THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF DAYTON POWER AND LIGHT COMPANY FOR APPROVAL OF ITS ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION PROGRAM PORTFOLIO PLAN FOR 2018-2020.

CASE NO. 17-1398-EL-POR
CASE NO. 17-1399-EL-WVR

OPINION AND ORDER

Entered in the Journal on December 20, 2017

I. SUMMARY

{¶ 1} The Commission approves the Dayton Power and Light Company's Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2018 through 2020, as modified by the Stipulation filed in this case.

II. APPLICABLE LAW

{¶ 2} Dayton Power and Light Company (DP&L or the Company), is an electric distribution utility as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02 and, as such, is subject to the energy efficiency and peak demand reduction (EE/PDR) requirements under R.C. 4928.64 and 4928.66.

{¶ 3} Ohio Adm.Code Chapter 4901:1-39 provides rules for the Commission's review of each electric utility's EE/PDR program portfolio plan (Portfolio Plan) that consists of cost-effective programs to encourage innovation and market access for all customer classes and achieve the statutory benchmarks for peak-demand reduction, and meet or exceed the statutory benchmarks for energy efficiency.

{¶ 4} For the 2018 through 2020 plan period, DP&L is required to achieve annual energy savings of one percent of its baseline, pursuant to R.C. 4928.66(A)(1)(a), and to implement programs designed to reduce its peak demand by 1.75 percent annually under R.C. 4928.66(A)(1)(b).

III. PROCEDURAL HISTORY

{¶ 5} DP&L's current Portfolio Plan was approved on September 27, 2017 in Case No. 16-649-EL-POR to run through 2017, until a new plan was approved in this docket. *In re Dayton Power and Light Co.*, Case No. 16-649-EL-POR, et al., Opinion and Order (Sep. 27, 2017) and Stipulation (Dec. 13, 2016) at 15-16.

{¶ 6} On June 15, 2017, DP&L filed an application for approval of its 2018-2020 Portfolio Plan.

{¶ 7} On September 29, 2017, the attorney examiner granted the motions to intervene by the Ohio Partners for Affordable Energy (OPAE), the Ohio Consumers' Counsel (OCC), the Environmental Law & Policy Center (ELPC), the Kroger Co. (Kroger), the Ohio Hospital Association (OHA), the Industrial Energy Users-Ohio (IEU-Ohio), People Working Cooperatively (PWC), the Environmental Defense Fund with the Ohio Environmental Council (EDF/OEC), the Ohio Manufacturers' Association Energy Group (OMAEG), and Interstate Gas Supply, Inc. (IGS). Further, the examiner scheduled the hearing of this matter for November 8, 2017.

{¶ 8} On October 27, 2017, the Company filed a Stipulation and Recommendation that was joined by Staff, ELPC, Kroger, EDF/OEC, OMAEG, OHA, OPAE, and PWC, and is not opposed by IGS, IEU-Ohio, or OCC.

{¶ 9} On November 6, 2017, DP&L filed the testimony of Tyler A. Teuscher, in support of the Stipulation. Mr. Teuscher was the only witness to testify at the hearing of this matter on November 8, 2017, and the parties agreed to waive cross-examination and the filing of briefs at that time (Tr. 10-13).

IV. SUMMARY OF THE STIPULATION

{¶ 10} As noted above, the Commission's adoption of the Stipulation is not opposed by any party. The Stipulation, if adopted, would extend DP&L's approved plan period through 2020 and continue the $33 million annual cost cap that is based on four percent of the Company's total sales to ultimate customers in 2015 (4% Cap). The 4% Cap was approved in the Company's 2017 Portfolio Plan to limit the bill impacts on customers for the recovery of the Company's EE/PDR program costs and before-tax shared savings incentives. *In re Dayton Power and Light Co.*, Case No. 16-649-EL-POR, et al., Opinion and Order (Sep. 27, 2017) at 6-7. The Stipulation clarifies that the 4% Cap does not apply to DP&L's recovery of lost distribution revenues or decoupling costs, and that any PJM revenues from EE/PDR programs passed through the Company's EE/PDR Rider may be used for program spending by the Company, subject to the 4% Cap (Jt. Ex. 1 at 4-6).

{¶ 11} The Stipulation also provides that DP&L will address the cost allocation, term, and rate design of its decoupling rider in Case No. 15-1830-EL-AIR and that the costs included in such rider will be reset at the conclusion of that case. The Stipulation clarifies that DP&L will not be entitled to double collect the same revenue reductions through lost distribution revenues and decoupling charges simultaneously and that the amount of lost distribution revenues will be reset with approval and implementation in Case No. 15-1830-EL-AIR (Jt. Ex. 1 at 5-6).

{¶ 12} Under the Stipulation, DP&L will work within its Plan budget in order to achieve the program year energy efficiency savings and peak demand reductions within the 4% Cap. Further, the Company will not exceed any of the individual program budgets set forth in Exhibit 1 of the Stipulation, except that DP&L may exceed the respective budgets for the "Custom Rebate" and "Rapid Rebate" programs but will not jointly exceed their combined budgets and will notify the Signatory Parties and members of DP&L's collaborative if the Company projects exceeding the respective budgets for these programs (Jt. Ex. 1 at 6-7).

{¶ 13} Further, the Stipulation provides that DP&L will eliminate its Home Audit and Non-Programmatic Savings programs and will provide $1 million of the Residential

Low Income Affordability Program to OPAE to reach mutually agreeable targets (Jt. Ex. 1 at 7).

{¶ 14} Under the Stipulation, DP&L agrees to provide up to $175,000 of enhanced rebates to the OHA members from DP&L's Rapid Rebate (Prescriptive) and Custom Rebate Programs for any qualifying measures. OHA members may roll over up to $50,000 of unused enhanced rebate funds annually under the Portfolio Plan. DP&L also agrees to work with OHA to design an enhanced system for sending information between OHA and DP&L regarding rebates that have been paid, are in process, and are being planned for OHA members. OHA will report biannually to its collaborative on the use of the enhanced rebates and unused enhanced rebate funds (Jt. Ex. 1 at 7-8).

{¶ 15} The Stipulation also includes a $30,000 annual allocation to OMAEG from the non-residential program budget to assist in the development of more complete communication tools and plans to better market DP&L's EE/PDR programs to OMAEG members, assist in their participation, and host energy efficiency training for those members. OMAEG will collaborate with DP&L to ensure energy savings totaling at least 0.5 percent of the combined retail annual energy sales average over OMAEG's members' previous three-year baseline. OMAEG will report to the collaborative biannually during the Portfolio Plan. (Jt. Ex. 1 at 8).

{¶ 16} Under the Stipulation, DP&L and Kroger agree to an Overhead LED Lighting Program for the installation of interior, overhead LED lighting at Kroger stores in DP&L's service territory, with funding and incentives to be determined with Kroger and included in the approved budget for non-residential programs. None of the costs from this program will be allocated to residential customers (Jt. Ex. 1 at 8).

{¶ 17} Under the Stipulation, mercantile customers who receive an exemption from DP&L's Energy Efficiency Rider (EER) will maintain the rights to the energy efficiency capacity for the purposes of bidding into PJM auctions, but these customers may voluntarily commit such rights to DP&L. The demand response capabilities of mercantile customers will count towards the Company's compliance with its PDR benchmarks under R.C. 4928.66, and, in the event that mercantile exemptions negatively impact the actual capacity DP&L can use to meet its PJM auction commitments, DP&L may purchase replacement capacity to cover any shortfalls it experiences (Jt. Ex. 1 at 8-9).

{¶ 18} DP&L agrees to provide $100,000 annually from its Residential Income Eligible Efficiency program to PWC, to deliver customer funded weatherization and energy efficiency services to low income customers. Both PWC and DP&L will establish performance targets, subject to cancellation for cause or denial of funding (Jt. Ex. 1 at 9).

{¶ 19} The Stipulation also provides that DP&L's EER rate design for non-residential tariff classes will be 50 percent towards non-residential tariff classes based on the most recent year of distribution revenue while the other half will be allocated to non-residential tariff classes given their most recent 12 months of billed kWh sales. The resulting rider cost per tariff class will be divided by a year of forecasted sales to provide a dollar/kWh amount for the non-residential EER (Jt. Ex. 1 at 9-10).

{¶ 20} Under the Stipulation, DP&L will reserve $250,000 for the Company's Combined Heat and Power (CHP) and Waste Energy Recovery (WER) programs from the Custom Rebate Program budget for customer incentive payments. However, if no customers have installed a CHP/WER system by October 15 of a given year, the funds may be released for other programming (Jt. Ex. 1 at 10).

{¶ 21} The Stipulation also includes provisions with respect to the vetting of proposed pilot programs, with DP&L's Energy Efficiency Collaborative, and provides a 90-day automatic approval process for unopposed program applications (Jt. Ex. 1 at 10-11).

{¶ 22} With respect to cost recovery, the Stipulation provides that DP&L's EER will continue essentially unchanged from that approved in Case No. 16-649-EL-POR with carrying costs equal to DP&L's most recently approved cost-of-debt on any over-recovered or under-recovered balances. However, the Stipulation also includes a shared savings mechanism that provides an after-tax net benefit of 87 percent to DP&L's customers and 13 percent to shareholders, using the Utility Cost Test. The amount of shared savings incentives recovered by DP&L may range from five to 13 percent depending on DP&L's achievement beyond it statutory benchmarks, but, in any event, the Company's recovery of shared savings is capped at $7 million after tax. The Stipulation also notes that certain programs are not eligible for shared savings, including those where savings are achieved through customer actions without the assistance of a utility-sponsored program. The Stipulation expressly provides that DP&L can only count its savings once during the term of the Portfolio Plan but is allowed to bank any over-compliance for use in a subsequent year. If DP&L does use banked savings to achieve its statutory benchmarks, the Company will not be eligible to recover shared savings for that year. Further, shared savings will be allocated to residential and nonresidential classes based on the net benefits resulting from each class's programs (Jt. Ex. 1 at 11-13).

{¶ 23} With respect to the bidding of EE/PDR resources in the PJM capacity auctions, the Stipulation continues the Company's practice of passing through 80 percent of PJM revenues from Plan programs through the EE/PDR Rider to the customer's benefit with DP&L retaining 20 percent of such revenues. Further, this provision also addresses the manner in which the Company bids EE/PDR resources for unapproved plan years, given that the PJM base residual auction is conducted three years in advance of the delivery year. (Jt. Ex. 1 at 13-15).

V. COMMISSION CONCLUSION

{¶ 24} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight, particularly where the stipulation is unopposed by any party and resolves all issues in the proceeding. *Consumers' Counsel v. Pub. Util.*

Comm., 64 Ohio St.3d 123, 125, 1992-Ohio-122, 592 N.E.2d 1370, citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978).

{¶ 25} The Commission has established a three-prong test in considering whether a stipulation is reasonable and should be adopted:

a. Is the settlement a product of serious bargaining among capable, knowledgeable parties?

b. Does the settlement, as a package, benefit ratepayers and the public interest?

c. Does the settlement package violate any important regulatory principle or practice?

{¶ 26} The Supreme Court of Ohio has endorsed the Commission's use of these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 1994-Ohio-435, 629 N.E.2d 423, citing *Consumers' Counsel* at 126. The Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. In determining the reasonableness of a stipulation, the Commission should consider the agreement as a package. *In re Ohio Edison Co., et al.*, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (Oct. 12, 2016) at 99-100.

{¶ 27} DP&L witness Teuscher testified that the Stipulation meets each of the criteria under the Commission's three-part test for determining the reasonableness of the Stipulations, and he sponsored DP&L's exhibits regarding rate calculations and estimated bill impacts (Co. Ex. 1 at 5-8).

A. Is the settlement a product of serious bargaining among capable, knowledgeable parties?

{¶ 28} As noted by Mr. Teuscher, the Stipulation represents the culmination of a long and detailed settlement process with a diverse group of capable, knowledgeable parties, signing the agreement or not opposing its adoption (Co. Ex. 1 at 6). Upon review of the record, the Commission finds that the first prong of the three-part test for the reasonableness of a stipulation has been met.

B. Does the settlement, as a package, benefit ratepayers and the public interest?

{¶ 29} The testimony of Mr. Teuscher identifies a number of clarifications and modifications made by the Stipulation that, as a package, provide for DP&L to offer a suite of programs from 2018 through 2020, that will allow DP&L to meet its statutory EE/PDR benchmarks and provide numerous benefits to customers. The DP&L witness testified that the Stipulation represents a fair and reasonable resolution to the issues raised in DP&L's 2018-2020 Portfolio Plan, which was filed pursuant to the settlement approved in Case No. 16-649-EL-POR on September 27, 2017 (Co. Ex. 1 at 2-3).

{¶ 30} As noted by Mr. Teuscher, the Stipulation continues the $33 million annual 4% Cap on the recovery of EE/PDR program costs and shared savings that was approved in the Company's 2017 Portfolio Plan. *In re Dayton Power and Light Co.*, Case No. 16-649-EL-POR, et al., Opinion and Order (Sep. 27, 2017) and Stipulation (Dec. 13, 2016) at 15-16. In addition, the Stipulation continues the $7 million after-tax annual cap on the Company's shared savings and modifies several aspects of the Company's eligibility for, and the calculation of shared savings, including an agreement on the avoided generation costs to be used for the purpose of calculating net benefits and shared savings. In addition, as noted above, the Stipulation contains numerous provisions that will benefit specific EE/PDR programs and customer groups such as increased Combined Heat and Power Program incentives, Company commitments regarding smart thermostats and customer-funded weatherization, and programs for medical and manufacturing customers, as well as pilot programs for mercantile customers, non-residential customer energy audits, and LED lighting with Kroger (Jt. Ex. 1 at 5-13).

{¶ 31} Accordingly, based upon the evidence of record, we find that the Stipulation, as a package, will benefit ratepayers and the public interest.

C. *Does the settlement package violate any important regulatory principle or practice?*

{¶ 32} No party has raised any claim that the Stipulation violates any important regulatory principles. Further, Company witness Teuscher testified that the Company's application filed on June 15, 2017 complies in all material respects with the requirements of Ohio Adm.Code 4901:1-39-04, and that the Stipulation recommends approval of DP&L's 2018-2020 Portfolio Plan, as initially filed, with the exception of two programs. He asserted that the 2018-2020 Portfolio Plan includes a wide range of cost-effective EE/PDR programs for all customer classes that are designed to achieve the statutory benchmarks for peak demand reduction, and meet or exceed the statutory benchmarks for energy efficiency, while encouraging innovation and market access. Therefore, he concludes that the Stipulation does not violate any important regulatory principle or practice (Co. Ex. 1 at 12).

{¶ 33} Based upon the evidence of record, we find that the Stipulation does not violate any important regulatory principle or practice. Accordingly, we find that the Stipulation passes the three-part test and should be adopted.

VI. ORDER

{¶ 34} It is, therefore,

{¶ 35} ORDERED, That the Stipulation filed on October 27, 2017 be approved. It is, further,

{¶ 36} ORDERED, That the Company's EE/PDR Program Portfolio Plan for 2018 through 2020 be approved as modified by the Stipulation. It is, further,

{¶ 37} ORDERED, That the Company take all other actions consistent with the Stipulation. It is, further,

{¶ 38} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

M. Beth Trombold

Thomas W. Johnson

Lawrence K. Friedeman

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Barcy F. McNeal
Secretary