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 Appro9val 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

Michael DeWine
Ohio Attorney General

William L. Wright
Section Chief

Thomas W. McNamee
Thomas G. Lindgren
Assistant Attorneys General
Public Utilities Section
30 East Broad Street, 16th Floor
Columbus, OH 43215-3414
614.466.4397 (telephone)
614.644.8764 (fax)
thomas.mcnamee@ohioattorneygeneral.gov
thomas.lindgren@ohioattorneygeneral.gov

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

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TABLE OF CONTENTS

Page

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INTRODUCTION

This reply brief will address those salient elements of the arguments presented by the opponents to the amended stipulation in their initial briefs. Silence as to any argument presented should not be taken as acquiescence but rather as an indication that the argument has already been addressed either in Staff's initial brief or those of the other supporters.

DISCUSSION

A. The DMR is not a transition charge or equivalent.

As anticipated, parties opposed to the amended stipulation have spent much time in briefing arguing that the DMR is an illegal transition charge under R.C. 4928.38. As discussed thoroughly in the initial brief there is simply no merit to this claim. Transition charges are a defined term under R.C. 4928.39. The DMR meets none of these requirements. This case has nothing to do with a transition to competitive markets. That happened long ago. Indeed this case has nothing to do with generation at all. DP&L unilaterally determined to dispose of its generating assets either through closure or sale before this case was filed. The presence or absence of the DMR is not relevant to this. Even if it were determined through some contra-factual reading of the record of the case that the DMR were a transition charge, it would not violate the law. The DMR is recommended pursuant to R.C. 4928.143(B)(2)(h) which states that the Commission may approve plans which include this type of charge "…without limitation and notwithstanding any provision of Title XLIX of the Revised Code to the contrary…" Thus R.C. 4928.38 just does not apply.

While the basic premise of the argument has been rebutted there are more specific claims that need to be addressed. These will be addressed in the following paragraphs.

It is claimed that ratepayers are being asked to "bail out" DP&L's generation. This is simply false. DP&L's generation is going away. There is nothing to bail out.

It is claimed, ironically, that the DMR is insufficient to solve DPL, Inc.'s financial problems. This claim misconstrues the entire situation. Whether the level of the DMR solves DPL Inc.'s financial condition or not is irrelevant. Addressing DPL Inc.'s financial status is not the point. The object is to improve the situation of DP&L so as to put it in a condition to be able to raise the additional funds that will be necessary to support the smart grid initiative.[1] Thus, even if the claim were true, it does not matter.

It is claimed that the DMR revenues will be used to support "underperforming" generation. This is impossible. DMR revenues flow, quite clearly, to DP&L. Relatively soon DP&L will have no generation whether performing well or poorly.

For this same reason the DMR does not violate R.C. 4928.02(H). The DMR is intended to improve the financial situation of DP&L and soon DP&L will have no generation. There is no possible tie between the DMR and some hypothesized support for generation that has been sold or closed. The fate of the units closed or sold is simply not affected by the presence or absence of the DMR. The two are unrelated.

Fundamentally the opponents to the amended stipulation are tied to the past, fighting yesterday's battles. They focus on the transition to competitive generation markets. That happened long ago. This case is about a different transition, the transition from a traditional twentieth century distribution system to the twenty-first century smart grid. That will not happen for the customers of DP&L without significant new investment. DP&L is not permitted by its debt covenants to borrow currently.[2] The DMR is the only means to rectify this situation so as to allow additional investment to support

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[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 4) (Mar. 22, 2017).

[2] Tr. V at 881, Tr. I at 109.

smart grid. If service for the customers of DP&L is to advance into the modern world, the DMR must be approved.

B. The amended stipulation has diverse support.

Certainly the amended stipulation is supported by a diversity of interests. It finds support from industrial customers, commercial customers, at-risk populations, the city of Dayton with its mass of residential consumers, and, significantly, the Staff, the only independent, disinterested party. The OCC's argument to the contrary is simply a rehash of their continuing position that, without the OCC's agreement, there is no diversity of interests. No single party has a veto. The fact is that the amended stipulation has broad support from a variety of interests. It passes the test.

A variety of the provisions of the amended stipulation have been described, quite incorrectly, as "handouts". This criticism reflects the limited vision of the opponents.

The Commission's charge in any case under R.C. 4928 is very broad indeed. R.C. 4928.02 provides *fourteen* distinct, and sometimes conflicting, policy goals that the Commission is to implement. Opponents choose to focus on only one portion of one of these, "…reasonably priced retail electric service."[3] And they misunderstand that. They take this to mean "as cheap as possible ignoring any other interest." This is simply

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[3] R.C. 4928.02(A).

wrong[4] and the error causes the OCC to misunderstand and mischaracterize many aspects of the amended stipulation. In point of fact these specific provisions of the stipulation advance other policies that the General Assembly has directed the Commission to further.

Non-shopping customers will be benefitted[5] by the availability of the reconciliation rider. This provides a hedge against fluctuating energy prices. Those who do not wish this protection may shop and go without the hedge. This is flexible regulatory treatment as required by R.C. 4928.02(G). This has been mischaracterized by opponents as a burden but in reality it is an option that customers may choose to meet their needs as required by R.C. 4928.02(B).

The competitive enhancements created by the amended stipulation directly encourage the diversity of energy supplies and suppliers and assist in the provisioning market access for cost-effective supply and demand side retail electric services, furthering the goals of both R.C. 4928.02(C) and (D).

At risk populations of various sorts are benefitted by the amended stipulation. They are directly benefitted by the funds provided to, for example, Edgemont. They are benefitted indirectly, through services which will be provided, by grants to OPAE. Even

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4 It is also ironic as the amended stipulation results in either no or only a trivial change in the rates for customers. *In re DPL SSO* (Direct Testimony of R. Jeffrey Malinak in Support of the Amended Stipulation and Recommendation at Attachment A) (Mar. 22, 2017) (hereinafter "DP&L Ex. 2").

5 While it might be argued that this same protection should be offered to shopping customers as well, that is not the proposal before the Commission currently.

the residents of Adams County will receive grants. All of these components further the policy of protecting at risk populations as directed by R.C. 4928.02(L).

There are several provisions which are directed at significant manufacturing enterprises. An economic development rider is continued. Energy efficiency enhancements are provided for the Dayton International Airport. All of this is done with a view toward facilitating the state's effectiveness in the global economy as required by R.C. 4928.02(N).

In sum, far from being "handouts" these specific provisions are vital for the Commission to fulfill its broad statutory responsibilities. Gone are the days when the Commission could simply set formulaic base rates and be done. The General Assembly has charged the Commission to achieve many goals simultaneously. The amended stipulation advances the many obligations imposed on the Commission. The arguments of the opponents do not and they should be rejected.

C. The amended stipulation complies with the merger order.

The DMR does not violate the terms of the Commission order approving the acquisition of DPL, Inc. by AES. That order approved three stipulations all of which included language barring DP&L from collecting costs of the acquisition through its rates. The most stringent of these provisions stated:

> Applicants agree that neither the costs incurred directly related to the negotiation, approval and closing of the merger nor any acquisition premium shall be eligible for inclusion in

> rates and charges applicable to retail electric service provided by DP&L.[6]

It is clear that the amended stipulation does not violate this requirement. Any cost associated with the acquisition of DPL, Inc. by AES, the debt created thereby, is housed with DPL, Inc.[7] The DMR funds will flow to DP&L, not DPL, Inc. They will improve DP&L's financial situation. That is the point. It may be that DP&L's financial situation will improve enough to pay dividends to DPL, Inc. DPL, Inc. in turn may use those dividends to service or eliminate its debt[8], whether that debt arose from the acquisition or otherwise. This cannot possibly violate the Commission order. It is not logical. Ninety six percent of DPL, Inc.'s income comes from DP&L.[9] If the Commission's merger order meant that DPL Inc. could not use dividends from DP&L to service its obligations, those obligations could never be serviced. That is not a valid reading. Rather the Commission must have meant that ratepayers of DP&L would never be responsible for any acquisition-related debt. DP&L would use its revenues to meet its responsibilities and only after those have been met, issue dividends to DPL Inc. for DPL Inc. to use as it sees fit to meet its obligations. This is all explained quite clearly in the testimony of company witness Malinak who says:

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6 *In the Matter of the Application of AES*, Case No. 11-3002-EL-MER (Finding and Order at 9) (Nov. 22, 2011).

7 Tr. I at 29-30.

8 This is anticipated by the amended stipulation and would have the effect of benefitting DP&L due to the umbrella approach to debt rating used by the agencies.

9 Tr. I at 44.

> DP&L's operating profits must be used to pay interest and any contractual principal obligations ("debt service obligations") on its own debt first, thereby making DPL's debt subordinated to DP&L's debt in order of payment. Second, DP&L must make the capital and operating expenditures for its transmission and distribution network in order to ensure the delivery of safe and reliable transmission and distribution service. Third, DP&L must pay its share of the ongoing capital expenditures for the coal generating plants in which it owns a partial interest. Fourth, DP&L must make a contribution to its pension plan of approximately – million per year to fund service costs and keep the funding rate flat. Fifth, while DP&L's remaining free cash flow will be available to service debt issued by DPL.[10]

This is exactly what is contemplated by the amended stipulation. Ratepayers are not obligated to pay any acquisition debts owed by DPL Inc. Rather DPL Inc. is required to meet its own obligations from its own resources. Nothing is included in rates paid by DP&L's customers and the merger order has not been violated.

It is claimed that the amended stipulation is unfair to ratepayers because AES should be required to do more than the extensive commitments that are included. This claim reflects a misunderstanding of the situation.

As has been stated previously, DP&L cannot borrow any more money currently but, to finance smart grid, they will need to borrow money. The only way to address this situation is to improve DP&L's financial status. That is the purpose of the DMR. Improving DP&L's financial status will have the effect of benefitting DPL, Inc. as well. This is simply a fact, a corollary of the way that ratings agencies view debt. While Staff would certainly like it if AES would fix the financial problems at its subsidiaries, wishing

[10] DP&L Ex.2A at 30.

does not make it so. As discussed at length in the initial brief, AES has made significant commitments which will help the financial situation. None of these commitments would exist without the amended stipulation. The real alternatives here are first the extensive commitments (no dividends, tax obligations converted to equity investment) offered by AES through the stipulation. These will have the direct effect of improving DPL Inc.'s financial health and, thereby, indirectly improving the situation for DP&L. The other choice is bleak, no commitment at all from AES. In this scenario, DPL Inc. continues to weaken, taking, as it must, DP&L with it. The choice is binary. There is no third way.

D. Today's system reliability is not the issue.

OCC makes a telling argument. They reason that, because DP&L's system reliability is currently sufficient, the Commission should do nothing to address the current financial problem. This argument underscores the shortsightedness of the opponents' analysis. It is clear that, failing any action by the Commission, maintaining that acceptable level of performance will become more challenging, but that is really not the issue in this case. Maintaining the status quo[11] is not what this case is about. The goal here is to set the stage to move to a new, higher level of service, smart grid. Again the opponents are locked into the past. What was good enough for our grandparents is good enough for us they say, but it's not. The world has changed and the law recognizes that. The policies in R.C. 4928.02 are all forward looking. So is the amended stipulation.

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[11] Although doing even this would be unlikely if the amended stipulation is rejected.

E. The DMR is needed now.

The DMR is needed now so that DP&L will be in a position to access the funds when the PowerForward initiative is implemented. Part of the point of PowerForward is to move the state as a whole forward. If the DMR is rejected now, when it comes time to implement the initiative, DP&L will be in the difficulty it is currently.[12] This means that it will not be able to move forward. Improving its financial house, which takes time, will not start until some later time. This will not do. The state as a whole needs to move to the next level of distribution grid. DP&L needs to be in a position to move forward in synchrony with the rest of the state. The only means available currently to achieve this is the amended stipulation.

CONCLUSION

The amended stipulation meets the prongs of the three part test and is superior to a hypothetical MRO. It meets the standards for approval. This allows the Commission to approve it. The circumstances however are much more decisive. The amended stipulation offers the only way forward for the customers of DP&L. Failing approval of the amended stipulation, the customers of DP&L will be left behind. They will not gain the benefits of smart grid development. There simply is no alternative. The amended stipulation should be approved.

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12 Or, more likely, worse.

Respectfully submitted,

Michael DeWine
Ohio Attorney General

William L. Wright
Section Chief

/s/ Thomas W. McNamee

Thomas W. McNamee
Thomas G. Lindgren
Assistant Attorneys General
Public Utilities Section
30 East Broad Street, 16th Floor
Columbus, OH 43215-3414
614.466.4397 (telephone)
614.644.8764 (fax)
thomas.mcnamee@ohioattorneygeneral.gov
thomas.lindgren@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 **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 12th day of May, 2017.

/s/ Thomas W. McNamee

Thomas W. McNamee
Assistant Attorney General

Parties of Record:

michael.schuler@aes.com
cfaruki@ficlaw.com
djireland@ficlaw.com
jsharkey@ficlaw.com
mfleisher@elpc.org
jeffrey.mayes@monitoringanalytics.com
evelyn.robinson@pjm.com
schmidt@sppgrp.com
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com
jkylercohn@bkllawfirm.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
mjsettineri@vorys.com
smhoward@vorys.com
glpetrucci@vorys.com
ibatikov@vorys.com
bojko@carpenterlipps.com
ghiloni@carpenterlipps.com
cpirik@dickinsonwright.com
todonnell@dickinsonwright.com
mkeaney@calfee.com
anorris@dickinson-wright.com
mdortch@kravitzllc.com
trent@theoec.org
cmooney@ohiopartners.org
tony.mendoza@sierraclub.org
brigner@occ.state.oh.us
joliker@igsenergy.com
dwilliamson@spilmanlaw.com
jay.goyal@gmail.com
ejacobs@ablelaw.org
dparram@bricker.com
jdoll@djflawfirm.com
jamie.williams@occ.ohio.gov
kspencer@aando.com
rsahliattorney@columbus.rr.com
schmidt@sppgrp.com
dianne.kuhnell@duke-energy.com
felecia.burdett@puco.ohio.gov
talexander@calfee.com
charris@spilmanlaw.com

Attorney Examiners:

gregory.price@puco.ohio.gov
nicholas.walstra@puco.ohio.gov