



**ENVIRONMENTAL LAW & POLICY CENTER**  
Protecting the Midwest's Environment and Natural Heritage

March 9, 2017

The Honorable Richard M. Bulgrin  
Attorney Examiner  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43215-3793

*Re: 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 2017 through 2019, Case No. 16-0649-EL-POR*

Dear Attorney Examiner Bulgrin:

The Environmental Law & Policy Center (“ELPC”) is submitting this letter to reflect a change in our position regarding the Stipulation and Recommendation (“Stipulation”) filed in this case on December 13, 2016. As of that date, we were in a non-opposing position regarding the settlement package reflected in the Stipulation, and Dayton Power & Light’s testimony of Tyler Teuscher reflected that position. However, two subsequent events have resulted in a change in our position.

First, on January 13, 2017, the Staff of the Public Utilities Commission of Ohio (“Commission” or “PUCO”) filed testimony in support of the Stipulation that went beyond what we had agreed to not oppose. In that testimony, PUCO Staff discussed the one-year cost cap to be applied to Dayton Power & Light’s 2017 programs, asserting broadly that: “A cost cap benefits ratepayers and the public interest by providing cost control, certainty, and stability, as well as price assurances to customers.” Braun Test. at 5 (Jan. 13, 2017). The Staff testimony does not discuss any potential adverse effects from a cost cap as provided for in the Stipulation and also does not describe any other ways in which the Stipulation may benefit ratepayers and the public interest.

Second, on January 18, 2017, the PUCO issued an Opinion and Order approving a stipulation in a parallel energy efficiency portfolio plan case for Ohio Power Company (“AEP”). Case No. 16-574-EL-POR, Opinion and Order (Jan. 18, 2017). Similar to the Stipulation in this case, the AEP stipulation package includes a cost cap on the utility’s energy efficiency programs and shared savings incentive payments for a limited time period followed by a proceeding in which the application of a cost cap in future years will be subject to litigation. In approving the AEP stipulation, the PUCO made the following statements regarding the cost cap provision:

The addition of an annual cost cap is a reasonable response to concerns which have been raised regarding potential increases in the costs of the EE/PDR programs, and the annual cost cap should incent AEP Ohio to manage the costs of the programs in the most efficient manner possible. In light of the importance of the annual cost cap, the Commission notes that we will be reluctant to approve stipulations in other EE/PDR program portfolio cases which do not include a similar cap on EE/PDR program costs.

*Id.* at 8. ELPC and three other intervenors in the AEP proceeding filed a Joint Application for Rehearing seeking reconsideration of this portion of the Opinion and Order on the basis that it lacks any foundation in the evidentiary record. Case No. 16-574-EL-POR, Joint Application for Rehearing (Jan. 20, 2017). The Commission subsequently denied that application for rehearing, concluding that it did not relate to “any matter actually determined in the Opinion and Order” and that “[a]ny determination of the future of the cost cap in 2019 and 2020 in this proceeding or whether a similar cost cap should be included in other electric distribution utility’s EE/PDR program portfolio plan will only take place after a hearing on the matter, at which time Environmental Intervenors will have a full and fair opportunity to be heard on the need for a cost cap.” Case No. 16-574-EL-POR, Entry on Rehearing (Feb. 8, 2017) at 3.

While ELPC agrees that any determination regarding the merits of a cost cap for a utility efficiency plan should occur only after “a full and fair opportunity to be heard” on the issue, the fact remains that in this proceeding the Commission will rule on a Stipulation that includes a one-year cost cap. In the parallel context of the AEP case, the Commission made statements regarding the merits of a cost cap on its own rather than as part of a larger settlement. ELPC now fears that the Commission may do the same here, despite the lack of any developed factual record regarding the potential benefits or downsides of a cap on program spending as a matter of general policy. Accordingly, ELPC can no longer take a non-opposing position here, and although our assessment of the Stipulation package as a whole has not changed, we intend to file a brief to point out the limits of the evidentiary record regarding a cost cap in this case.

Respectfully submitted,

/s/ Madeline Fleisher

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**3/9/2017 11:05:01 AM**

**in**

**Case No(s). 16-0649-EL-POR**

Summary: Correspondence