

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The :
Dayton Power and Light Company for : Case No. 16-649-EL-POR
Approval of Its Energy Efficiency and :
Peak Reduction Program Portfolio Plan. :

In the Matter of the Application for : Case No. 16-1369-EL-WVR
Limited Waiver of The Dayton Power and :
Light Company. :

POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

Michael DeWine
Ohio Attorney General

William L. Wright
Section Chief

John H. Jones
Assistant Section Chief
Public Utilities Section
30 East Broad Street, 16th Floor
Columbus, OH 43215-3414
614.466.4397 (telephone)
866.524.1223 (fax)
john.jones@ohioattorneygeneral.gov

**On behalf of the Staff of
The Public Utilities Commission of Ohio**

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INTRODUCTION

The Stipulation and Recommendation (“Stipulation”)¹ presenting the Energy Efficiency and Peak Demand Reduction Plan for 2017 for The Dayton Power and Light Company (“DP&L” or “Company”) provides a just, reasonable, and balanced resolution of all the issues in these proceedings. The Stipulation satisfies the three-prong test established by the Public Utilities Commission of Ohio (“Commission”) to evaluate a stipulation. The Stipulation also complies with R.C. 4928.66 and all accompanying Commis-

¹

In re the Application of the Dayton Power and Light Company for Approval of its Energy Efficiency Portfolio Plan, Case Nos. 16-649-EL-POR, et al. (“*In re DP&L Portfolio Plan for 2017*”) (Stipulation and Recommendation (Joint Ex. 1)) (Dec. 23, 2016).

sion rules that apply to energy efficiency program portfolio plans. Staff requests that the Commission approve the Stipulation

BACKGROUND

On June 15, 2016, DP&L filed its Application for approval of its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2017 through 2019 (“Application”). The 2017-2019 Plan is DP&L’s third Program Portfolio filed with the Commission pursuant to Rule 4901:1-39-04 of the Ohio Administrative Code. On December 13, 2016, the Stipulation in these proceedings was filed and supported by the following Parties: DP&L, Staff of the Public Utilities Commission of Ohio (“Staff”), Ohio Environmental Council and The Environmental Defense Fund (“OEC” and “EDF”)², People Working Cooperatively, Inc. (“PWC”), Ohio Hospital Association (“OHA”), Ohio Partners for Affordable Energy (“OPAE”), The Kroger Company (“Kroger”), Interstate Gas Supply, Inc., (“IGS”) and The Ohio Manufacturers Association Energy Group (“OMAEG”) (together referred to as the “Signatory Parties”).³ The Signatory Parties represent eight of the eleven intervening parties in this case. Two of the remaining intervening parties who agreed not to oppose the Stipulation are Industrial

² *In re DP&L Portfolio Plan for 2017* (Stipulation at 6, fn. 3) (OEC and EDF do not support the cost cap but they do support the other provisions of the Stipulation and will not oppose adoption of the Stipulation in its entirety).

³ *Id* at 18-20.

Energy Users-Ohio (“IEU-Ohio”) and Environmental Law & Policy Center (“ELPC”).⁴ However, ELPC filed a letter in the docket on March 9, 2017, informing the Attorney Examiner that it can no longer take a non-opposing position. The other remaining intervening party challenging the Stipulation here is The Office of the Ohio Consumers’ Counsel (“OCC”).

The Stipulation modified DP&L’s Application for its third Portfolio Plan by proposing instead a one year extension of its existing 2015 program budget and Portfolio Plan Programs through 2017. The existing Plan is DP&L’s second Energy Efficiency Portfolio Plan that was approved by the Commission in 2013.⁵ Although DP&L’s second Plan was to last through 2015, S.B. 310 presented the Company with the option of continuing its Plan through 2016, which the Company did. Another major modification to DP&L’s third Plan is an overall cost cap on program costs and shared savings set at 4% of DP&L’s revenue for 2015.⁶

On January 13, 2017, testimony in support of the Stipulation and extended Plan through 2017 was filed by DP&L and Staff. On January 30, 2017, testimony in opposition to the Stipulation was filed on behalf of The Office of the Ohio Consumers’ Counsel (“OCC”). No other party filed testimony in support of or opposition to the Stipulation.

⁴ *In re DP&L Portfolio Plan for 2017* (Testimony of Tyler A. Teuscher (DP&L Ex. 1) at 3) (Jan. 13, 2017).

⁵ *In re 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 Nos. 13-833-EL-POR, *et al.* (Opinion and Order) (Dec. 4, 2013).

⁶ *In re DP&L Portfolio Plan for 2017* (Joint Ex. 1 at 6).

On February 6, 2017, a joint motion to modify the procedural schedule and admit exhibits was filed by DP&L, Staff, and OCC. The movants requested the evidentiary hearing be mooted and appearances limited to moving for the admission of all exhibits into evidence and waiving all cross examination and objections to the admission of those exhibits in the record. On February 7, 2017, at the evidentiary hearing, the joint motion was granted by the Attorney Examiner and the following exhibits were admitted in the record: Stipulation and Recommendation filed December 13, 2016 (Joint Ex. 1), DP&L Testimony of Tyler A Teuscher filed January 13, 2017 (DP&L Ex. 1), Application of DP&L filed on June 15-16, 2016 (DP&L Ex. 2), Application of DP&L for Approval of its Portfolio Plan in Case No. 13-833-EL-POR, filed on April 15, 2013 (DP&L Ex. 3), Staff Testimony of Kristin Braun filed January 13, 2017, as modified (Staff Ex. 1), OCC Testimony of Colleen Shutrump filed January 30, 2017 (OCC Ex. 1).⁷

ARGUMENT

Rule 4901-1-30, Ohio Adm. Code, authorizes parties to Commission proceedings to enter into stipulations. Although not binding upon the Commission, the terms of such agreements are to be accorded substantial weight.⁸ The ultimate issue for the Commission's consideration is whether the agreement is reasonable and should be adopted. In

⁷ *In re DP&L Portfolio Plan for 2017* (Tr. at 9-10) (Feb. 7, 2017).

⁸ *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123 at 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978).

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?⁹

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve cases.¹⁰ When the Commission reviews a contested stipulation, as is the case here, the Court has also been clear that the requirement of evidentiary support remains operative. While the Commission “may place substantial weight on the terms of a stipulation,” it “must determine, from the evidence, what is just and reasonable.”¹¹

The Stipulation is a result of significant time and effort of the Signatory Parties and it satisfies the Commission’s three-prong test above

⁹ See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (Order on Remand) (Apr. 14, 1994); *Ohio Edison Co.*, Case No. 92-1463-GA-AIR, *et al.* (Opinion and Order) (Aug. 26, 1993); *Ohio Edison Co.*, Case No. 89-1001-EL-AIR (Order on Remand) (Aug. 19, 1993); *The Cleveland Electric Illumination Co.*, Case No. 88-170-EL-AIR (Opinion and Order) (Jan. 31, 1989); and *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (Opinion and Order) (Nov. 26, 1985).

¹⁰ *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559 (1994), citing, *Consumers' Counsel*, *supra*, at 126.

¹¹ *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992).

A. The Stipulation is the product of serious bargaining among capable, knowledgeable parties.

The Stipulation is the product of serious negotiations among knowledgeable parties. The list of parties that signed the stipulation represents a variety of diverse interests, which include the Company; the Staff; low-income customer advocates – OPAE and PWC; a large commercial business - Kroger; a competitive retail electric supplier – IGS; environmental groups – OEC and EDF; a private nonprofit trade association of hospitals providing health care services – OHA; and a nonprofit entity representing Ohio manufacturers – OMAEG. The Signatory Parties represent the major users of power in the DP&L service territory. The Signatory Parties have an extensive history of participation and experience in matters before the Commission.

The Stipulation that has been proposed in this case is the result of a lengthy process of negotiation involving experienced counsel representing members of many stakeholder groups. These parties were involved in all phases of this case and have been involved in many Commission cases over the years. Parties signing the stipulation were capable and knowledgeable about the issues raised in this case.

All parties were involved in the development of the Stipulation that was filed in this case on December 13, 2016.¹² No party was excluded from settlement negotiations in this case. Each of the parties employs experts in the industry and is represented by experienced and competent counsel who are knowledgeable of regulatory matters and

¹² *In re DP&L Portfolio Plan for 2017* (Prefiled Direct Testimony of Kristin Braun (Staff Ex. 1) at 4) (Jan. 13, 2017).

practice regularly before the Commission.¹³ In sum, the stipulation is the product of serious negotiations among knowledgeable parties.

B. As a package, the Stipulation benefits ratepayers and the public interest.

As a package, the Stipulation benefits ratepayers and the public interest. For example, the Stipulation provides that:

- For 2017, DP&L will continue the energy efficiency programs as set forth in DP&L's 2015 program budget filed with its second Energy Efficiency Portfolio Plan, except as modified by the terms and provisions contained within this Stipulation;
- For 2017, a cap on costs associated with DP&L's energy efficiency programs and any shared savings resulting from these programs will be set at 4% of DP&L's revenue for 2015, as reported on DP&L's 2015 FERC Form 1, page 300, line 10, total sales to ultimate consumers;
- DP&L agrees to source to OPAE 100% of the Residential Low Income Affordability Program for 2017 to conduct home energy audits and install cost-effective energy efficiency measures to weatherize qualifying homes, thereby reducing homeowners' electric bills;
- DP&L will provide \$75,000 from its business programs budget in 2017 for OHA to conduct hospital energy audits, promote energy efficiency and DP&L programs to its members, and conduct energy efficiency training;
- DP&L will provide OMAEG with \$30,000 in 2017 from shareholder funds to help communicate and promote energy efficiency programs to manufacturers, and conduct energy efficiency training;
- DP&L agrees to provide PWC \$200,000 for 2017 from its Pilot Program to deliver customer funded weatherization and energy efficiency services to low income customers;

¹³

In re DP&L Portfolio Plan for 2017 (Staff Ex. 1 at 4).

- DP&L will continue the Combined Heat and Power (CHP) and Waste Energy Recovery (WER) program and it will reserve \$250,000 from the Custom Rebate Program budget for customer incentive payments for CHP and WER;
- DP&L will expand the scope of its existing Government Audit program to include all C&I customer classes;
- DP&L agrees to allocate 100% of the annual Residential Lighting Program incentive budget to incentivize LED lighting for the 2017;
- DP&L will reserve a combined total of \$600,000 from the residential and non-residential program dollars to offer marketing and incentives for true “smart” or “learning” thermostats, \$450,000 of which will be reserved for customer incentives;
- The Signatory Parties agree to implementation of a Shared Savings mechanism that provides an after-tax net benefit of 87% to DP&L’s Customers and 13% to DP&L, based on the Utility Cost Test (UCT), when the Company exceeds its energy efficiency requirements (kWh) by 15%.;
- Any shared savings incentive recovered by DP&L for 2017 will be capped at \$4.5 million, on an after-tax basis;
- DP&L agrees to bid at least 75% of the 2017 Program Portfolio megawatts (MWs) which are eligible to be bid pursuant to PJM rules into the PJM BRA occurring during 2017.

As a package, these benefits touch many customers and are self-explanatory. Staff asks that the Commission exercise its discretion to find that the Stipulation, as a whole, benefits ratepayers and the public interest. In addition to the proposed continuation of the 2015 program portfolio that previously helped customers achieve energy savings, the proposed cost cap further benefits ratepayers and the public interest by providing cost control, certainty, and stability, as well as price assurances to customers.¹⁴

¹⁴

In re DP&L Portfolio Plan for 2017 (Staff Ex. 1 at 5).

The Stipulation is to be evaluated as a package. The package, in this case, provides significant benefits to customers as mentioned above. Even if some attributes could have been evaluated separately, achieving them in one group is advantageous by providing continuity and stability for DP&L's Plan and its customers who benefit under it. 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. These programs will encourage and promote energy savings by providing incentives for lowering customer energy consumption and demand, which will then lower customer electric bills.¹⁵ Further, customers and other interest-groups will benefit from the continuation of DP&L's energy efficiency collaborative, which has a history of positive reception from participants.¹⁶

The Signatory Parties agreed to a 4% cap on program costs and shared savings to be set at DP&L's revenue for 2015.¹⁷ That cap was bargained for in this case. A stipulated agreement with several provisions, including a cost cap, was reached through concessions made by Staff and the Signatory Parties.

¹⁵ DP&L Ex. 1 at 6.

¹⁶ *Id.*

¹⁷ *In re DP&L Portfolio Plan for 2017* (Staff Ex. 1 at 5).

C. As a package, the Stipulation does not violate any important regulatory principle or practice.

The final prong of the Commission's three-prong test is passed, as the Stipulation does not violate any important regulatory principle or practice. The terms of the Stipulation represent a compromise of the Signatory Parties. None of the individual provisions of the Stipulation is inconsistent with or violates any important Commission principle or practice.¹⁸ On the contrary, the compromise reached by the diverse set of Signatory Parties results in a Stipulation that promotes a number of the state policies expressed in R.C. 4928.02, including:

- R.C. 4928.02(D) – Encourage innovation and market access for cost-effective supply-and-demand-side retail electric service;
- R.C. 4928.02(J) – Provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates;
- R.C. 4928.02(M) – Encourage the education of small business owners in this state regarding the use of, and encourage the use of, energy efficiency programs and alternate energy resources in their businesses.

In addition, the Stipulation complies with R.C. 4928.66, *et seq.* and all of the provisions under Chapter 4901:1-39, Ohio Administrative Code. DP&L's program portfolio for 2017 under the Stipulation is comprehensive and includes a wide range of programs that encourages innovation and market access for cost-effective energy efficiency

¹⁸

In re DP&L Portfolio Plan for 2017 (Staff Ex. 1 at 5).

and peak demand reduction for all customer classes. The program portfolio will achieve the statutory benchmarks for peak-demand reduction, and meet or exceed the statutory benchmarks for energy efficiency. In sum, the Stipulation does not violate any important regulatory principle or practice.

CONCLUSION

Staff respectfully requests the Commission approve the Stipulation because all of its terms, including the overall cost cap on program costs and shared savings, satisfy the Commission's three-prong test and are just, reasonable and balanced. Most importantly, from Staff's perspective, the Stipulation's cost cap proposal benefits ratepayers and the public interest by providing cost control and price assurances to customers. As a package, the programs in this proposed portfolio are cost effective and beneficial to customers. The Commission should approve the Stipulation.

Respectfully submitted,

Michael DeWine
Ohio Attorney General

William L. Wright
Section Chief

/s/ John H. Jones

John H. Jones
Assistant Section Chief
Public Utilities Section
30 East Broad Street, 16th Floor
Columbus, OH 43215-3414
614.466.4397 (telephone)
866.524.1223 (fax)
john.jones@ohioattorneygeneral.gov

**On behalf of the Staff of
The Public Utilities Commission of Ohio**

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Post-Hearing Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via electronic mail upon the following Parties of Record, this 10th day of March, 2017.

/s/ John H. Jones

John H. Jones
Assistant Section Chief

Parties of Record:

Trent A. Dougherty
Miranda Leppa
Ohio Environmental Counsel
1145 Chesapeake Avenue Suite 1
Columbus, OH 43212
tdougherty@theoec.org
mleppa@theoec.org

Joseph Olikier
IGS Energy
6100 Emerald Parkway
Dublin, OH 43016
joliker@igsenergy.com

Kimberly W. Bojko
Danielle M. Ghiloni
Angela Paul Whitfield
James D. Perko
Carpenter Lipps & Leland
280 North High Street, Suite 1300
Columbus, OH 43215
bojko@carpenterlipps.com
ghiloni@carpenterlipps.com
paul@carpenterlipps.com
perko@carpenterlipps.com

John Finnigan
Environmental Defense Fund
128 Winding Brook Lane
Terrace Park, OH 45174
jfinnigan@edf.org

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45839-1793
cmooney@ohiopartners.org

Frank P. Darr
Matthew R. Pritchard
McNees Wallace & Nurick
21 East State Street, 17th Floor
Columbus, OH 43215
fdarr@mwncmh.com
mpritchard@mwncmh.com

Christopher Healey
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
christopher.healey@occ.ohio.gov

Dane Stinson
Devin D. Parram
Dylan Borchers
Matthew Warnock
Bricker & Eckler
100 South Third Street
Columbus, OH 43215-4291
dstinson@bricker.com
dparram@bricker.com
dorchers@bricker.com
mwarnock@bricker.com

Madeline Fleisher
Kristin Field
Robert Kelter
Environmental Law & Policy Center
21 West Broad Street, Suite 500
Columbus, OH 43215
mfleisher@elpc.org
kfield@elpc.org
rkelter@elpc.org

Richard L. Sites
Ohio Hospital Association
155 East Broad Street, 3rd Floor
Columbus, OH 43215-3620
rick.sites@ohanet.org

Jeremy M. Grayem
Ice Miller
250 West Street, Suite 700
Columbus, OH 43215
jeremy.grayem@icemiller.com

Robert Dove
Samantha Williams
Natural Resources Defense Council
20 North Wacker Drive, Suite 1600
Chicago, IL 60606
rdove@attorneydove.com
swilliams@nrdc.org

Attorney Examiner:
Richard M. Bulgrin
Public Utilities Commission of Ohio
180 East Broad Street, 12th Floor
Columbus, OH 43215-3793
dick.bulgrin@puco.ohio.gov

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