

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Determination of)
the Existence of Significantly Excessive)
Earnings for 2014 Under the Electric) Case No. 15-928-EL-UNC
Security Plan of The Dayton Power and)
Light Company.)

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:

Randall Griffin, 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 a standard service offer (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 that established the policy and the 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, 2015, The Dayton Power and Light Company (DP&L) filed an application for administration of the SEET, as required by R.C. 4928.143(F) and Ohio

Adm.Code 4901:1-35-10 (DP&L Ex. 1). Thereafter, on May 28, 2015, DP&L filed a supplement to its application for administration of the SEET (DP&L Ex. 2).

On September 9, 2015, DP&L and Staff filed a stipulation and recommendation (Stipulation) (Joint Ex. 1). Subsequently, on September 10, 2015, the attorney examiner scheduled this matter for hearing to take place on October 1, 2015. The hearing was held as scheduled. At the hearing, DP&L witness Eric Brown testified in support of the Stipulation (DP&L Ex. 2).

II. Application and Comments

In the application, DP&L explains that in 2013 the Commission approved an ESP for DP&L, which found that a SEET threshold of 12 percent should be established for DP&L. *In re The Dayton Power and Light Co.*, Case No. 12-426-EL-SSO, Opinion and Order (Sept. 4, 2013) at 26. 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. 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, 2014 (DP&L Ex. 1 at 2).

Craig Forestal, Director of Regulatory Accounting for the AES Corporation's United States utility businesses, including DP&L, explains in the application that after removing the sales for resale margin and adjusting the common equity, DP&L's ROE for the year 2014 was 9.4 percent. DP&L asserts that this figure is the appropriate amount to compare to the established SEET threshold of 12 percent because the SEET review should only take into consideration significantly excessive earnings associated with the Ohio jurisdiction, and should not include Company returns that are regulated by FERC. Further, DP&L witness Craig Forestal asserts that this is consistent with the Commission's Orders in prior SEET cases for AEP and DP&L. *See, In re AEP*, Case No. 10-1261-EL-UNC, Opinion and Order (Jan. 11, 2011); *see also In re The Dayton Power and Light Co.*, Case No. 13-1495-EL-UNC, Opinion and Order (Feb. 13, 2014).

Additionally, the ROE using the unadjusted per books amounts from FERC Form 1 produces an ROE of 9.7 percent. DP&L then made two adjustments to the per books ROE calculation. The first adjustment was a \$51,000 adjustment to add back the estimated penalty accrual reduction recorded in FERC Account No. 426.3. The second adjustment removes the impact on common equity (on an after tax basis) of impairment losses recorded in 2012 and 2013 on two of DP&L's coal-fired generation stations. This addback of \$55,447,000, net of tax, related to the fixed asset impairment provision recorded during 2014 associated with two of DP&L's coal-fired power plants. After making these adjustments, the application indicates that DP&L's per books ROE is 9.3 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 2014. Finally, as noted above,

after removing the sales for resale margin and adjusting the common equity, DP&L arrives at an adjusted ROE of 9.4 percent.

III. Stipulation

The Stipulation signed by DP&L and Staff was filed on September 9, 2015 (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 ROE for DP&L for 2014, as adjusted by specific items contemplated by the *Seet Test Case*, was 9.4 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 2014 (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. (Dec. 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (Jan. 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (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 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.

Eric Brown, a Rate Analyst in the Regulatory Operations department at 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. 3 at 3). Therefore, upon review of the terms of the Stipulation, based on our three-prong standard of review, we find that DP&L has met the first criterion, that the process involved serious bargaining by knowledgeable, capable parties.

With regard to the second criterion, Mr. Brown asserted that the Stipulation benefits DP&L customers and the public interest. He 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. Mr. Brown stated that the Stipulation, as a package, benefits ratepayers and the public interest because it allows for a speedy and fair resolution of this case, while avoiding unnecessary litigation. (DP&L Ex. 3 at 4.) Therefore, upon review of the Stipulation, we find that, as a package, it satisfies the second criterion.

Finally, Mr. Brown 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.

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, 2015, 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. Additionally, on May 28, 2015, DP&L filed a supplement to its application for the administration of the SEET.
- (3) On September 9, 2015, DP&L and Staff filed a Stipulation that purports to resolve all of the issues in this proceeding.
- (4) The evidentiary hearing was held on October 1, 2015.
- (5) At the hearing, the Stipulation was submitted by the parties, intending to resolve all issues in this case. No party opposed the Stipulation.
- (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 Stipulation filed in this proceeding be approved and adopted. It is, further,

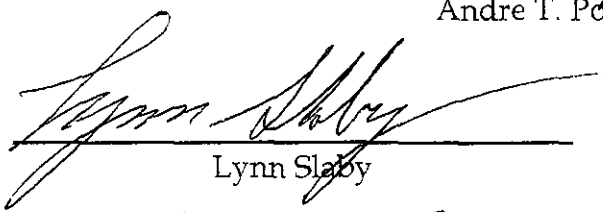
ORDERED, That DP&L take all necessary steps to carry out the terms of the Stipulation and this Opinion and Order. It is, further,

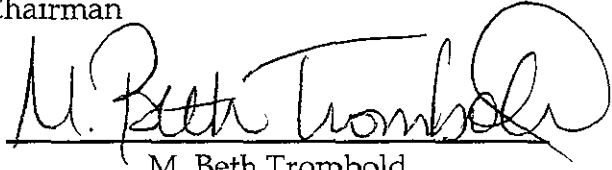
ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,


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

THE PUBLIC UTILITIES COMMISSION OF OHIO



Andre T. Porter, Chairman

Lynn Slaby

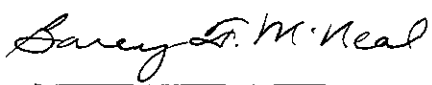
M. Beth Trombold

Asim Z. Haque

Thomas W. Johnson

BAM/sc

Entered in the Journal **DEC 16 2015**



Barcy F. McNeal
Secretary