

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)
Dayton Power and Light Company to) Case No. 15-1830-EL-AIR
Increase Its Rates for Electric Distribution)

In the Matter of the Application of the)
Dayton Power and Light Company for) Case No. 15-1831-EL-AAM
Accounting Authority)

In the Matter of the Application of the)
Dayton Power and Light Company for) Case No. 15-1832-EL-ATA
Approval of Revised Tariffs)
)

INITIAL POST-HEARING BRIEF OF THE KROGER CO.

Angela Paul Whitfield (0068774)
Carpenter, Lipps & Leland LLP
280 N. High Street, Suite 1300
Columbus, Ohio 43215
Telephone: 614.365.4100
Fax: 614.365.9145
paul@carpenterlipps.com
(willing to accept service by email)

Counsel for The Kroger Co.

I. INTRODUCTION

The proposed settlement entered into between The Dayton Power & Light Company (DP&L), Staff of the Public Utilities Commission of Ohio (Commission) (Staff), The Kroger Co. (Kroger), and fifteen other intervening Signatory or Non-Opposing Parties satisfies the criteria established by the Commission for use in evaluating the reasonableness of a settlement.¹ Specifically, the settlement, memorialized by the filing of the Stipulation and Recommendation (Stipulation) on June 18, 2018 and the Supplemental Stipulation and Recommendation (Supplemental Stipulation) on July 12, 2018, is the product of serious bargaining among capable and knowledgeable parties; will create significant benefits for customers; and, as a package, is in the public interest and does not violate any regulatory principle or practice. As a whole, the settlement is just and reasonable, and, accordingly, should be approved by the Commission.

For the reasons discussed herein, Kroger respectfully requests that the Commission adopt and approve without modification the settlement reached between the parties, which consists of the Stipulation filed on June 18, 2018 and the Supplemental Stipulation filed on July 12, 2018.

II. PROCEDURAL BACKGROUND

This case has been before the Commission for nearly three years. On November 30, 2015, DP&L filed its Application to increase its electric distribution rates. Initially, DP&L sought to increase its revenue requirement by \$65.8 million per year. After DP&L filed its Application, several parties intervened and all parties had the opportunity to conduct -- and did,

¹ In addition to DP&L, Staff, and Kroger, the following parties have signed onto this settlement as either Signatory or Non-Opposing Parties: The Office of the Ohio Consumers' Counsel, Ohio Energy Group, Wal-Mart Stores East, LP and Sam's East, Inc., Ohio Hospital Association, Natural Resources Defense Council, Ohio Environmental Council and Environmental Defense Fund, Environmental Law & Policy Center, Edgemont Neighborhood Coalition, Ohio Partners for Affordable Energy, Industrial Energy Users-Ohio, Ohio Manufacturers' Association Energy Group, Buckeye Power, Inc., One Energy Enterprises, LLC, and the City of Dayton. See Stipulation (June 18, 2018) and Supplemental Stipulation (July 12, 2018).

in fact, conduct -- extensive discovery on the factual circumstances underlying DP&L's Application and the arguments being advanced by various parties.

On March 12, 2018, Staff issued its Staff Report on DP&L's Application. After the Staff Report was released, all parties had the opportunity to file objections to the Staff Report, which many parties did. At that point, the parties scheduled several settlement discussions in an attempt to resolve this case without an extensive litigation process. On June 18, 2018, this process resulted in a settlement between DP&L, Staff, and a number of intervening parties, including Kroger. Other parties did not sign the Stipulation, but agreed not to oppose it. Then, on July 12, 2018, DP&L and the City of Dayton filed the Supplemental Stipulation, resolving their differences in this matter.

Pursuant to an Attorney Examiner entry dated June 21, 2018, an evidentiary hearing commenced on July 23, 2018 and concluded July 24, 2018. After the filing of the Stipulation and the Supplemental Stipulation, the only parties who opposed the settlement at hearing were the Retail Energy Supply Association (RESA) and Interstate Gas Supply, Inc. (IGS). Kroger participated in the evidentiary hearing regarding the Stipulation and Supplemental Stipulation as an intervening party.

III. STANDARD OF REVIEW

Ohio Adm. Code 4901-1-30 permits parties to enter into stipulations for review by the Commission. In numerous cases, the Commission has adopted the following criteria to evaluate whether a stipulation is reasonable and warrants acceptance:

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?²

As explained in detail below, the settlement memorialized in the Stipulation and Supplemental Stipulation satisfies this controlling three-part test. Therefore, the Commission should approve and adopt the settlement reached between the parties.

IV. **LAW AND ARGUMENT**

A. **The Settlement is the Result of Serious Bargaining among Capable, Knowledgeable Parties.**

The parties to the Stipulation and Supplemental Stipulation represent a wide array of interests. Among those coalitions represented by parties to this settlement are residential customers, commercial customers, environmental groups, the largest city in DP&L's territory, and, of course, DP&L and Staff. Most of these parties are regular participants in proceedings before the Commission, and all were represented by legal counsel throughout the process, including during the negotiations that led to the settlement of this matter. In short, no one is contesting that the parties to the Stipulation and Supplemental Stipulation are capable and knowledgeable.

The settlement also was the product of extensive negotiations among the various parties to this case. In the two months leading up to the filing of the Stipulation, the parties held six separate negotiation sessions to formulate the terms of what eventually became the Stipulation.³ All parties that intervened in this case were invited to attend and participate in these

² See, e.g., *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order at 39 (March 31, 2016).

³ See Testimony of Sharon R. Schroder in Support of the Stipulation and Recommendation at 5 (June 26, 2018) (Schroder Testimony).

negotiations.⁴ Parties that could not participate in person for any given session were afforded the ability to participate via a telephone conference system.⁵ These negotiations were also substantively helpful, as the parties were able to ask questions of Staff and DP&L as well as respond to the latest term sheets and settlement proposals.⁶ Testimony from DP&L Witness Schroder further establishes that DP&L also met with individual parties to address concerns outside of the broader group negotiations.⁷ These extensive negotiations between knowledgeable, informed, and represented parties led to the compromise currently before the Commission, thus satisfying the first part of the Commission’s three-part test for evaluating stipulations.

B. As a Package, the Settlement Benefits Customers and the Public Interest.

As the Commission has affirmed, “the second part of the test specifically requires that [it] evaluate the settlement as a package.”⁸ In this regard, the Commission “has repeatedly found value in the parties’ resolution of pending matters through a settlement package, as an efficient and cost-effective means of bringing their issues before the Commission, while also, at times, avoiding the considerable time and expense associated with the litigation of a fully contested case.”⁹

Ms. Schroder testified in detail as to the benefits that this settlement provides to customers and to the public interest, including that the settlement will:

⁴ Id.

⁵ Id. at 6.

⁶ Id.

⁷ Id.

⁸ *In the Matter of the Application Seeking Approval of Ohio Power Company’s Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, Opinion and Order at 77 (March 31, 2016).

⁹ Id. at 77-78 (internal citations omitted).

- Enable DP&L to provide safe and reliable service while also maintaining its financial condition so it can meet its operational needs;
- Facilitate incremental distribution system investments;
- Improve reliability by authorizing a deferral for future recovery of certain annual vegetation management expenses;
- Begin implementation of mechanisms to return the benefits of the corporate federal income tax reduction that DP&L received to customers;
- Institute a new decoupling mechanism;
- Establish a rate of return that incorporates a return on equity below the mid-point of the range proposed in the Staff Report and a cost of debt lower than that which DP&L requested and Staff recommended; and
- Provide funding for the City of Dayton's low-income power program.¹⁰

These benefits, as well as others noted in Ms. Schroder's testimony, demonstrate that, as a package, the settlement benefits DP&L's customers and the public interest. As might be expected in the context of a settlement for a case this large, the settlement also reflects significant compromises by all parties. Ms. Schroder explains several different concessions made by DP&L in order to arrive at these agreements, including, but not limited to: a lower revenue requirement, customer charge, and Distribution Investment Rider cap, than initially requested.¹¹ Additionally, the parties agreed to implement mechanisms to pass the benefits of the Tax Cuts and Jobs Act of 2017 back to customers.¹²

Finally, the settlement, as a package, benefits the customers and the public interest because it represents an agreement by the vast majority of parties to this case to resolve the case by agreement, and, in doing so, avoid an extensive and costly litigation process that would delay the resolution of this matter to the detriment of all involved.

¹⁰ Schroder Testimony at 7-12.

¹¹ Id. at 13-14.

¹² Id.

In sum, the settlement memorialized in the Stipulation and Supplemental Stipulation, as a package, provides meaningful and valuable benefits to customers and benefits the public interest. Accordingly, the settlement satisfies the second part of the three-part test.

C. As a Package, the Settlement Does Not Violate any Important Regulatory Principle or Practice.

As set forth above, the third criterion of the Commission's legal inquiry regarding the reasonableness of a settlement relates to whether or not the settlement violates any important regulatory principle or practice.¹³ The record evidence is devoid of any citation to a specific law, regulatory principle or regulatory practice that the opposing parties claim this settlement violates.

As testified to by Ms. Schroder, the settlement is in accord with a number of regulatory principles and practices set forth under Ohio law.¹⁴ Ms. Schroder stated that these policies and practices include: (i) the policy favoring just and reasonable rates; (ii) the policy of supporting the availability of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced electric service; (iii) the policy of ensuring that an electric utility's transmission and distribution systems are available to customer generators or owners of distributive generation so that the customer-generator or owner can market and deliver the electricity it produces; (iv) the policy of protecting at-risk populations; and (v) the policy of facilitating Ohio's effectiveness in the global economy.¹⁵ Moreover, IGS Witness Hess admitted on cross-examination that his testimony did not address this part -- or any of the parts -- of the Commission's test for analyzing stipulations.¹⁶ Similarly, the testimony submitted by IGS Witness Crist and RESA Witness Ringenbach also

¹³ See, e.g., *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order at 39 (March 31, 2016).

¹⁴ Schroder Testimony at 14-15.

¹⁵ Id.

¹⁶ Hearing Transcript Vol. I at p. 118-119 (July 23, 2018).

fail to address directly this analysis.¹⁷ Accordingly, the settlement, as a package, satisfies the third criterion of the three-part test.

¹⁷ Direct Testimony of Devin Crist in Opposition to Stipulation and Recommendation (July 16, 2018); Direct Testimony of Teresa Ringenbach (July 16, 2018).

V. CONCLUSION

The Stipulation filed on June 18, 2018 and the Supplemental Stipulation filed on July 12, 2018 memorialize a settlement that, as a package, is just, reasonable, and in the public interest. The settlement satisfies all three criteria of the Commission's analysis for approving settlements as it is the product of serious bargaining among the parties; will create significant benefits for customers; and, as a package, is in the public interest and does not violate any regulatory principle or practice. Accordingly, for the foregoing reasons, Kroger respectfully requests that the Commission adopt and approve the settlement offered in this proceeding without modification.

Respectfully submitted,

/s/ Angela Paul Whitfield
Angela Paul Whitfield (0068774)
Carpenter, Lipps & Leland LLP
280 N. High Street, Suite 1300
Columbus, Ohio 43215
Telephone: 614.365.4100
Fax: 614.365.9145
paul@carpenterlipps.com
(willing to accept service by email)

Counsel for The Kroger Co.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served on August 17, 2018 by electronic mail upon the persons listed below.

/s/ Angela Paul Whitfield
Angela Paul Whitfield

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Summary: Brief Initial Post-Hearing Brief Of The Kroger Co. electronically filed by Mrs. Angela Whitfield on behalf of The Kroger Co.