

**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 REPLY BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

March 24, 2017

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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”) was admitted in evidence without objection, along with other exhibits, at the hearing on February 7, 2017.² The Environmental Law & Policy Center (“ELPC”) was among the parties that agreed to the admission of the

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).

² *In re DP&L Portfolio Plan for 2017*, Hearing Transcript (February 7, 2017) (“Tr.”) at 8-10.

exhibits.³ Other exhibits admitted include Staff Testimony, which was filed January 13, 2017—25 days before the hearing date.⁴ As a result of the parties waiving a full hearing, they waived all cross examination on the Stipulation and Staff’s testimony in support of the Stipulation, including ELPC. Both exhibits clearly addressed the cost cap term, which is one part of a larger settlement package.⁵ But now ELPC has reversed positions and broken its word to Staff among others in the process. ELPC changed from having a non-opposing position to an opposing position limited to the cost cap term, while still not opposing the overall settlement package.⁶

Besides having contradictory positions on the Stipulation, ELPC has not acted in good faith toward Staff post-hearing by reversing its position and targeting the cost cap term in isolation. Staff requests that the Public Utilities Commission of Ohio (“Commission”) give no weight to ELPC’s reversal. The Stipulation, as a package that includes the cost cap, provides a just, reasonable, and balanced resolution of all the issues in these proceedings. The Stipulation satisfies the three-prong test established by the Commission to evaluate a stipulation. The Stipulation also complies with R.C. 4928.66 and all accompanying Commission rules that apply to energy efficiency program portfolio plans. Staff requests that the Commission approve the Stipulation.

³ Tr. at 7.

⁴ *Id* at 9-10.

⁵ Joint Ex. 1 at 6 and *In re DP&L Portfolio Plan for 2017*, Prefiled Direct Testimony of Kristin Braun (January 13, 2017) (Staff Ex. 1) at 5.

⁶ Initial Brief of The Environmental Law & Policy Center (March 10, 2017), (“ELPC Brief”) at 2.

ARGUMENT

The ultimate issue for the Commission's consideration is whether the agreement 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 Stipulation is a result of significant time and effort of the Signatory Parties, and it satisfies the Commission's three-prong test above. Even ELPC believes "the Stipulation as a whole provides for a reasonably robust portfolio of efficiency programs that will comply with R.C. 4928.66 and benefit DP&L customers."⁷

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

The Stipulation proposed in this case is the result of a lengthy process of negotiation involving experienced counsel representing members of many stakeholder groups. Parties signing the Stipulation, and another party who until recently did not

⁷ *Id.*

oppose any terms of 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, 2016.⁸ No party was excluded from settlement negotiations in this case. 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.

Staff asks that the Commission exercise its discretion to find that the Stipulation, as a whole, benefits ratepayers and the public interest. The proposed cost cap, which is one term of a larger package of benefits to customers, also benefits ratepayers and the public interest by providing cost control, certainty, and stability, as well as price assurances to customers.⁹ The Stipulation is to be evaluated as a package. The package, in this case, provides significant benefits to customers. ELPC, who recently reversed its position on the cost cap term without good reason, believes the Stipulation as a whole provides a robust portfolio of programs that benefits DP&L customers and complies with R.C. 4928.66.¹⁰

⁸ Staff Ex. 1 at 4.

⁹ *Id* at 5.

¹⁰ ELPC Brief at 2.

The Signatory Parties agreed to a cost cap as part of a package and ELPC previously agreed not to oppose either. That term and all the other terms were reached through bargaining and concessions being made by Staff and the Signatory Parties. As a package, the Stipulation benefits ratepayers and the public interest.

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. None of the individual provisions of the Stipulation is inconsistent with or violates any important Commission principle or practice.¹¹ On the contrary, the compromise reached by the diverse set of Signatory Parties results in a Stipulation that promotes a number of state policies.

In addition, the Stipulation complies with all statutory and rule requirements applicable to utility program portfolios addressing energy efficiency and peak demand reduction. DP&L's portfolio of programs encourages innovation and market access for cost-effective energy efficiency and peak demand reduction for all customer classes. The portfolio will achieve or exceed all statutory benchmarks. In sum, the Stipulation does not violate any important regulatory principle or practice.

¹¹ Staff Ex. 1 at 5.

D. ELPC’s new opposing position on the Stipulation lacks credibility and should be given no weight by the Commission.

ELPC’s new position in this case is without merit and should not be given any weight by the Commission. ELPC states in its Brief that it continues “to believe the Stipulation as a whole provides for a reasonably robust portfolio of efficiency programs that will comply with R.C. 4928.66 and benefit DP&L customers.”¹² However, on March 9, 2017, ELPC gave notice that it has changed to an opposing position regarding the Stipulation due to Staff’s testimony on the cost cap.¹³ Although ELPC states that the cost cap does not prevent the Stipulation as a whole from benefiting ratepayers in 2017, it now opposes the Stipulation.¹⁴

ELPC now states that it “vigorously disagrees” with Staff’s view that the cost cap benefits ratepayers and the public interest.¹⁵ ELPC’s post-hearing arguments and claims in its brief against Staff and the cap are hollow because ELPC waived filing testimony in opposition to Staff’s testimony containing the cost cap term, it waived all objections and cross examination to Staff’s testimony being admitted in the record of evidence, and it waived a full hearing on the merits of all the issues resolved in the Stipulation, including the cost cap. It was not unforeseeable nor should it have been a surprise to ELPC that Staff would highlight the cost cap term in its testimony among the many terms and

¹² ELPC Brief at 2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

benefits provided in the Stipulation. The Stipulation was filed December 13, 2016, and Staff testimony was filed January 13, 2017. Both addressed the cost cap term and the overall settlement package. And yet, ELPC waited until March 9, 2017, to make up its mind about the Stipulation.

The questions ELPC suddenly has post-hearing about Staff's analysis behind the cost cap, the potential benefits or detriments of a cost cap applied to program costs and shared savings, and the basis for determining why the cost cap is even necessary are questions ELPC waived along with a full hearing, filing testimony, making objections, and conducting any cross examination. Plenty of process and procedure were available to ELPC to provide an opposing position to the cost cap term in the Stipulation and Staff's testimony in support of the Stipulation, but it waived them all in this case.

ELPC also believes that Staff is "push[ing] the Commission to address the cost cap on its merits as a standalone policy rather than as part of the settlement package."¹⁶ ELPC's charge is not supported by the record. Staff does not control the Commission nor dictate its decisions. The Commission is free to accept, reject or modify the Stipulation as it deems necessary after weighing the evidence, applying the law and making findings of fact.

Finally, ELPC urges the Commission not to reach the merits of the cost cap as a term of the Stipulation.¹⁷ This statement is illogical because the Commission considers

¹⁶ *Id.*

¹⁷ *Id.*

the merits of all the terms making up the entire settlement package. ELPC further states, without context or evidentiary basis, that “[t]he Commission Order should reflect the narrowness of the Stipulation.”¹⁸ ELPC’s requests are vague and without merit, and should be denied.

For the foregoing reasons, the Commission should give no weight to ELPC’s new opposing position on the cost cap term in the Stipulation.

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. ELPC’s new opposing position on the Stipulation lacks credibility and should be rejected. The Commission should approve the whole settlement package in the Stipulation because all of the terms individually and together are just and reasonable.

¹⁸

Id.

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Post-Hearing Reply 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 24th day of March, 2017.

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