

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
THE DAYTON POWER AND LIGHT
COMPANY FOR ADMINISTRATION OF THE
SIGNIFICANTLY EXCESSIVE EARNINGS
TEST UNDER R.C. 4928.143(F) AND OHIO
ADM.CODE 4901:1-35-10 FOR 2016.

CASE No. 17-1213-EL-UNC

IN THE MATTER OF THE APPLICATION OF
THE DAYTON POWER AND LIGHT
COMPANY FOR ADMINISTRATION OF THE
SIGNIFICANTLY EXCESSIVE EARNINGS
TEST UNDER R.C. 4928.143(F) AND OHIO
ADM.CODE 4901:1-35-10 FOR 2017.

CASE No. 18-873-EL-UNC

OPINION AND ORDER

Entered in the Journal on July 31, 2019

I. SUMMARY

{¶ 1} The Commission finds that the stipulation between The Dayton Power and Light Company and Ohio Energy Group regarding the significantly excessive earnings test for 2016 and 2017 meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

II. PROCEDURAL HISTORY

{¶ 2} The Dayton Power and Light Company (DP&L or Company) is an electric distribution utility as defined in R.C. 4928.01(A)(6), and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} Pursuant to R.C. 4928.141, electric utilities are required to provide consumers with a standard service offer, consisting of either a market-rate offer or an electric security plan (ESP). Further, R.C. 4928.143(F) requires the Commission to evaluate the earnings of each electric utility's approved ESP to determine whether the plan produces significantly excessive earnings for the electric utility. The Commission

issued a Finding and Order in *In re Significantly Excessive Earnings Test*, Case No. 09-786-EL-UNC (*SEET Test Case*), Finding and Order (June 30, 2010), which established the policy and significantly excessive earnings test (SEET) filing directives for the electric utilities.

{¶ 4} On May 15, 2017, DP&L filed an application for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2016.

{¶ 5} On May 15, 2018, DP&L filed an application for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2017.

{¶ 6} On June 5, 2018, the Ohio Energy Group (OEG) filed a motion to intervene in the matter regarding DP&L's 2017 SEET application.

{¶ 7} On October 9, 2018, Staff filed the testimony of Joseph Buckley in support of DP&L's applications.

{¶ 8} By Entry issued September 9, 2018, the attorney examiner consolidated the cases for purposes of hearing and scheduled the hearing to take place on October 23, 2018. A stipulation and recommendation (Stipulation) between DP&L and OEG regarding both the 2016 and 2017 proceedings was filed on October 22, 2018. The Company also filed the supporting testimony of Nathan Parke on October 22, 2018.

{¶ 9} At the October 23, 2018 hearing, the Stipulation was introduced and admitted into the record (Jt. Ex. 1). The attorney examiner also granted OEG's motion to intervene in the proceeding regarding DP&L's 2017 SEET application at the hearing.

III. APPLICATIONS

{¶ 10} In the application regarding the 2016 calendar year, DP&L requests that the Commission find that DP&L's earnings were not significantly excessive with respect to the annual period ending December 31, 2016 (DP&L Ex. 1 at 1). DP&L witness

Craig Forestal stated that the adjusted return on equity for DP&L during 2016 was 9.4 percent, which is well below DP&L's approved SEET threshold of 12 percent (DP&L Ex. 1 at 6).

{¶ 11} In the application regarding the 2017 calendar year, DP&L requests that the Commission find that DP&L's earnings were not significantly excessive with respect to the annual period ending December 31, 2017 (DP&L Ex. 3 at 1). Mr. Forestal stated that the adjusted return on equity for DP&L during 2017 was 4.5 percent, which is well below DP&L's approved SEET threshold of 12 percent (DP&L Ex. 3 at 10).

IV. STIPULATION OF THE PARTIES

{¶ 12} The Stipulation signed by DP&L and OEG filed on October 22, 2018, purports to resolve all outstanding issues in these proceedings. The Stipulation states that DP&L has calculated its earned return on equity for the year ending on December 31, 2016, to be 9.4 percent. The Stipulation also states that DP&L has calculated its earned return on equity for the year ending on December 31, 2017, to be 4.5 percent. OEG reviewed the information provided by DP&L and determined that DP&L did not incur significantly excessive earnings with respect to the Company's ESP in 2016 or 2017. On that basis, the signatory parties recommend the Commission determine that significantly excessive earnings did not occur in 2016 or 2017. (Jt. Ex. 1 at 2.) Staff noted at the hearing that although Staff is not a signatory party to the Stipulation, Staff does not oppose the Stipulation itself or the outcome of the case (Tr. at 11-12).

V. DISCUSSION

{¶ 13} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *See Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the

stipulation is unopposed by any party and resolves all issues in the proceeding in which it is offered.

{¶ 14} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re W. Res. Tel. Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. 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?

{¶ 15} The Supreme Court of Ohio has endorsed the Commission's analysis using 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, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). Additionally, the Court stated that the Commission may place

substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

{¶ 16} Nathan Parke, Senior Manager of Regulatory Operations for DP&L, testified in support of the agreement in this case. Mr. Parke testified that the Stipulation represents a fair and reasonable resolution to the issues raised in DP&L's application, and that the Stipulation is a product of serious bargaining among capable, knowledgeable parties. (DP&L Ex. 5 at 3-4). Upon review, we find that the first prong of the test is met.

{¶ 17} With regard to the second prong, Mr. Parke stated that the Stipulation benefits DP&L customers and the public interest by avoiding an unnecessary prolonged hearing (DP&L Ex. 5 at 4). The Commission agrees and finds the Stipulation also satisfies the second prong of the test.

{¶ 18} Regarding the third and final prong, Mr. Parke testified that the Stipulation complies with all relevant and important regulatory practices and principles (DP&L Ex. 5 at 4). The Commission finds no evidence that the Stipulation violates any important regulatory principle or practice. Accordingly, the Stipulation meets the third criterion.

{¶ 19} As discussed above, it was noted at the hearing that Staff was not a signatory party to the Stipulation but Staff does not oppose the Stipulation itself or the resolution of the case. Moreover, the testimony of Joseph Buckley, a Utility Specialist 3 for the Public Utilities Commission, was filed on October 9, 2018, and was admitted to the record with no objection at the hearing. (Tr. at 11-13.) Mr. Buckley testified that, upon review of DP&L's calculations, Staff does not believe DP&L exceeded the SEET threshold in 2016 or 2017 (Staff Ex. 1 at 3). At the hearing, Staff noted that the conclusion of Mr. Buckley's testimony is consistent with the outcome recommended in the Stipulation. Staff further clarified for the record that its absence as a signatory party should not be taken as opposition to the Stipulation. (Tr. at 11-12.)

{¶ 20} The Commission finds that the Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 21} DP&L is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 22} R.C. 4928.143(F) requires the Commission to evaluate the earnings of each electric utility's approved ESP to determine whether the plan produces significantly excessive earnings for the electric utility.

{¶ 23} On May 15, 2017, DP&L filed an application for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2016.

{¶ 24} On May 15, 2018, DP&L filed an application for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2017.

{¶ 25} The evidentiary hearing was held in this matter on October 23, 2018. At the hearing, the Stipulation was submitted, intending to resolve all issues in this case. No party opposed the Stipulation.

{¶ 26} The Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

VII. ORDER

{¶ 27} It is, therefore,

{¶ 28} ORDERED, That the Stipulation filed in this proceeding be approved and adopted. It is, further,

{¶ 29} ORDERED, That the Company takes all necessary steps to carry out the terms of the Stipulation and this Opinion and Order. It is, further,

{¶ 30} ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

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

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

Lawrence K. Friedeman

Daniel R. Conway

GAP/TMS/sc

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Summary: Opinion & Order That the Commission finds that the stipulation between The Dayton Power and Light Company and Ohio Energy Group regarding the significantly excessive earnings test for 2016 and 2017 meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted. electronically filed by Docketing Staff on behalf of Docketing