

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)
Dayton Power and Light Company for) Case No. 16-0395-EL-SSO
Approval of its Electric Security Plan.)

In the Matter of the Application of The)
Dayton Power and Light Company for) Case No. 16-0396-EL-ATA
Approval of Revised Tariffs.)

In the Matter of the Application of The)
Dayton Power and Light Company for) Case No. 16-0397-EL-AAM
Approval of Certain Accounting Authority) Pursuant to Ohio Rev. Code §4905.13.)

**REPLY BRIEF
BY
THE EDMONT NEIGHBORHOOD COALITION
AND
OHIO PARTNERS FOR AFFORDABLE ENERGY**

The Edgemont Neighborhood Coalition (“Edgemont”) and Ohio Partners for Affordable Energy (“OPAE”) , advocates for low-income residential customers of The Dayton Power and Light Company (“DP&L”), hereby submit to the Public Utilities Commission of Ohio (“Commission”) this reply brief in the above-captioned proceedings to consider the proposed Electric Security Plan (“ESP”) of DP&L. Edgemont and OPAE are signatory parties to the Amended Stipulation and Recommendation (“Amended Stipulation”) filed March 14, 2017 in these cases. Joint Exhibit (“Ex.”) 1. The Office of the Ohio Consumers’ Counsel (“OCC”), Wal-Mart Stores East LP and Sam’s East, Inc. (“Wal-Mart”), and the Environmental Defense Fund (“EDF”) and Ohio Environmental Council (“OEC”) have submitted initial briefs opposing the Amended Stipulation.

OCC argues that the Amended Stipulation is not supported by a diversity of interests and is only supported by a “fraction” of the many parties that intervened. OCC Brief at 22. According to OCC, there are only ten supporting parties from the “approximately 30 parties”, which means that the “vast majority of parties” are not supporting the Amended Stipulation. *Id.*

In fact, only two customer groups, OCC and Wal-Mart, filed initial briefs opposing the Amended Stipulation. The environmental groups EDF and OEC do not support the Amended Stipulation but recommend that grid modernization, voltage optimization, access to customer energy usage data, and automated metering infrastructure move forward in earnest and not as business as usual, hardly the “always-low-prices” position of OCC and Wal-Mart. Murray Energy Corporation and Citizens to Protect DP&L Jobs do not support the Amended Stipulation but only because of its failure to include the Killen and Stuart plants in the stipulated sale process, the same position as the Utility Workers Union of America. The Sierra Club’s concern is also the Killen and Stuart plants, but Sierra Club argues that the Commission should not upset the multi-party settlement that involves a delicate balancing of competing interests. The Sierra Club argues that if the Commission wishes to foster settlement in its cases, it should not attempt to re-work a multi-party settlement. Sierra Club Brief at 2. In short, with the exception of its low-priced ally Wal-Mart, OCC is alone in its opposition to the Amended Stipulation.

OCC also argues that the “narrow support” for the Amended Stipulation (already disputed above) does not include “the bulk of DP&L’s customers.

456,000 of DP&L's 515,000 customers are residential customers" and that the Amended Stipulation "overwhelmingly burdens roughly 89% of DP&L's customers that the OCC represents." OCC Brief at 23. While there is broad-based support for the Amended Stipulation, OCC is claiming that OCC's signature on a stipulation is necessary to show a diversity of interest in the stipulation's support. This is not true. The Commission has found that a stipulation with signatory parties comprised only of the utility and the Staff of the Commission represents diverse interests. *Duke Energy Ohio*, Case No. 15-534-EL-RDR, Opinion and Order (October 26, 2016) at 31. The Staff, a signatory party to the Amended Stipulation here, has an interest in balancing the concerns of all of Ohio's ratepayers and ensuring reliable service and fair rates. *Id.* Therefore, the Staff's signature alone refutes OCC's argument that the Amended Stipulation lacks signatories with diverse interests, including the interests of the entire residential class.

OCC also argues that the non-utility parties that support the Amended Stipulation "appear to be more motivated by the handouts that they received rather than by support "for the Amended Stipulation. OCC Brief at 22. OCC argues that the Amended Stipulation is not the product of serious bargaining but the product of "handouts" from DP&L to parties in return for their support or non-opposition. *Id.* at 24. OCC argues that provisions in the Amended Stipulation are "clearly intended to purchase the signatures of individual parties in exchange for DP&L securing its own investor benefits." *Id.*

The Commission has addressed arguments regarding “favor trading” and declined to conclude that benefits received by signatory parties to a stipulation were the sole motivation of the party in support of the stipulation. *FirstEnergy Corp.*, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (October 12, 2016) at 104; citing *FirstEnergy Corp.*, Case No. 14-1297-EL-SSO, Opinion and Order at 44-45. The Commission should follow its precedent and reject OCC’s effort to malign the Amended Stipulation and the signatory and non-opposing parties on the basis of what OCC believes to be the motivations of the signatory and non-opposing parties with respect to the Amended Stipulation.

In addition, the Commission has approved similar benefit provisions in certain cases. *Ohio Power Company*, Case No. 05-376-EL-UNC, Order on Remand (February 11, 2015) at 11-12. The Commission has considered the circumstances of a case, including the hard work of the signatory parties in reaching a stipulation and the lengthy procedural history of a case. *Id.* The instant case involved much hard work for the signatory and non-opposing parties in reaching the Amended Stipulation. Numerous negotiating sessions were held and proceeded over a period of months. DP&L Ex. 3 at 5. Countless hours were devoted to the negotiating process and to the exchange of language and information associated with the terms of the Amended Stipulation. *Id.* Parties made extensive comments on DP&L’s proposals and DP&L made significant compromises, changes, and additions to its proposals to accommodate the requests of parties. *Id.* at 7. Therefore, the evidence of record shows that the instant case involved circumstances of hard work over a long period of time on

the part of the signatory and non-opposing parties. The Commission should find that the Amended Stipulation's provisions for benefits for the signatory and non-opposing parties are justified.

OCC believes that the Amended Stipulation does not benefit customers or the public interest because customers will be worse off if the Amended Stipulation is approved. OCC Brief at 24. But OCC's "worse off" argument depends on OCC prevailing on every issue OCC has raised, a highly unlikely outcome. OCC argues that DP&L's witness Schroder's calculation of a slight rate decrease for a residential customer using 1,000 kWh per month is "misleading" because the rate decrease is the result of the current Rate Stability Rider charge expiring and reduced market-based generation charges from a fully competitive Standard Service Offer ("SSO") auction. Id. at 24-25. OCC argues that the new riders agreed to in the Amended Stipulation account for an additional \$12 a month for a residential customer using 1,000 kWh per month. Id. at 25. If OCC prevails on every issue it has raised, there will be no new riders and only the reduced SSO rate and the expiration of the Rate Stability Rider charge.

Under the Amended Stipulation, a typical residential customer taking DP&L's SSO using 1,000 kWh per month would see a decrease off the current bill from \$112.41 to \$112.16, a \$0.25 decrease or 0.22% off the current bill. For that customer, the Distribution Modernization Rider ("DMR") is an increase of \$3.86; the bypassable Reconciliation Rider for Ohio Valley Electric Corporation ("OVEC") costs is an increase of \$1.85; the Regulatory Compliance Rider is an

increase of \$0.54; the Economic Development Rider is an increase of \$0.47; and the Energy Efficiency Rider a decrease of \$1.00. The SSO rate would decrease by \$5.97. DP&L Ex. 3, Ex. A at 1 of 36. The Rate Stability Rider is terminated.

Rejecting the Amended Stipulation, OCC envisions a \$5.97 monthly reduction to the SSO rate for an SSO residential customer using 1,000 kWh, the termination of the Rate Stability Rider, and no new riders. OCC's argument is its best-case scenario, but OCC's best-case scenario is not the likely outcome of this case, given all the parties and competing interests.

For example, the termination of DP&L's Rate Stability Rider is dependent on DP&L's pursuit of this new ESP, a pursuit that OCC cannot take for granted. If DP&L withdrew this ESP application, the Rate Stability Rider would still be in place. *DP&L*, Case Nos. 08-1094-EL-SSO, et al., Finding and Order, August 26, 2016.

In addition, the Commission has already approved a rider similar to DP&L's proposed DMR in the case of the FirstEnergy Corp. distribution utilities, Case No. 14-1297-EL-SSO. In its Fifth Entry on Rehearing (October 12, 2016), the Commission found that FirstEnergy's Rider DMR was necessary for the FirstEnergy utilities to access capital financing for grid modernization efforts and the Commission agreed with its Staff that credit support provided by Rider DMR will assist the FirstEnergy utilities in receiving more favorable terms when accessing the credit markets and that will enable the utilities to obtain funds to jumpstart grid modernization. Fifth Entry on Rehearing, Case No. 14-1297-EL-SSO (October 12, 2016) at 88-90; Finding and Order (December 21, 2016) at 5.

The Commission has also already approved the concept of a rider similar to DP&L's proposed Reconciliation Rider in Ohio Power Company's Case No. 14-1693-EL-RDR, et al., in its Opinion and Order dated February 25, 2015. The Commission has allowed for an OVEC-only rider, which the Commission affirmed in its Fifth Entry on Rehearing in Case No. 14-1693-EL-RDR on April 5, 2017. Therefore, OCC has no reasonable basis to believe that its best-case scenario with respect to the Rate Stability Rider, Rider DMR, and the Reconciliation Rider will be the outcome of this case.

OCC argues that low-income customers are "only a portion of residential consumers" who "receive only a pittance that does not begin to offset the harm" caused by the Amended Stipulation. OCC Brief at 23. OCC refers to the "serious economic hardships that are plaguing DP&L's service territory." Id. at 33. OCC notes that approximately 35.5% of the city of Dayton's residents are at the poverty level. Id. OCC argues that the value of the Amended Stipulation's commitments to low-income customers "pale in comparison to the hundreds of millions of dollars" that DP&L seeks to charge customers, including the very low-income customers it purports to want to help. Id. OCC argues that despite some funding for low-income programs, low-income customers will be worse off under the Amended Stipulation because they will be burdened with paying the riders and handouts. OCC Brief at 41.

Under the Amended Stipulation, DP&L will contribute \$765,000 per year in shareholder funds for the term of the DMR to support low-income residential customers through bill payment assistance and economic development

programs. The Amended Stipulation also provides an additional \$200,000 per year to fund programs that assist DP&L's low-income, elderly and disabled customers. DP&L Ex. 3 at 16.

Cherish Cronmiller of the Community Action Partnership of Dayton ("CAP") testified on behalf of Edgemont and OPAE in support of the Amended Stipulation. Edgemont-OPAE Ex. 1. The Amended Stipulation provides for annual assistance to support consumers at or below 200% of the federal poverty line or those at risk of losing electric service. The Amended Stipulation is consistent with Ohio Revised Code ("R.C.") Section 4928.02(L) in protecting at-risk populations. The assistance for low-income customers is consistent with the State's policy and benefits ratepayers and the public interest.

In most of the counties in the DP&L service territory, more than 30 percent of all households would be eligible for benefits from the funding provided in the Amended Stipulation. The need for assistance with electric service payments is staggering. The terms of the Amended Stipulation will provide substantial benefits to low-income customers. OPAE-Edgemont Ex. 1.

Under the Amended Stipulation, low-income customers will receive assistance to pay their bills. The shareholder funds will help low-income customers pay their bills and avoid disconnection or have service restored. OCC advocates for no bill reductions anywhere near sufficient to help a low-income customer experiencing financial distress pay a monthly bill. DP&L's agreement to provide shareholder funds for bill payment assistance for low-income residential customers benefits ratepayers and the public interest.

Finally, it is also unlikely that the Commission will find that a Market Rate Offer (“MRO”) would be more favorable in the aggregate than the Amended Stipulation’s ESP. The Amended Stipulation provides additional quantitative and qualitative benefits that could exceed \$9 million over the three-year term of the DMR and would further increase if the DMR term is extended. The \$9 million in additional incentives promote competition, reliability, economic development, and energy efficiency as well as provide support for at-risk populations in DP&L’s service territory. R.C. 4928.02. These incentives are entirely funded by shareholders and should be considered qualitative benefits when evaluating the ESP versus the MRO. Staff Ex. 2 at 5-6.

OCC pursues its best-case scenario and seeks no compromise agreement among the parties. But OCC’s position is not the likely outcome of this case. The Amended Stipulation represents a compromise of the interests of all the stipulating and non-opposing parties and their appraisal of the risks and outcome of litigation. The Amended Stipulation is not what any of its signatories would have advocated in a fully-litigated proceeding, but the stipulating and non-opposing parties benefited from a compromise of their positions through the Amended Stipulation.

In conclusion, the Commission should find that the Amended Stipulation meets its three-part test for the reasonableness of stipulations and should approve the Amended Stipulation in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply Brief of the Edgemont Neighborhood Coalition and Ohio Partners for Affordable Energy will be served electronically upon the persons listed below who are electronically subscribed this 15th day of May 2017.

/s/Colleen Mooney
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Summary: Reply Brief electronically filed by Colleen L Mooney on behalf of Edgemont Neighborhood Coalition and Ohio Partners for Affordable Energy