower customer electric 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. 3 at 8.)

Wilson Gonzalez, senior energy policy advisor for OCC, also testified at the hearing. Mr. Gonzalez testified in support of the stipulation and recommended that the Commission adopt the stipulation. Mr. Gonzalez testified that the stipulation benefits customers and is in the public interest because it puts a cap on shared

savings and a cap on lost distribution revenue. Further, Mr. Gonzalez testified that the stipulation benefits customers because it requires DP&L to bid energy efficiency into the PJM auctions, which may increase the revenue DP&L receives from PJM. Finally, Mr. Gonzalez testified that, in his opinion, the stipulation does not violate any important regulatory principle or practice. (OCC Ex. 1 at 7-9.)

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) 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.

(2) On April 15, 2013, DP&L filed an application for approval of its EE/PDR program portfolio plan to comply with the requirements of Section 4928.66, Revised Code.

(3) Motions to intervene were filed by OCC, ELPC, AEE, IEU-Ohio, EMC, OMA, OHA, OPAE, OEG, EMC, PWC and EnerNOC. All motions for intervention are granted.

(4) An evidentiary hearing was held on September 26, 2013, at which time the case was called and continued.

(5) An evidentiary hearing was held on October 22, 2013, to consider the stipulation.

(6) The stipulation, as a package, meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

(7) DP&L should be authorized to implement the new EE/PDR rider rates consistent with the stipulation and this order.

ORDER:

It is, therefore,

ORDERED, That DP&L's application for approval of its 2013-2015 EE/PDR program portfolio plan, pursuant to the stipulation, be adopted. It is, further,

ORDERED, That DP&L file its EE/PDR rider tariffs consistent with this opinion and order, to be effective on a bills rendered basis, on a date not earlier than both the commencement of DP&L's January 2014 billing cycle, and the date upon which final tariffs are filed with the Commission, contingent upon final review and approval by the Commission. It is, further,

ORDERED, That DP&L be authorized to file, in final form, four, complete copies of its tariffs consistent with this opinion and order. DP&L shall file one copy in these case dockets and one copy in its TRF docket (or may make such filing electronically as directed in Case No. 06-900-AU-WVR). The remaining two copies shall be designated for distribution to Staff. It is, further,

ORDERED, That DP&L notify all affected customers of the changes to its tariffs via bill message or bill insert within 45 days of the effective date of the tariffs. A copy of this 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,

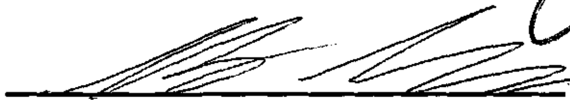
ORDERED, That DP&L's request for waiver from using a pro rated accounting methodology, instead of an annualized accounting methodology, be granted. It is, further,

ORDERED, That DP&L's request for waiver from Rule 4901:1-39-05(C), O.A.C., to file its annual portfolio status report by March 15 of each year be granted and DP&L is directed to file its annual portfolio status reports by May 15 of each year. It is, further,

ORDERED, That a copy of this opinion and order be served upon all parties of record.

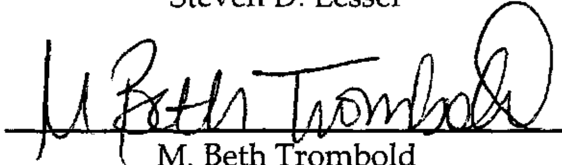
THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman



Steven D. Lesser

Lynn Slaby



M. Beth Trombold

Asim Z. Haque

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Entered in the Journal

DEC 04 2013

Barcy F. McNeal
Secretary