

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
THE DAYTON POWER AND LIGHT
COMPANY'S IMPLEMENTATION OF
CERTAIN MATTERS RELATING TO THE TAX
CUTS AND JOBS ACT OF 2017.

CASE NO. 19-572-EL-UNC

CASE NO. 19-568-EL-ATA

IN THE MATTER OF THE APPLICATION OF
THE DAYTON POWER AND LIGHT
COMPANY TO ESTABLISH THE TAX
SAVINGS CREDIT RIDER.

FINDING AND ORDER

Entered in the Journal on September 26, 2019

I. SUMMARY

{¶ 1} The Commission adopts the joint stipulation and recommendation filed by the parties, resolving the issues related to Dayton Power and Light Company's implementation of the Tax Cuts and Jobs Act of 2017.

II. DISCUSSION

A. *Procedural Background*

{¶ 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 jurisdiction of this Commission.

{¶ 3} R.C. 4909.18 provides, in part, that a public utility may file an application to establish or change any rate, charge, regulation, or practice. If the Commission determines that the application is not for an increase in any rate and does not appear to be unjust or unreasonable, the Commission may approve the application without the need for a hearing.

{¶ 4} The Tax Cuts and Jobs Act of 2017 (TCJA), which was signed into law on December 22, 2017, provides for a number of changes in the federal tax system. Most notably, the federal corporate income tax rate was reduced from 35 percent to 21 percent, effective January 1, 2018.

{¶ 5} In Case No. 18-47-AU-COI, a Commission-ordered investigation (COI) was opened to study the impacts of the TCJA on the Commission's jurisdictional rate-regulated utilities and to determine the appropriate course of action to pass benefits on to ratepayers. *In re the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Case No. 18-47-AU-COI (*Tax COI Case*), Entry (Jan. 10, 2018), Second Entry on Rehearing (Apr. 25, 2018).

{¶ 6} On March 1, 2019, DP&L initiated Case No. 19-0572-EL-UNC (DP&L Tax Case) and Case No. 19-0568-EL-ATA (DP&L Tariff Case) by filing applications for the sole purpose of returning certain benefits of the TCJA to customers. The applications were in accordance with DP&L's commitments contained in the Stipulation and Recommendation that DP&L filed in its rate case on June 18, 2018. Case No. 15-1830-EL-AIR (Rate Case Stipulation).

{¶ 7} Motions to Intervene have been filed in this case by Ohio Consumers' Counsel (OCC) (March 25, 2019), Ohio Energy Group (OEG) (April 11, 2019), Ohio Manufacturers' Association Energy Group (OMAEG) (April 25, 2019), The Kroger Company (Kroger) (May 9, 2019), Industrial Energy Users-Ohio (IEU-Ohio) (June 11, 2019), and Ohio Cable Telecommunications Association (OCTA) (July 17, 2019). The Commission grants these intervenor motions, as they satisfy the criteria set forth in R.C. 4903.221(B).

{¶ 8} On September 12, 2019, DP&L, Staff, OCC, Kroger, OEG, OCTA and OMAEG joined in filing a Joint Stipulation and Recommendation (Stipulation) in the DP&L Tax Case and DP&L Tariff Case. IEU-Ohio joined the pleading as a non-opposing party. The Stipulation filed pursuant to Ohio Adm.Code 4901-1-30, is intended to resolve the issues related to DP&L's implementation of the TCJA. If approved by the Commission, the Stipulation would establish a Tax Savings Credit Rider (TSCR) in order to implement the terms of the Stipulation. DP&L asserts that the TSCR would provide retail customers with a credit reflecting DP&L's reduced tax expense associated with the TCJA. According to the Stipulation, current revenues require adjustments to implement the TCJA with regard to

federal income tax (FIT) expenses and the gross revenue conversion factor. (Rate Case Stipulation) The tax considerations involve excess accumulated deferred income taxes (EDIT) resulting from the TCJA and the full balance of regulatory liability ordered by the Commission effective January 1, 2018 in Case No. 18-47-AU-COI (Regulatory Liability). Further, EDIT amounts are divided between distribution-related eligible protected excess EDIT (Protected EDIT) and distribution-related, eligible unprotected EDIT (Unprotected EDIT). DP&L proposes merging the Unprotected EDIT (adjusted to \$19.2 million) and Regulatory Liability (\$1.17 million), and returning those combined amounts to customers over an amortization period no greater than 10 years. As for Protected EDIT (adjusted to \$62.4 million), DP&L will amortize and begin returning these amounts in accordance with federal law using the average rate assumption method commencing the first billing cycle after the stipulation is approved. Further, DP&L will recognize a reduction to its Distribution Investment Rider (DIR) rate base and make pole attachment and conduit occupancy rate adjustments to reflect an allocated EDIT resulting from the TCJA.

{¶ 9} On September 17, 2019, DP&L filed the testimony of Jessica Kellie, DP&L Regulatory Operations Program Manager, in support of the Stipulation. Ms. Kellie testified in support of the Stipulation asserting that it is the product of serious negotiations among capable and knowledgeable parties, benefits customers and the public interest, and does not violate any important regulatory principle or practice. Ms. Kellie described DP&L's plan for ensuring that customers receive the benefit of the TCJA, which is consistent with the Stipulation.

B. Consideration of the Stipulation

{¶ 10} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *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 presented in the proceeding in which it is offered.

{¶ 11} 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 Western Reserve Telephone 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:

- (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?

{¶ 12} The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve cases 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, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Supreme Court of Ohio 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.

{¶ 13} As previously stated, a Stipulation signed by all of the parties was filed on September 12, 2019. The following is a summary of the Stipulation and is not intended to supersede or replace the Stipulation:

- (1) The applications filed in the DP&L Tariff Case and DP&L Tax Case should be approved to provide the benefits of the federal tax cuts to consumers.
- (2) DP&L is authorized to establish a Tax Savings Credit Rider (TSCR) as proposed in the applications.
- (3) The TSCR will be allocated to customer classes based on a percentage of base distribution revenues as set forth in Exhibit 5 of DP&L's recently approved Rate Case Stipulation and will be trued-up annually.
- (4) The Regulatory Liability created by Case No. 18-47-AU-COI, for the FIT savings for period of January 2018 through September 2018, is \$1.17 million. The Signatory Parties agree that the refund of the Regulatory Liability will also include carrying charges at DP&L's most recent cost of debt (4.8%) from January 1, 2018 through the date the amount is fully returned to customers. This collective amount will be credited back to customers through the TSCR over a period of twelve months, commencing with the first billing cycle of the next month after the approval of the Stipulation, and will include a gross revenue conversion factor of 1.2751 established in the Rate Case Stipulation resulting in a total refund of \$1.625 million for the Regulatory Liability as set forth in Exhibit A.

- (5) Consistent with the Rate Case Stipulation and approval order in Case No. 15-1830-EL-AIR, the Company will return the Unprotected EDIT commencing with the first billing cycle after the approval of the Stipulation. The Signatory Parties agree that the Unprotected EDIT balance as of December 31, 2017 is \$15.0 million. This amount will be credited back to customers through the TSCR and will include a gross revenue conversion factor of 1.2751 established in the Rate Case Stipulation, resulting in a total refund of \$19.2 million.
- (6) Consistent with the Rate Case Stipulation and approval Order in Case No. 15-1830-EL-AIR, the Unprotected EDIT will be returned to customers in an amount of no less than \$4.0 million per year for the first five years of the amortization period. Any remaining balance will be returned in the sixth year of the amortization period.
- (7) Consistent with the Rate Case Stipulation and approval Order in Case No. 15-1830-EL-AIR, the Company will begin returning the amortization of the Protected EDIT back to customers commencing with the first billing cycle of the next month after approval of the Stipulation. The Signatory Parties agree that the Protected EDIT balance as of December 31, 2017 is \$48.9 million. This amount will be credited back to customers through the TSCR and will include a gross revenue conversion factor of 1.2751 established in the Rate Case Stipulation, resulting in a total refund of \$62.4 million. The Protected EDIT will be amortized and returned to customers in accordance with federal law under the average rate assumption method.

- (8) The Company will recognize a reduction to the Distribution Investment Rider's (DIR) rate base. Specifically, the Company will revise its DIR calculations to include unamortized balances of DIR-related excess deferred income taxes as a reduction to the DIR rate base using an allocation factor. The allocation factor will be 88%, which is based upon the gross DIR plant from Exhibit 3 of the Rate Case Stipulation divided by total gross plant in service from Exhibit 2 of the Rate Case Stipulation. This revision will occur in the first quarterly DIR filing after approval of this Stipulation.
- (9) Regarding pole attachment rates, the signatory parties agree as follows:
 - (a) The Company agrees to include an adjustment in its pole attachment and conduit occupancy rate calculations beginning with the next rate adjustment filing to reflect an allocated portion of EDIT resulting from the TCJA, as follows:
 - (1) The amounts of Protected and Unprotected EDIT as set forth in paragraphs 5 and 7 shall be further adjusted to reflect any amortizations that occur up to and including December 31 of the cost year used to calculate the adjustment to pole attachment and conduit occupancy rates. The amortization method used for this further adjustment for Protected EDIT will be consistent with the method in paragraph 7 above. The accounting entry includes debits to

accounts 254 and 282 and credits to accounts 190, 282, and 411. The amortization method for this further adjustment for Unprotected EDIT will be consistent with the method set forth in paragraphs 5-6 above. The accounting entry includes debits to accounts 254, 282, and 283 and credits to accounts 190, 282, 283, and 411.

(2) The calculations used to compute the net cost of a bare pole or conduit will comply with Chapter O.A.C. 4901:1-3 and shall also include a reduction in the net pole (or conduit) investment of an allocated portion of the remaining unamortized amounts of the Protected and Unprotected EDIT with respect to Acct. 364 (poles) or Acct. 366 (conduit). The allocated portion shall be based on the ratio of Gross Pole Investment (Acct. 364 or for conduit, Acct. 366) divided by Gross Distribution Plant as shown on DP&L's FERC Form 1. The calculations used to compute the Administrative Carrying Charge and the Taxes Carrying Charge shall reflect a reduction in investment costs equal to the remaining unamortized balance of Protected and Unprotected EDIT. The calculations used to compute the Maintenance Carrying Charge for poles shall reflect a reduction in investment costs equal to the remaining unamortized balance of Protected and Unprotected EDIT associated with Accts. 364, 365, and 369; and, for conduit Acct. 366 (based on the ratio of Gross Investment in these accounts divided by Gross Distribution Plant as shown on DP&L's FERC Form 1).

- (3) The above adjustments to the pole attachment and conduit occupancy rates shall be applied with the same effective date as other rate changes to the pole attachment and conduit occupancy rates arising out of the same proceeding
- (b) The FIT savings resulting from the TCJA (reflected in the FERC Form 1 being used to perform the rate calculation) will be reflected when calculating the pole attachment and conduit occupancy rates.
- (c) DP&L agrees that, prior to filing an application to adjust its pole attachment rate (currently at \$8.05 per pole per year), it will bring its continuing property records (“CPR”) up to date so they accurately reflect the number of poles reflected in FERC Account 364 investments, as ordered by the Commission in Case No. 15- 971-EL-ATA (Finding and Order dated September 7, 2016, at paragraph 29). DP&L agrees to meet and communicate regularly with Staff and the OCTA regarding its aforementioned CPR updating.
- (d) The Company will serve the OCTA with a copy of its next application to adjust its pole attachment rate, and at that same time provide to the OCTA the following year-end data for the year prior to the next rate adjustment filing:
- (1) Amortization schedules for the refund of the Protected and Unprotected EDIT resulting from

the TCJA as of the year end prior to the year in which the next pole rate adjustment filing is made, and if not otherwise shown, the identification of all remaining unamortized amounts of Protected and Unprotected EDIT;

- (2) The filed FERC Form 1 for the year end prior to the year in which the next pole rate adjustment filing is made; and
- (3) A copy of the CPR for utility Account 364 as of the year end prior to the year in which the next pole rate adjustment filing is made, inclusive of all pole and appurtenance investment costs booked to account 364 and associated units of investment, and the CPR for the number and types (e.g. transmission vs. distribution) of poles. The CPR shall contain enough detail to show all subaccounts and other breakdowns available that would permit the calculation of the actual percentage of appurtenance investment booked to Account 364. The Company may include a summary sheet in addition.
- (4) The number and types (e.g. transmission vs. distribution) of poles from the Company's Geographic Information System (GIS) mapping system as of the year end prior to the year in which the next pole rate adjustment filing is

made; and to the extent the GIS data is relied upon for the formula rate, an explanation of the nature of the differences to the CPR provided in paragraph 10(d)(3).

- (5) The cost amounts (if any) and the FERC accounts to which those costs were booked, that are associated with the Company bringing its CPR up to data as ordered by the Commission in Case No. 15-971-EL-ATA (Finding and Order dated September 7, 2016, at paragraph 29) and 10 included in the next rate adjustment calculation.
 - (e) The Company will work with the OCTA in good faith to timely provide access to any additional information reasonably needed in its next Commission proceeding involving an application to adjust its pole attachment rate, including identification of the specific sources of the formula inputs, workpapers, and any company-specific records/data underlying the formula inputs.
 - (f) Nothing in this paragraph 9 modifies the amount of the EDIT agreed to in paragraphs 5 through 7.
- (10) The Signatory Parties agree that this Stipulation, in addition to the resolution already set forth in the Rate Case Stipulation fully resolve all issues relating to the enactment of the TCJA.

{¶ 14} Upon review, we find that the Stipulation submitted by the parties satisfies the three-part test used by the Commission in the consideration of stipulations. In the Stipulation, the parties note that their settlement agreement was openly negotiated by the participating stakeholders and that it is a product of lengthy and serious bargaining among capable, knowledgeable parties. The parties also state that, as a package, the Stipulation benefits customers and the public interest by, among other things, providing direct benefits to the residential customer class, including low-income customers. According to the parties, the Stipulation violates no regulatory principle or practice. (Stipulation at 1-2.)

{¶ 15} Accordingly, the Commission finds that the Stipulation is a reasonable resolution of the issues related to DP&L's implementation of the TCJA and its adoption will ensure that ratepayers receive the benefits of the lower federal corporate income tax rate. DP&L has appropriately agreed to refund Regulatory Liability, Unprotected EDIT and Protected Edit. The Stipulation is consistent with our intention that all tax impacts resulting from the TCJA be returned to customers, whether through the Tax COI Case or through a case-by-case determination for each affected utility. Tax COI Case, Second Entry on Rehearing (Apr. 25, 2018) at ¶ 15. The Stipulation should, therefore, be adopted in its entirety. We also find that the TSCR should be subject to a financial audit and reconciliation process. Finally, we find that no hearing is necessary in these proceedings.

III. ORDER

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That the Stipulation filed by the parties be adopted and approved. It is, further,

{¶ 18} ORDERED, That IEU-Ohio, Kroger, OMAEG, OEG, OCC, and OCTA be granted party status in both the DP&L Tax Case and the DP&L Tariff Case. It is, further,

{¶ 19} ORDERED, That the applications in the DP&L Tax Case and DP&L Tariff Case be approved. It is, further,

{¶ 20} ORDERED, That DP&L's proposed TSCR tariffs be approved. It is, further,

{¶ 21} ORDERED, That DP&L be authorized to file tariffs, in final form, consistent with this Finding and Order. DP&L shall file one copy in these case dockets and one copy in its TRF docket. It is, further,

{¶ 22} ORDERED, That the effective date of the new tariffs shall be a date not earlier than the date upon which the final tariff pages are filed with the Commission. It is, further,

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

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

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

GAP/hac

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Case No(s). 19-0572-EL-UNC, 19-0568-EL-ATA

Summary: Finding & Order that the Commission adopts the joint stipulation and recommendation filed by the parties, resolving the issues related to Dayton Power and Light Company's implementation of the Tax Cuts and Jobs Act of 2017. electronically filed by Docketing Staff on behalf of Docketing