BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Determination of the Existence of Significantly Excessive Earnings for 2013 Under the Electric Security Plan of The Dayton Power and Light Company.	)))))	Case No. 14-831-EL-UNC

OPINION AND ORDER

The Commission, 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:

Judi L. Sobecki, 1065 Woodman Drive, Dayton, Ohio 45432, on behalf of The 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 Staff of the Commission.

OPINION:

I. Background

Pursuant to R.C. 4928.141, electric utilities are required to provide consumers with an SSO, consisting of either a market-rate offer (MRO) or an electric security plan (ESP). Further, according to the directives of R.C. 4928.143(F), the Commission is required to evaluate the earnings of each electric utility's approved ESP to determine whether the plan or offer produces significantly excessive earnings for the electric utility. On June 30, 2010, the Commission issued a Finding and Order which established policy and significantly excessive earnings test (SEET) filing directives for the electric utilities. *In re the Investigation into the Dev. of the Significantly Excessive Earnings Test Pursuant to Amended Substitute Senate Bill 221 for Electric Utilities*, Case No. 09-786-EL-UNC (*SEET Test Case*), Finding and Order (June 30, 2010).

On May 15, 2014, The Dayton Power and Light Company (DP&L) filed an application for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 (DP&L Ex. 1). Additionally, DP&L filed a motion for protective

order and memorandum in support that the Commission maintain the confidentiality of portions of the application specifying DP&L's estimated capital expenditures.

On July 22, 2014, DP&L and Staff filed a stipulation and recommendation (Stipulation) (Joint Ex. 1). Subsequently, on August 5, 2014, the attorney examiner scheduled this matter for hearing on September 9, 2014. At the hearing, DP&L witness Dona R. Seger-Lawson provided testimony in support of the stipulation (DP&L Ex. 2).

II. Application and Comments

In the application, DP&L explains that in 2009 the Commission approved an ESP for DP&L, which set the period for the initial application of the SEET to DP&L. *In re The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 08-1094-EL-SSO, Opinion and Order (June 24, 2009). DP&L notes that R.C. 4928.143(F) requires the Commission to annually determine whether an electric distribution utility has earned significantly excessive earnings under its ESP. In the application, DP&L requests that the Commission find that significantly excessive earnings did not result for DP&L under its ESP with respect to the annual period ending December 31, 2013 (DP&L Ex. 1 at 2).

The application and supporting testimony explain that the return on equity using the unadjusted per books amounts from FERC Form 1 produces a return on equity (ROE) of 6.6 percent. DP&L then made two adjustments to the per books ROE calculation. The first adjustment is a $169,000 adjustment to remove the reduction in estimated penalties recorded in FERC Account No. 426.3. The second adjustment removes the impairment loss of $55,447,000, net of tax, related to the fixed asset impairment provision recorded during 2013 associated with two power plants. After making these adjustments, the application indicates that DP&L's per books ROE is 10.6 percent. DP&L then notes that it did not have any equity returns in its prior ESP case that need to be removed from the calculation of the ROE for the SEET review for calendar year 2013. Finally, after removing the sales for resale margin and adjusting the common equity, DP&L arrives at an adjusted ROE of 7.8 percent.

III. Stipulation

The Stipulation signed by DP&L and Staff was filed on July 22, 2014 (Joint Ex. 1). The Stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. The Stipulation states that the earned return on equity for DP&L for 2013, as adjusted by specific items contemplated by the *Seet Test Case*, was 7.8 percent. On that basis, the signatory parties recommend that the Commission determine that significantly excessive earnings did not occur with respect to DP&L's ESP in 2013 (Joint Ex. 1 at 2).

IV. Consideration of the Stipulation

Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. 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, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 378 N.E.2d 480 (1978). 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 559, 561, 629 N.E.2d 423 (1994) (citing *Consumers' Counsel* 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.

Dona R. Seger-Lawson, Director of Regulatory Operations for DP&L, stated that the Stipulation is the product of serious bargaining among capable, knowledgeable parties who have appeared before the Commission in numerous other proceedings (DP&L Ex. 2 at 4). Therefore, 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.

With regard to the second criterion, Ms. Seger-Lawson asserted that the Stipulation benefits DP&L customers and the public interest. She contended that it is

uncontested that DP&L did not have significantly excessive earnings, and this Stipulation provides for a speedy and fair resolution of the case. Ms. Seger-Lawson noted that the Stipulation, as a package, benefits ratepayers and the public interest because it avoids further litigation in this matter. (DP&L Ex. 2 at 4.) Therefore, upon review of the Stipulation, we find that, as a package, it satisfies the second criterion.

Finally, Ms. Seger-Lawson stated that the Stipulation does not violate any regulatory principle or practice (DP&L Ex. 2 at 4). 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.

Accordingly, we find that the Stipulation entered into by the parties is reasonable and should be adopted. Further, the Commission has reviewed the unredacted portions of DP&L's application and finds that DP&L's motion for protective order is reasonable and should be adopted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) DP&L is a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

(2) On May 15, 2014, DP&L filed an application for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10.

(3) Additionally, on May 15, 2014, DP&L filed a motion for protective and memorandum in support to maintain the confidentiality of portions of the application.

(4) On July 22, 2014, DP&L and Staff filed a Stipulation that purports to resolve all of the issues in this proceeding.

(5) The evidentiary hearing was held on September 9, 2014.

(6) At the hearing, the Stipulation was submitted, intending to resolve all issues in this case. No party opposed 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 filed in this proceeding be approved and adopted. It is, further,

ORDERED, That the motion for protective order is reasonable and should be adopted. It is, further,

ORDERED, That DP&L take all necessary steps to carry out the terms of the Stipulation and this Opinion and 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 all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Thomas W. Johnson, Chairman

Steven D. Lesser

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

BAM/sc

Entered in the Journal OCT 01 2014

Barcy F. McNeal
Secretary