

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan. : Case No. 16-395-EL-SSO
:
:

In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs. : Case No. 16-396-EL-ATA
:
:

In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code § 4905.13. : Case No. 16-397-EL-AAM
:
:

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

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**On behalf of the Staff of
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Pursuant to Ohio Rev. Code § 4905.13. :

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INTRODUCTION

This case is about the future. The outcome of this case will define the future of energy delivery that the customers of the Dayton Power and Light Company (DP&L or the company) will experience. The amended stipulation lays out an approach which will allow DP&L to position itself to bring the benefits of competitive innovation and intelligent system operation to its customers in the Miami Valley. A rejection of the amended stipulation will leave the company mired in the twentieth century. The Staff recommends that the Commission look to the future, not the past, and approve the amended stipulation.

DISCUSSION

As the Commission is fully aware, stipulations are reviewed using the three part test. The amended stipulation meets all three prongs of the test as will be shown more fully in the following sections.

A. The amended stipulation is the product of serious bargaining among knowledgeable parties.

There should be no question that the first prong is met. The list of signatory parties is long and is made up of entities that have been involved in Commission matters previously.¹ The parties are knowledgeable.²

Every party had the opportunity to participate. Settlement meetings were held where all were invited.³ The Office of Consumers' Counsel (OCC) participated. *Ibid.* Many parties attended.⁴ Both group and bilateral meetings were held.⁵ Serious bargaining went on and on. Even after an initial stipulation was filed in the docket, more discus-

¹ *In the Matter of the Application of Dayton Power and Light Company for Approval of Its Electric Security Plan*, Case No. 16-395-EL-SSO (“*In re DPL SSO*”) (Prepared Testimony of Patrick Donlon at 3-4) (Mar. 22, 2017) (hereinafter “Staff Ex. 2”).

² Tr. II at 596.

³ Tr. III at 596.

⁴ *In re DPL SSO* (Testimony of Sharon R. Schroder in Support of the Amended Stipulation and Recommendation at 5-7) (Mar. 22, 2017) (hereinafter “DP&L Ex. 3.”)

⁵ Tr. II at 261.

sions went on resulting in the drafting of the Amended Stipulation which is the focus of this case.⁶

In sum, there should be no dispute that the first prong of the test is met.

B. The amended stipulation benefits the public interest.

The amended stipulation provides a huge array of benefits.⁷ Foremost amongst these⁸ in Staff's view is that:

The stipulation provides DP&L, through the Distribution Modernization Rider (DMR), the ability to access the capital market at favorable rates to ensure investment in the distribution system. Without the ability of the Company to secure capital at reasonable rates, the ratepayers could end up in a worse situation in the future. Without access to capital markets, the Company would be subject to higher interest rates. Accessing the capital market, in turn, will enable the Company to procure funds to jumpstart their distribution grid modernization initiatives.⁹

The Commission has announced its intention to further a smart grid initiative. The details of this are to be decided later this year. While the exact parameters of this initiative have not as of yet been determined, there will be a significant investment required.

⁶ Tr. V at 865-868.

⁷ DP&L Ex. 3 at 9.

⁸ There are others of course:

Additionally, the stipulation provides economic development incentives for DP&L's service territory, enhancements to the competitive market, a smart grid rider, and a modernization plan.

Staff Ex. 2 at 4.

⁹ *Id.*

This then is the exact problem. DP&L is not in a position to make a significant investment. Its current debt includes covenants which bar DP&L from incurring any additional debt.¹⁰ Without additional funds, there can be no smart grid for DP&L's customers.¹¹

The DMR is the *sine qua non* for DP&L's participation in this important initiative.

This financial situation for DP&L must be improved for the company to be positioned to implement smart grid. Many steps to improve DP&L's financial situation have been, are being, and will be undertaken. These include:

- DPL Inc. will make no dividend payments to AES during the ESP,
- DPL, Inc. will make no tax payments to AES during the DMR,
- DPL Inc. and AES will translate the foregone and future DPL Inc. tax obligations to a capital infusion,
- DP&L will transfer its generating assets.

DP&L sold its East Bend unit which both eliminated a negative cash flow problem and provided \$15 to 20 million in cash.¹² In addition DPL, Inc. sold its competitive retail business, providing \$90 million in cash.¹³ Although these steps are significant, they are not sufficient to improve DP&L's metrics so as to allow it to access the capital markets

¹⁰ Tr. V at 881; Tr. I at 109.

¹¹ Indeed the record shows that current safe and reliable service may be in jeopardy without approval of the DMR. *In re DPL SSO* (Direct Testimony of R. Jeffrey Malinak in Support of the Amended Stipulation and Recommendation at 58) (Mar. 22, 2017).

¹² Tr. I at 33-35.

¹³ *Id.*

and implement smart grid. The one missing piece to improve DP&L's financial position is the additional cash flow that would be provided by the DMR.

While the current operational benefits of smart grid are clearly known, the record contains a lengthy discussion of the innovative services that could be offered, but only if there is a smart grid installation.¹⁴ This includes a description of a successful initiative in Texas.¹⁵ These innovative services include:

...but aren't necessarily limited to time-of-use pricing, residential demand response, residential peak load control, SmartGrid can be deployed in such a way that would enable distributed generation for customers' two-way metering.¹⁶

This is the future of the electricity grid. Without the smart grid initiative, the customers of DP&L will remain mired in the past. While the Commission could approve the amended stipulation for this reason alone, there are multitudes of other benefits.

The current grid will be improved by:

- creation of the DIR which will speed the provision of infrastructure
- investments in energy efficiency at the Dayton International Airport and with the Montgomery County Port Authority; and,
- Energy Star support activities with Honda.¹⁷

¹⁴ Tr. II at 423-431.

¹⁵ Tr. II at 426-428.

¹⁶ Tr. II at 426.

¹⁷ DP&L Ex 3 at 11-12.

Economic development will be enhanced by:

- the headquarters remaining in Dayton;¹⁸
- the creation of the economic development rider;
- directly provided funds for economic development; and,
- funds specifically for Adams County to aid its economic adjustment.¹⁹

Shopping customers will be helped by the availability of the direct hedge provided by the bypassable Reconciliation Rider.²⁰

Shopping customers will be helped by the competitive enhancements provided.²¹

There is even direct financial support for low-income customers.²²

In sum, the benefits offered by the amended stipulation are many and broad. All aspects of the public are helped by the various components. The amended stipulation meets the second prong of the test.

¹⁸ DP&L Ex 3 at 17.

¹⁹ *Id.* at 13.

²⁰ *Id.* at 14. And, obviously, those customers not desiring this protection can shop instead.

²¹ *Id.* at 15.

²² *Id.* at 16.

C. The amended stipulation does not violate any important regulatory principle or practice.

An electric security plan may include:

Provisions regarding the utility's distribution service, including, without limitation and notwithstanding any provision of Title XLIX of the Revised Code to the contrary, provisions regarding single issue ratemaking, a revenue decoupling mechanism or any other incentive ratemaking, and provisions regarding distribution infrastructure and modernization incentives for the electric distribution utility. The latter may include a long-term energy delivery infrastructure modernization plan for that utility or any plan providing for the utility's recovery of costs, including lost revenue, shared savings, and avoided costs, and a just and reasonable rate of return on such infrastructure modernization. As part of its determination as to whether to allow in an electric distribution utility's electric security plan inclusion of any provision described in division (B)(2)(h) of this section, the commission shall examine the reliability of the electric distribution utility's distribution system and ensure that customers' and the electric distribution utility's expectations are aligned and that the electric distribution utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system.²³

The amended stipulation presents as much of a long term infrastructure modernization plan as is possible to develop at this time. It is impossible to develop the modernization plan more fully at this time. Indeed it would be unwise to attempt to do so. The smart grid initiative should be developed in a comprehensive way under the direction of the Commission. Only in this way can the benefits of the program be brought to *everyone* in Ohio. The amended stipulation recognizes this. It provides that a more detailed plan should be submitted within three months after the Commission completes its Power-

²³

R.C. 4928.143(B)(2)(h).

Forward Initiative. It cannot be otherwise. To develop the details now, without overall guidance from the Commission, is pointless. As Webster's New World Dictionary Second College Edition indicates, a "plan" is "a method of proceeding". The amended stipulation does just this. The Commission will issue its guidance. DP&L will fill in the details of how it will implement that guidance. The Commission will review those details and the company will implement the Commission's order. This is a method of proceeding, a plan, within the meaning of the statute. That the details will be presented later and will doubtless evolve over time is necessary given the nature of the undertaking.

The plan is multifaceted, multi-layered, and will develop over time.

It provides for grid improvements both in the more immediate term, through the DIR, and for the longer term through the smart grid rider and the obligation to submit a plan to the Commission for implementation after the Commission has developed guidelines for that initiative. Even more deeply, the DMR provides current financing so as to position the company to be able to implement anything at all.

To be a modernization plan acceptable pursuant to R.C. 4918.143(B)(2)(h) an analysis must be performed to assure that the interests of the utility and its customers are aligned and that the company is devoting sufficient emphasis and resources on reliability. This analysis has been done and the test has been met.²⁴

In sum, the amended stipulation presents a program in compliance with the requirements of R.C. 4928.143(B)(2)(h).

²⁴

In re DPL SSO (Prefiled Testimony of Jacob J. Nicodemus) (Mar. 22, 2017).

It will be argued, incorrectly, that the DMR allows collection of illegal transition revenues pursuant to R.C. 4928.38. Transition revenues are charges that are imposed to collect allowable transition costs.²⁵ Allowable transition costs are defined by statute and consist of the historic costs included in the utility's books at the time of transition in 2000 which meet the following criteria:

(A) The costs were prudently incurred.

(B) The costs are legitimate, net, verifiable, and directly assignable or allocable to retail electric generation service provided to electric consumers in this state.

(C) The costs are unrecoverable in a competitive market.

(D) The utility would otherwise be entitled an opportunity to recover the costs. Transition costs under this section shall include the costs of employee assistance under the employee assistance plan included in the utility's approved transition plan under section 4928.33 of the Revised Code, which costs exceed those costs contemplated in labor contracts in effect on the effective date of this section.²⁶

The purpose of permitting these transition charges is to assist the utility in "...making the transition to a fully competitive retail electric generation market."²⁷ As should be quite obvious, the current situation in which DP&L finds itself has nothing to do with transition to the competitive market in the year 2000. It has nothing whatever to do with any notion of "stranded costs" created by the change in regulatory structure under S.B. 3. Rather it is today's situation that is the problem. It is the combination of the company's

²⁵ R.C. 4928.40.

²⁶ R.C. 4928.39.

²⁷ R.C. 4928.37(A)(1).

weak current financial situation (it cannot borrow money) with the need to borrow money to support significant grid enhancements that creates the need for the DMR. The DMR is not tied to any consideration of the company's investment in plant. Although the record shows that DP&L intends to dispose of its remaining plant investments, how it does so, at what price, under what terms, whether there is a profit or a loss, is entirely up to DP&L. The financial consequences to DP&L of its disposal of these assets was not considered in this case at all. These assets are not now and have not been used recently to provide service for the SSO. The DMR is not tied to any of this. Instead it is entirely based on the company's need to access capital markets.²⁸ Thus the DMR is not a transition charge within the statutory meaning and therefore cannot be an illegal transition charge or equivalent.

Even if, contrary to the facts on the ground, it were determined that the DMR were a transition charge, it would still be legally permissible. The section which specifically authorizes infrastructure modernization plans provides that such plans are allowed "...without limitation and notwithstanding any provision of Title XLIX of the Revised Code to the contrary..."²⁹ Thus, even if it were determined that the DMR did constitute a transition charge or equivalent, R.C. 4928.143(B)(2)(h) would authorize it.

In sum arguments claiming a violation of the bar on transition charges should be rejected.

²⁸ Staff Ex. 2 at 4.

²⁹ R.C. 4928.143(B)(2)(h).

D. The amended stipulation is better in the aggregate than an MRO.

Before the Commission may approve an ESP it must determine:

...that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code.³⁰

There are two particularly salient things that must be understood in implementing this test, context matters and not all benefits can be quantified.

When considering what the effect of an MRO might be it is important to recognize that the MRO would not happen in a vacuum. Regardless of how the energy is provisioned for the standard service offer (whether through an MRO or an ESP) the needs that drive the creation of the various riders that appear in the amended stipulation would remain the same. There would still be storm damage that would need to be repaired. Economic development would still be needed. Energy efficiency would still need support and on and on. While these riders might be created in an MRO directly or through some other means, they would still be created. The needs they address simply are not dependent upon how the energy in the lines is purchased. They would exist in either scenario and are, therefore, a wash and need not be considered in the ESP v. MRO analysis.³¹ They do not make a difference.

³⁰ R.C. 4928.143(C)(1).

³¹ Tr. V at 888-889.

The DMR itself falls into this same category. As has been discussed previously, for DP&L to be in a position to be able to access the capital markets as will be necessary to implement a smart grid initiative, it needs to improve its financial metrics. Many steps have been taken already and more will be taken to accomplish this but more is needed.³² These are simply the facts on the ground and they would be true regardless of whether the topic under discussion was an ESP or an MRO. To obtain the benefits of smart grid, the financial problem would need to be addressed whether that were through a determination of an emergency under R.C. 4928.142(D)(4) or through a rate case doesn't matter. Relief would be provisioned, it has to be. Since the need and the means to address that need remain the same under either scenario, the presence of the DMR is irrelevant to the ESP v. MRO test.³³

In the current situation the results that would be obtained for the SSO itself would not be different. Under either scenario the SSO power would be supplied through an auction so there would be no difference in the result.³⁴

Having determined that most aspects of the amended stipulation do not have a bearing on the ESP v. MRO test, the analysis that remains is quite simple. The amended stipulation provides millions of dollars of direct benefits that would not exist under the

³² Staff Ex. 2 at 4.

³³ *Id.* at 6.

³⁴ *Id.* at 5.

MRO.³⁵ These benefits promote competition, reliability, economic development, and energy efficiency.³⁶ The ESP is better in the aggregate than the MRO on a quantitative basis and should, therefore, be approved.

Although it is clear that the ESP is preferable to an MRO on a quantitative basis this ignores the very significant qualitative benefits of the approval of the amended stipulation. Approval of the amended stipulation provides the quickest, clearest path to achieving the implementation of the smart grid initiative. The competitive, economic development and operational benefits of this innovation are difficult or impossible to translate into dollars and cents today but will certainly be very large indeed.

CONCLUSION

We are at a decision point. Should the electric industry in Ohio move into the 21st century or stay mired in the past? The Commission has previously, boldly, said the state will move forward in the service territories of the other EDU's. For this to happen for the customers of DP&L as well, the amended stipulation should be approved. The financial stability the approval of the amended stipulation will provide is the only means the company has to access the funds needed to improve the distribution grid. It is this or nothing.

³⁵ Staff Ex. 2 at 5.

³⁶ *Id.*

As has been shown above, the amended stipulation meets the three part test and passes the MRO vs. ESP test. This shows that the Commission can approve the amended stipulation. The future demands that it should.

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**On behalf of the Staff of
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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 5th day of May, 2017.

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