

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the 2013 Review of the       )  
Fuel Adjustment Clauses for The       )       Case No. 14-117-EL-FAC  
Dayton Power and Light Company.       )

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 Ohio Consumers' Counsel, by 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.

Mike DeWine, Ohio Attorney General, by Thomas McNamee and Steven Beeler, Assistant Attorneys 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 R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

By Opinion and Order issued on June 24, 2009, the Commission approved a stipulation and recommendation to establish an Electric Security Plan (ESP) for DP&L. *In re The Dayton Power and Light Company*, Case No. 08-1094-EL-SSO, et al., Opinion and Order (June 24, 2009). The ESP provided for, among other things, the establishment of a fuel adjustment clause (FAC) mechanism, effective January 1, 2010, with annual audits of DP&L's fuel costs and fuel management practices. The ESP also established an alternative energy rider (AER) to recover alternative energy costs. On September 4, 2013, the Commission authorized a second ESP for DP&L, which was modified and

approved in Case No. 12-426-EL-SSO, et al., for the period beginning January 1, 2014, and ending May 31, 2017. *In re The Dayton Power and Light Company*, Case No. 12-426-EL-SSO, et al. (ESP II), Opinion and Order (Sept. 4, 2013); *ESP II*, Second Entry on Rehearing (Mar. 19, 2014) at 31. The Commission authorized both a FAC and an AER for the term of the second ESP.

On February 5, 2014, the Commission issued an Entry in this case ordering Staff to issue a request for proposal (RFP) 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 for the years 2013 and 2014. On March 19, 2014, the Commission issued an Entry selecting Energy Ventures Analysis, Inc. (EVA) to perform the management/performance and financial audit. EVA filed 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 on August 21, 2014.

On October 28, 2014, DP&L filed a stipulation and recommendation, which was signed by DP&L, Staff, and the Ohio Consumers' Counsel (OCC). The hearing for this proceeding convened on December 18, 2014. At the hearing, DP&L presented the stipulation, which was marked and admitted as Joint Exhibit 1 (Tr. at 3, 5). In addition, numerous other exhibits were entered into the record without objection (Tr. at 3). The presiding attorneys also granted OCC's motion to intervene, which had been filed on March 10, 2014 (Tr. at 5).

## II. Summary of the Audit Report and Stipulation

The audit report submitted by 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 audit period of January 1, 2013 through December 31, 2013. In the audit report, EVA and Larkin discuss DP&L's Fuel Procurement Audit in Chapter III, the Financial Audit of the Fuel Adjustment Clause Rider Component in Chapter V, and the Renewables and AER Component in Chapter VI (Staff Ex. 1 at i-iii).

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.

- (1) In the first quarterly filing after the Commission issues this Opinion and Order, DP&L will credit the Fuel Rider in the amount of \$14,692.40, and the auditors will report on whether the adjustment was correctly performed.
- (2) DP&L will continue to credit the jurisdictional share of gains and losses from the resale of coal to the Fuel Rider.
- (3) DP&L will consider additional modifications to its credit policy prior to the 2014 fuel audit, but will not be under any obligation to make or propose modifications.
- (4) DP&L will comply with its credit policy for all coal procurements. Additionally, for procurements made pursuant to an RFP, DP&L will demonstrate its compliance with its credit policy by creating contemporaneous documentation which shows the tons purchased plus tons remaining to be delivered under then-existing contracts remain below the ceiling level for tons established under the credit policy. DP&L will allow this documentation to be available for review in future audits.
- (5) DP&L will make corrections to the allocation of renewables administrative costs by crediting \$14,593.00 to the AER for the benefit of DP&L's customers.

#### CONCLUSION:

Ohio Adm.Code 4901-1-30 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. *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western*

*Reserve Tel. Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Record (Zimmer Plant)*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 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 Supreme Court of Ohio 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 has 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 Jessica Kellie testified at the hearing that the stipulation is a product of serious bargaining among capable, knowledgeable parties and is the product of an open process. Ms. Kellie further explained 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, Ms. Kellie indicated that all parties to this proceeding had an opportunity to participate and express their opinions during the negotiation process. (DP&L Ex. 1 at 3-4.) 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.

Further, Ms. Kellie asserted 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 and AER riders. (DP&L Ex. 1 at 4;

Tr. at 9.) Upon review of the stipulation, the Commission finds that, as a package, it satisfies the second criterion.

With regard to the third criterion, Ms. Kellie averred that the stipulation does not violate any important regulatory principle or practice. (DP&L Ex. 1 at 4-5; Tr. at 8-9.) 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.

Therefore, the Commission finds that the stipulation entered into by the parties is reasonable and should be adopted. Additionally, pursuant to Ohio Adm.Code 4901-1-24, and consistent with Commission precedent in these matters, the Commission finds that the unredacted version of the audit report filed by EVA shall remain confidential for a period of 24 months.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) DP&L is a public utility under R.C. 4905.02, 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 2013.
- (3) On August 21, 2014, 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 2013 were filed in this case.
- (4) On October 28, 2014, a stipulation and recommendation was submitted, intending to resolve all the issues in this case. The stipulation was signed by DP&L, Staff, and OCC.
- (5) A hearing in this matter was held on December 18, 2014. At the hearing, the presiding attorney granted OCC's motion to intervene in this proceeding.
- (6) 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 unredacted version of the audit report filed with the Commission remain confidential for 24 months. It is, further,

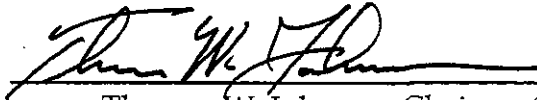
ORDERED, That the stipulation of the parties be adopted and approved. It is, further,

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

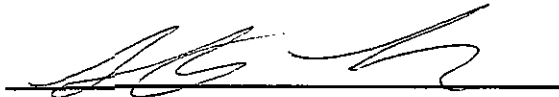
ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

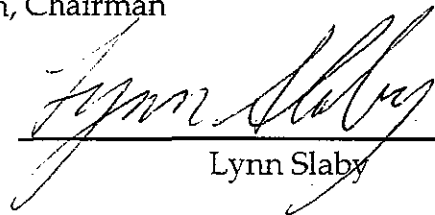
## THE PUBLIC UTILITIES COMMISSION OF OHIO



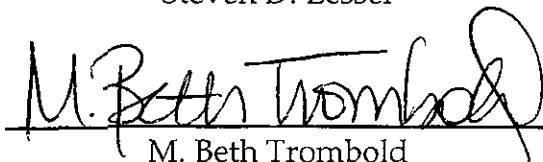
Thomas W. Johnson, Chairman



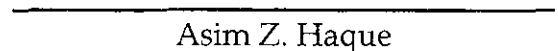
Steven D. Lesser



Lynn Slaby



M. Beth Trombold



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Entered in the Journal **FEB 11 2015**Barcy F. McNeal  
Secretary