BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for an Increase in Electric Distribution Rates.	:	Case No. 15-1830-EL-AIR
In the Matter of the Application of The Dayton Power and Light Company for Approval to Change Accounting Methods.	:	Case No. 15-1831-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for Tariff Approval.	:	Case No. 15-1832-EL-ATA

THE DAYTON POWER AND LIGHT COMPANY'S POST-HEARING BRIEF

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I. INTRODUCTION AND SUMMARY

Every customer representative who intervened in this case signed the Stipulation and Recommendation as either Signatory or Non-Opposing Parties. The only parties to oppose the Stipulation are competitive retail electric suppliers ("marketers"). The purpose of this case is to establish distribution rates for The Dayton Power and Light Company, and given that DP&L's customers agreed to the rates established in the Stipulation, the Commission should disregard the marketers' arguments.

Even if the Commission were to consider the marketers' arguments, those arguments are very narrow in scope and have no merit. The marketers have submitted no evidence to dispute that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. Nor have the marketers submitted evidence to dispute that the Stipulation benefits customers and the public interest.

The arguments that the marketers make regarding whether the Stipulation violates any important regulatory principle are self-serving, narrow and should be rejected. For example, the marketers argue that some of the administrative costs included in DP&L's distribution rates were incurred to support the Standard Service Offer, and those costs should be allocated to SSO customers through a bypassable rider. The Commission should reject that argument for the following reasons. First, as the marketers' own witness conceded, providing an SSO is a distribution company function and shopping customers benefit from an SSO. It is thus reasonable to recover those costs through distribution rates. Second, if administrative costs that DP&L incurs to support the SSO are to be allocated to SSO customers, then administrative costs that DP&L incurs to support shopping should be allocated to shopping customers. The marketers have made no showing as to the amount of the latter type of costs; instead, the marketers conducted an inaccurate, one-sided evaluation of such costs. Third, the testimony of the witness supporting the cost allocation was badly flawed, and is unreliable. Fourth, no customer or customer representative has complained about this issue. The current cost allocation is in the best interest of customers, and the marketers' attempt to change the allocation is just a self-serving attempt by them to raise the SSO rate so that customers will shop.

The marketers also assert that the way collateral is calculated according to DP&L's tariff should be changed, and that DP&L's Commission-approved fees for access to customer data should be eliminated. The Commission should reject those arguments for the following reasons. First, this is a distribution rate case, and nothing in Chapter 4909 or the Commission's rules requires those issues to be litigated in this case. Second, the Amended Stipulation and Recommendation in DP&L's most recent ESP case -- which the marketers signed -- establishes the collateral requirements and fees for customer data that the marketers agreed to, but now challenge. The ESP Stipulation expressly barred parties from challenging in this case items that they agreed to in the ESP case. Third, in any event, the marketer witnesses on those issues did not provide any calculations supporting their contentions.

In short, representatives of all of DP&L's customers have signed the Stipulation. The Commission should disregard the assertions of the marketers, as those arguments are aimed only at providing benefits to the marketers and would undermine a Stipulation that is in the best interest of DP&L's customers.

II. THE STIPULATION SATISFIES THE COMMISSION'S THREE-PART TEST

Although not binding on the Commission, the terms of a stipulation are "'accorded substantial weight'" by the Commission. Office of Consumers' Counsel v. Pub. Util. Comm., 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992) (per curiam) (quoting City of Akron v. Pub. Util. Comm., 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978) (per curiam)). 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?"

Feb. 23, 2017 Order on Global Settlement Stipulation, ¶ 101 (Case No. 09-872-EL-FAC).

The Supreme Court of Ohio has endorsed the Commission's use of those three criteria to evaluate a stipulation and stated that the Commission may place substantial weight on the terms of a stipulation. Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm., 68 Ohio St.3d 559, 629 N.E.2d 423 (1994) (per curiam).

III. THE STIPULATION IS THE PRODUCT OF SERIOUS BARGAINING AMONG CAPABLE, KNOWLEDGEABLE PARTIES

The uncontested evidence establishes that the Stipulation was the product of serious bargaining among capable, knowledgeable parties. Lipthratt Test., pp. 3-4 (Staff Ex. 6); Schroder Test., pp. 5-6 (DP&L Ex. 1); Willis Test., pp. 4-5 (OCC Ex. 1). Specifically, all of the parties to the case were invited to attend negotiation sessions on May 3 and 14, and June 4, 6, 8, and 13, 2018. Schroder Test., p. 5. Term sheets or drafts of the Stipulation were circulated at or before each session. Id. at 5-6. DP&L made extensive concessions in those negotiations. Id. at 13-14.

Further, the Stipulation was signed by a diverse group of parties who represent the interests of all of DP&L's customers. Schroder Test., p. 5. Specifically, the Stipulation was signed by the Commission's Staff, The Office of the Ohio Consumers' Counsel, two representatives of residential low-income customers, two of the largest supermarket chains in the country, a state-wide organization representing local hospitals in DP&L's service territory, four environmental groups, three state-wide organizations of large industrial customers, and the City of Dayton. Id. at 5; Trans., p. 63 (Schroder).

The marketers who oppose the Stipulation did not introduce any evidence on this factor at the hearing. Trans., pp. 117-18 (Hess); Ringenbach Test., pp. 1-3 (RESA/IGS Ex. 1) (not mentioning issue); Crist Test., pp. 1-10 (IGS Ex. 3) (not mentioning issue). The Commission should thus conclude that the Stipulation is the product of serious bargaining among capable, knowledgeable parties.

IV. AS A PACKAGE, THE STIPULATION BENEFITS CUSTOMERS AND THE PUBLIC INTEREST

The uncontested evidence also demonstrates that the Stipulation benefits customers and the public interest. Lipthratt Test., pp. 4-5; Schroder Test., pp. 7-14; Willis Test., pp. 5-8. For example, Staff witness Lipthratt testified:

> " Q. Does the Stipulation benefit ratepayers and the public interest?
>
> A. Yes. The Stipulation results in a just and reasonable resolution of the matters pending in these Commission dockets. Included in this reasonable resolution is a revenue requirement that benefits ratepayers, through a balanced

approach by recognizing some of the objections to the Staff Report of Investigation raised by intervening parties, rejecting some of the objections, and considering alternative approaches. Additionally, the following are some of the key benefits that are achieved from the Stipulation:

- Reduces the requested $65,771,725 revenue increase to a stipulated increase of $29,784,955.

- Reflects the lowered federal income tax rate of the Tax Cuts and Jobs Act of 2017 ('TCJA') and establishes a framework for returning excess accumulated deferred income taxes resulting from the TCJA and the full balance of the regulatory liability ordered by the Commission effective January 1, 2018 in Case No. 18-47-AU-COI to ratepayers.

- Establishes a rate of return of 7.27% that is lower than the range (7.33% - 7.82%) recommended as part of the Staff Report of Investigation.

- Establishes a $7.00 customer charge for DP&L's residential customers, which is lower than both the $13.73 customer charge recommended in DP&L's Application and the $7.88 customer charge recommended in the Staff Report of Investigation.

- Facilitates incremental distribution system investments through DP&L's Distribution Investment Rider (DIR), subject to annual caps which include a $2.0 million reduction for failure to meet certain reliability standards.

* * *

- Provides deferral authority, with no carrying costs, for incremental annual expenses for vegetation management performed by third-party vendors."

Lipthratt Test., pp. 4-5.

Similarly, DP&L witness Schroder testified that the Stipulation included the following benefits:

1. The Stipulation enables DP&L to continue to provide safe and reliability service by: (a) implementing just and reasonable rates that will allow DP&L to improve its financial condition; (b) populating a Distribution Investment Rider to allow DP&L to recover incremental distribution investment in identified FERC accounts; and (c) allowing DP&L to defer for future recovery certain vegetation management expenses incremental to a baseline; Schroder Test., pp. 7-8.

2. The Stipulation implements tax reductions from the Tax Cuts and Jobs Act, including returning to customers no less than $4.0 million per year for the first five years of the amortization period unless the combined amount is fully returned in the first five years. Id. at 9-10.

3. Implements a return on equity of 9.999%, which is lower than the mid-point of the range recommended in the Staff Report. Id. at 11.

All of this results in the average residential customer experiencing a modest increase of less than 2.5%. Id. at 12. Even after the rate increase, DP&L's customers will continue to pay the lowest rates in the state. Id.

The marketers who oppose the Stipulation did not introduce any evidence on this factor at the hearing. Trans., pp. 117-18 (Hess); Ringenbach Test., pp. 1-3 (not mentioning issue); Crist Test., pp. 1-10 (not mentioning issue). The Commission should thus conclude that the Stipulation benefits customers and the public interest.

V. THE STIPULATION DOES NOT VIOLATE ANY IMPORTANT REGULATORY PRINCIPLE OR PRACTICE

The Stipulation does not violate any important regulatory principles and practices. Schroder Test., p. 14; Lipthratt Test., p. 7; Willis Test., p. 9. The Stipulation advances many of the goals set forth in R.C. 4928.02, including but not limited to ensuring the availability of safe and reliable electric service, protecting at-risk populations, and facilitating the state's effectiveness in the global economy. Schroder Test., pp. 14-15.

The marketers have raised three main arguments:

1. Certain administrative costs should be allocated to SSO customers only;

2. DP&L should be required to change the previously-approved G8 tariff with respect to charges for historical interval data;

3. DP&L should be required to change the previously-approved G8 tariff with respect to calculations for collection of collateral from CRES.

None of these recommendations, however, are appropriate for this case, supported by credible evidence, or establish that the Stipulation results in a violation of important regulatory principles or practices. In fact, the marketers' recommendations would violate important regulatory principles and practices.

A. THE COMMISSION SHOULD NOT SHIFT COSTS TO THE SSO

The Amended Stipulation and Recommendation from DP&L's Electric Security Plan Case ("ESP Stipulation") provided that in this case "there will be an evaluation of costs contained in distribution rates that may be necessary to provide standard service offer service." March 13, 2017 Amended Stipulation and Recommendation, p. 9 (Case No. 16-395-EL-SSO). The ESP Stipulation did not mandate that any costs actually be allocated to the SSO; instead, it provided only that there would be an "evaluation" of whether such an allocation should occur. Id.

An evaluation was done by DP&L as well as the PUCO Staff, with both concluding that no costs should be shifted to the SSO. Trans. pp. 209-11 (Parke); Smith Test., pp. 2-15. IGS/RESA witness Hess asserts, however, that DP&L incurs certain "administrative and processing" costs to provide the SSO, and that those costs should be allocated to SSO customers through an avoidable rider. Hess Test., p. 13. The Commission should reject Mr. Hess' recommendation for the following separate and independent reasons.

1. The Costs at Issue Are Distribution Company Costs and Should Be Included in Distribution Rates

Mr. Hess conceded at the hearing that SSO service is "a distribution company function." Trans., p. 153. Accord: id. at 75, 78-79 (Schroder); id. at 211 (Parke). Mr. Hess also conceded that shopping customers have the right to switch to SSO service, and that "[t]he availability of the SSO service does benefit the customers who have shopped." Id. at 154. Accord: id. at 241 (shopping customers benefit from SSO) (Parke).

The fact that SSO service is a distribution company service that benefits all customers (including shopping customers) demonstrates that all customers should pay those costs. Indeed, Mr. Hess opined that costs that DP&L incurs to support shopping should be allocated to all customers because SSO customers "could benefit from [those costs] at some point in time." Trans., p. 165. The same logic applies to costs that DP&L incurs to support the SSO -- those costs should be allocated to all customers because shopping customers "could benefit from [those costs] at some point in time."

2. If an Allocation Were to Be Made, Costs of Providing Service to Shopping Customers Should Be Allocated to Them

If the Commission concluded that costs DP&L incurs to support the SSO should be allocated to SSO customers, then the costs DP&L incurs to support shopping should be allocated to shopping customers. Smith Test., pp. 5-8, 13-14. For example, DP&L incurs the following costs to support shopping: interacting with competitive suppliers, calculating and collecting collateral, providing bill-ready and rate-ready billing, administering the TCRR-N optout pilot program, obtaining information technology, and answering calls at DP&L's call center regarding shopping issues. Smith Test., pp. 5-6; Trans., pp. 79-80 (Schroder); id. at 220 (Parke). Similarly, the right of shopping customers to return to SSO service creates "come-and-go risks" for the winning bidders at SSO auctions; the price that those winning bidders charge to SSO customers includes a premium to compensate those winning bidders for the risk that shopping customers might return to the SSO. Trans., pp. 154-55 (Hess).

Mr. Hess made no effort to calculate the costs that DP&L incurs to provide service to SSO customers. Hess Test., pp. 1-19 (never mentions issue). Staff witness Smith concluded that "the costs to administer the competitive retail market and the SSO are similar." Smith Test., p. 8. Accord: id. at 13 ("Although it is likely that the provision of SSO service utilizes shared administrative and operating expenses, it is also likely that the provision of non-SSO Choice services utilize similar if not greater amounts of administrative and operating expenses."); Trans., p. 297 (Smith).

The marketers request that costs be allocated to SSO customers should thus be rejected because they conducted a biased evaluation by failing to analyze the costs that DP&L incurs to support shopping customers.

3. Mr. Hess' Methodology Is Deeply Flawed

It is undisputed that DP&L does not track its costs at a level of granularity to allow it to determine the costs that it incurs to support either SSO or shopping. Trans., p. 209 (Parke); Hess Test., p. 7. Mr. Hess nevertheless attempts to calculate those amounts by using less-accurate allocation procedures. Hess Test., p. 7.

The Commission should reject Mr. Hess' calculations and recommendations because his testimony and supporting calculations are deeply flawed. The evidence at the hearing showed that those flaws include:

1. Mr. Hess "did not conduct a process review, time studies, or any other data-driven analysis to assign costs to SSO customers." Smith Test., p. 11.

2. Mr. Hess "arbitrarily identified accounts that might have an imbedded SSO operational or administrative cost. There was no investigation of the imbedded costs." Id. (emphasis added).

3. Mr. Hess also erred by "basing the allocation methodology on revenue." Id.

4. Mr. Hess based his calculations on figures in the Staff Report, and did not update his calculations to address significant changes that were made as a result of the Stipulation. Trans., pp. 140-45.

Mr. Hess also admitted a glaring lack of knowledge about the subject, rendering his testimony not credible. For example:

1. Mr. Hess was not aware of any instance in which SSO costs have been allocated in the manner in which he is proposing in this case. Trans., p. 152.

2. Mr. Hess did not know whether IGS had a right to refuse to do business with a customer. Id. at 123.

3. Mr. Hess did not know whether DP&L had a call center for SSO issues only. Id. at 131.

4. Mr. Hess did not know the amount of postage that DP&L incurred to communicate with SSO customers as compared to CRES customers. Id. at 133.

5. Mr. Hess did not know whether DP&L has accounting employees who work exclusively on SSO issues. Id.

6. Mr. Hess did not know whether there are DP&L employees whose job is limited to compliance with regulatory rule requirements for the SSO. Id. at 133-34.

7. Mr. Hess did not know who pays costs associated with auction managers for the SSO. Id. at 153.

8. Mr. Hess did not know whether customers call DP&L's call center regarding their right to switch to a CRES provider. Id. at 155.

9. Mr. Hess did not know whether customers call DP&L's call center to complain about CRES charges on their DP&L bill. Id.

In short, Mr. Hess' testimony is so badly flawed and unsupported that it lacks sufficient credibility and is unreliable.

4. No Customers Have Raised the Issue

All of the customer representatives who intervened in this case signed the Stipulation. Jt. Ex. 1, pp. 17-18. Mr. Hess is not aware of any shopping customers who have raised the issue in this case. Trans., p. 156.

The marketers' request that costs be allocated to the SSO is thus simply a self-serving attempt to inflate the costs of the SSO so that more customers will switch to their services and/or allow the marketers to charge higher prices and retain higher profits. Their proposal does not benefit customers and should be rejected.

B. THE COMMISSION SHOULD NOT ALTER DP&L'S GENERATION TARIFFS

DP&L requires CRES providers to post collateral to protect DP&L from risks that a CRES provider may default. Mr. Hess agrees that a collateral requirement is appropriate. Trans., pp. 147-48. However, IGS witness Crist asserts that the way that DP&L calculates the collateral requirement in DP&L's G8 Tariff should be altered. Crist Test., pp. 9-10.

DP&L also requires CRES providers to pay a fee to receive historic customer usage data. RESA/IGS witness Ringenbach recommends that that fee be reduced to zero. Ringenbach Test., p. 3.

The Commission should reject those recommendations for the following separate and independent reasons.

1. **This Is a Distribution Rate Case**

This is a distribution rate case, which is governed by the Ohio Revised Code and the Commission's rules. Chapter 4909 governs distribution rate cases, and at no point does it require a utility to support its collateral requirements, usage charges in the utility's application, or to modify its generation-related tariff sheets. The same is true of the Commission's Standard Filing Requirements.

IGS and RESA are trying to litigate issues in this case that simply do not belong.

2. **The Generation Tariffs Were Previously-Approved by This Commission**

DP&L filed proposed generation-related tariffs in its ESP case. October 11, 2016 Tariffs Proposed in the October 11, 2016 Amended Application (Case No. 16-0395-EL-SSO). Those tariffs established the method that DP&L would use to calculate collateral that CRES providers would be required to post. Id. at Original Sheet No. G8, pp. 23-24. Those tariffs also established the fees that DP&L would charge for historic usage data. Id. at Original Sheet No. G8, p. 29. The ESP Stipulation stated: "Except as modified by this Stipulation, DP&L's Application in these matters is approved." March 13, 2017 Amended Stipulation and Recommendation, p. 37 (Case No. 16-395-EL-SSO). Nothing in the ESP Stipulation modified the collateral requirements or usage fees in DP&L's application. This Commission approved that Stipulation with certain modifications, none of which modified theG8 tariffs; thus, the G8 tariffs were approved.

Further, the ESP Stipulation provided: "In order to provide certainty to customers, parties, and Applicant, the Signatory Parties and Non-Opposing Parties agree that in DP&L's pending Electric Rate Case, Nos. 15-1830-EL-AIR, 15-1831-EL-AAM, 15-1832-EL-ATA, <u>no party will seek to support any attempt to withdraw, curtail, or revise any provision of this settlement or to revise the provisions or benefits of this Stipulation</u>." <u>Id</u>. at 37-38 (emphasis added). RESA and IGS both signed that ESP Stipulation. <u>Id</u>. at 40. However, IGS and RESA are now advocating in this case for changes to tariffs that were approved in the ESP case in which they were Signatory Parties. Their arguments are barred by the ESP Stipulation.

3. The Commission Should Reject the Recommendations of IGS and RESA in Any Event

Even if the Commission were to consider the recommendations of IGS and RESA, the Commission should reject their recommendations for the following reasons.

1. <u>No Supporting Calculations</u>: Neither Mr. Crist nor Ms. Ringenbach included any cost calculations showing that their recommendations were reasonable. Mr. Crist did not attempt to calculate the risks to which DP&L would be exposed if IGS defaulted. Trans., p. 194. Nor does Ms. Ringenbach attempt to calculate the costs that DP&L incurs to supply historic data. RESA/IGS Ex. 1, pp. 1-3 (no calculations).

2. <u>Privately-Held Unrated Companies</u>: Mr. Crist asserts that DP&L's collateral requirements "disproportionately impact privately held, unrated companies." IGS

Ex. 3, p. 3. Accord: id. at 7-8. However, there is no provision in DP&L's tariff that treats privately-held companies differently than publicly-held companies. Crist Test., Ex. 2, pp. 23-24.

VI. CONCLUSION

Every customer group that intervened in this case signed the Stipulation. The Commission should reject the marketers' arguments because those arguments are not in the best interest of customers.

Respectfully submitted,

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