

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The )  
Dayton Power and Light Company for )  
Approval of Its Plan to Modernize Its ) Case No. 18-1875-EL-GRD  
Distribution Grid. )

In the Matter of the Application of The )  
Dayton Power and Light Company for )  
Approval of a Limited Waiver of Ohio ) Case No. 18-1876-EL-WVR  
Adm. Code 4901:1-18-06(A)(2). )

In the Matter of the Application of The )  
Dayton Power and Light Company for ) Case No. 18-1877-EL-AAM  
Approval of Certain Accounting Methods. )

In the Matter of the Application of the )  
Dayton Power and Light Company for )  
Administration of the Significantly )  
Excessive Earnings Test Under R.C. ) Case No. 19-1121-EL-UNC  
4928.143(F) and Ohio Adm. Code 4901:1- )  
35-10 for 2018. )

In the Matter of the Application of the )  
Dayton Power and Light Company for )  
Administration of the Significantly ) Case No. 20-1041-EL-UNC  
Excessive Earnings Test Under R.C. )  
4928.143(F) and Ohio Adm. Code 4901:1- )  
35-10 for 2019. )

In The Matter of The Application of The )  
Dayton Power and Light Company For a )  
Finding That its Current Electric Security )  
Plan Passes the Significantly Excessive ) Case No. 20-680-EL-UNC  
Earnings Test and More Favorable in The )  
Aggregate Test In R.C. 4928.143(E). )

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**THE OHIO HOSPITAL ASSOCIATION’S REPLY POST HEARING BRIEF**

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## **I. INTRODUCTION**

Twenty parties signed and filed, including the Ohio Hospital Association (“OHA”), a Stipulation and Recommendation (the “Stipulation”) to resolve the several above-captioned cases pending before the Public Utilities Commission of Ohio (“PUCO” or “Commission”) involving the Dayton Power and Light Company (“DP&L” or “Company”). The Stipulation is overwhelmingly supported by the intervening parties, the Company, and even the PUCO Staff; however, the Office of the Ohio’s Consumer Council (“OCC”) opposes the Stipulation. OHA supports the Stipulation and believes the PUCO should agree with the Signatory parties and deny the oppositions of the OCC for reasons explained below.

## **II. LAW AND ARGUMENT**

Under Ohio Administrative Code (“O.A.C.”) 4901-1-30, parties to Commission proceedings may enter into stipulations to resolve contested issues. Although stipulations are not binding on the Commission, the terms of these agreements are given substantial weight by the Commission. In considering the reasonableness of stipulations, the Commission often relies on the following three-prong test:

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?<sup>1</sup>

The Stipulation in this case should be adopted by the Commission because it satisfies the three-prong test. Additionally, OHA supports the Stipulation because it provides benefits to the members of OHA, who have struggled economically due the COVID-19 pandemic.

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<sup>1</sup> See *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm’n*, 68 Ohio St.3d 559 (1994).

A. **The Commission should adopt the Stipulation because it meets the three prong criteria previously established by the Commission.**<sup>2</sup>

The Commission has routinely evaluated stipulation using the three prong test. The Stipulation must be a product of serious bargaining among knowledgeable parties, should benefit ratepayers and the public interest, and should not violate regulatory principles.

1. **The Stipulation is a product of serious bargaining among capable, knowledgeable parties.**

The Stipulation is a product of serious bargaining among the Company, staff and twenty other intervening parties. Even though, the OCC did not become a signatory party, the OCC participated and deliberated with the other intervening parties during settlement discussions. The settlement discussions were thorough and held over several months for the parties to have adequate time to reach a settlement. The Stipulation was not a way for the Company to “buy” a Stipulation as the OCC tries to allege in its initial post hearing brief.<sup>3</sup> Parties chose to intervene in the above captioned cases to represent their interest and ensure the result would be beneficial for themselves. OCC chose to intervene in the above-captioned cases for the exact same reason.

2. **The Stipulation as a whole benefits ratepayers and the public interest.**

The Stipulation as a package benefits ratepayers and the public interest. First, the Stipulation provides a reduction of the overall cost of the Company’s Smart Grid Plan from \$866.9 million to \$267.6 million to ratepayers. Ratepayers will also benefit from the new Customer Information System (“CIS”) that the Company must invest in pursuant to the Stipulation.<sup>4</sup> As part of CIS, ratepayers will be able to access their load data and better manage their usage. Additionally, the many other economic development provisions included in the Stipulation will support those in the

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<sup>2</sup> *Id.*

<sup>3</sup>See e.g. *In the Matter of the Application of the Dayton Power and Light Company for Approval of its Plan to Modernize its Distribution Grid*, Case No. 18-1875-EL-GRD, Ohio Consumers Counsel Initial Post Hearing Brief at p.2.

<sup>4</sup> Stipulation and Recommendation (Joint Ex. 1) at ¶ 10.

Company's service territory, without costing the ratepayer, because the provisions are being strictly funded by shareholder funds.<sup>5</sup> These economic development provisions will assist other ratepayer groups during the trying times of the pandemic.

3. The Stipulation does not violate any important regulatory principle or practice.

Finally, the Stipulation does not violate any important regulatory principle or practice. When the Commission reviews a settlement to determine if it violates a regulatory principle or practice, the Commission considers its own precedent, and favors stipulations that follow the precedent. Here, the Stipulation does not contain any provisions that run contrary to Commission precedent and runs in line with past Commission decisions.<sup>6</sup> The OCC claims that the Stipulation violates regulatory principles because it is supporting a “redistributive coalition” and then claims that “a much better regulatory practice would be for the PUCO to support and approve settlements that truly represent the broad interests of all customers, not narrow self-interest of signatory parties”.<sup>7</sup> As stated above, the Stipulation was formed by a large and diverse group of intervening parties. Just because the OCC did not sign on to the Stipulation does not make it a “group of narrow self-interested signatory parties”. The Stipulation's signatory parties represent many different ratepayer classes that care about many different issues in the above-captioned cases; therefore, OCC is wholly mistaken and wrong to state the Stipulation was formed with narrow minded signatory parties.

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<sup>5</sup> *Id.* at ¶ 15.

<sup>6</sup> See, e.g., *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19- 468-GA-ALT, Opinion and Order at ¶ 79 (Dec. 30, 2020).

<sup>7</sup> See e.g. *In the Matter of the Application of the Dayton Power and Light Company for Approval of its Plan to Modernize its Distribution Grid*, Case No. 18-1875-EL-GRD, Ohio Consumers Counsel Initial Post Hearing Brief at p. 78.

**B. The Commission should approve the Stipulation in its entirety because the programs created under the Stipulation benefit OHA member hospitals and the communities they serve.**

The Stipulation included all intervening parties, which allowed for a fair and justiciable settlement of the above-captioned cases. The various programs agreed to by the Company, the PUCO Staff, and other intervening parties are fair and provide benefits to those intervening parties. Additionally, the economic development programs are not funded by ratepayer funds, and instead are funded by shareholder funds.<sup>8</sup> The various programs included in the Stipulation that benefit OHA are:

1. Acceleration of VVO/CVR implementation installing the necessary hardware and software on approximately 30% (132) of DP&L's circuits; specifically targeting those circuits that serve hospitals.<sup>9</sup> VVO/CVR implementation is expected to achieve energy and demand reductions for customers, while also increasing system efficiency. This will provide a direct benefit to all the targeted OHA member hospitals.
2. DP&L agrees to continue an Alternate Feed Service waiver for all OHA members.<sup>10</sup> This provision will help ensure that OHA members continue to have access to Alternate Feed Service, which is critical for hospitals that need to provide continuous and reliable health care services even when hospitals lose electric service from their primary electric circuits.
3. Ohio Hospital Incentive available to seven hospitals that are members of OHA with MW demand of 2MW or greater.<sup>11</sup> This shareholder funded

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<sup>8</sup> Joint Ex. 1 at ¶15.

<sup>9</sup> *Id.* at ¶ 6.

<sup>10</sup> *Id.* at ¶ 14.

<sup>11</sup> *Id.* at ¶ 15.

economic development benefit will greatly assist these hospitals that serve communities in DP&L's territory. The Commission previously concluded that this type of economic development support helps to "facilitate the state's effectiveness in the global economy in accordance with R.C. 4928.02(N)."<sup>12</sup>

4. DP&L will direct a portion of the Customer Education expenditures toward educating hospitals about the potential benefits of SGP.<sup>13</sup> These funds will help hospitals unlock the potential benefits of SGP, such as greater access to energy usage information.

The Stipulation provides support to all of OHA members in DP&L's territory who are on the front lines fighting the pandemic. Hospitals have not been spared from the major economic impact of the pandemic. The economic development benefits for hospitals will help to alleviate these impacts the pandemic has caused on hospitals. Although OCC tries to characterize the economic development benefits as "cash payments", two things are undeniable: (1) DP&L shareholders are funding economic development provisions for hospitals, not ratepayers; and (2) these funds will go to support some of the largest hospitals in DP&L's territory that are providing healthcare services to everyone in DP&L's territory, including the residential customers OCC represents.

Further, increasing access to Alternate Feed Service will increase the reliability of electric service for hospitals. All customers within DP&L's territory benefit from hospitals having more reliable electric service, including the residential customers OCC represents. In addition, the provisions of the Stipulation that allow hospitals to better control or reduce their energy costs (i.e., prioritizing hospital circuits for VVO/CVR and energy education about the benefits of SGP)

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<sup>12</sup> *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 95 (Mar. 31, 2016).

<sup>13</sup> *Id.* at ¶ 14.

improve the financial strength of hospitals. And who benefits when DP&L hospitals are financially stronger? Everyone served by these hospitals, including the residential customers OCC represents.

There is a broad diversity of interest that the PUCO most consider before approving the Stipulation in this case. Also, there are a number of legal arguments that will be closely analyzed. However, from the perspective of the hospitals that serve the communities within DP&L's territory, the Stipulation is a win for all customers. It should be approved by the PUCO.

**C. CONCLUSION**

In conclusion, the Commission should approve the Stipulation formed with almost all of the intervening parties in the above-captioned cases. The Stipulation is a product of the diligence and thoroughness of the group of intervening parties. Finally, the Stipulation passes the Commission's three- prong test.

Respectfully submitted on behalf of  
THE OHIO HOSPITAL ASSOCIATION



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**CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing Response was served upon the persons listed below via electronic transmission this 5th day of March 2021.



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Summary: Reply Brief of The Ohio Hospital Association electronically filed by Teresa Orahood on behalf of Devin D. Parram