

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
The Dayton Power and Light Company )  
for the Creation of a Rate Stabilization ) Case No. 05-276-EL-AIR  
Surcharge Rider and Distribution Rate )  
Increase. )

OPINION AND ORDER

The Commission, considering the above-entitled application, hereby issues its opinion and order in this matter.

APPEARANCES:

Faruki, Ireland & Cox, P.L.L., by Charles J. Faruki and Jeffrey S. Sharkey, 500 Courthouse Plaza, S.W., 10 Ludlow Street, Dayton, Ohio 45402, on behalf of Dayton Power and Light Company.

Jim Petro, Attorney General of the State of Ohio, by Duane W. Luckey, Senior Deputy Attorney General, by Werner L. Margard, III, Steven A. Reilly and Steven L. Beeler, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Jeffrey L. Small and Ann M. Hotz, Assistant Consumers' Counsel, Office of Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215, on behalf of the residential consumers of Dayton Power and Light Company.

McNees, Wallace & Nurick, LLC, by Samuel C. Randazzo, Lisa G. McAlister and Daniel J. Neilsen, 21 East State Street, Columbus, Ohio 43215, on behalf of Industrial Energy Users-Ohio.

Craig I. Smith, 2824 Coventry Road, Cleveland, Ohio 44120, on behalf of Cargill, Inc.

David C. Rinebolt, 231 W. Lima Street, Findlay, Ohio 45839, on behalf of Ohio Partners for Affordable Energy.

Vorys, Sater, Seymour & Pease, by M. Howard Petricoff, 52 East Gay Street, Columbus, Ohio 43215, on behalf of Honda of America Mfg., Inc.

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OPINION:I. HISTORY OF THE PROCEEDING

The Dayton Power & Light Company (DP&L) is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.

On September 3, 2003, in Case No. 02-2279-EL-ATA et al., the Commission approved a stipulation (the RSP Stipulation) which extended DP&L's market development period to December 31, 2005 and provided for a rate stabilization period from January 1, 2006 through December 31, 2008. In addition, among other terms, the RSP Stipulation provided that all customers would be assessed a rate stabilization surcharge (the RSS Rider) of up to 11 percent of the tariffed generation charges as of January 1, 2004. The RSS rider would permit DP&L to recover costs associated with fuel price increases or actions taken in compliance with environmental and tax laws, regulations or court or administrative orders, and costs associated with physical security and cyber security relating to the generation of electricity from plants owned by DP&L and its affiliates, which costs are imposed by final rule, regulation or administrative or court order. The RSP Stipulation provided that adjustments to the RSS Rider be made by application by DP&L to the Commission under Section 4909.18, Revised Code. *In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for the Dayton Power and Light Company*, Case No. 02-2279-EL-ATA, et al., Opinion and Order (September 2, 2003).

On March 1, 2005, DP&L filed a notice of intent to file an application for an increase in rates to establish the RSS Rider. Further, on March 23, 2005, the Commission issued an entry establishing the date certain and test period for DP&L's application. On April 4, 2005, DP&L filed its application to increase rates. The Commission accepted DP&L's application for filing by entry dated May 4, 2005.

Motions to intervene were filed by Industrial Energy Users-Ohio (IEU-Ohio), Ohio Partners for Affordable Energy (OPAE), the Ohio Consumers' Counsel (OCC), Cargill, Inc. (Cargill), and Honda of America Mfg., Inc. (Honda). Those motions were granted on September 1, 2005 and October 12, 2005.

On August 26, 2005, a written report of the staff's investigation was filed. The staff concluded that, with minor adjustments, DP&L had justified an increase in the RSS Rider in excess of the 11 percent cap contained in the RSP Stipulation. By entry issued on September 1, 2005, the attorney examiner ordered that objections to the staff report be filed in accordance with Section 4909.19, Revised Code, which requires that objections be filed

within 30 days of the filing of the staff report. Objections were timely filed by DP&L, the OCC, IEU-Ohio, Honda, OPAE and Cargill.

A public hearing was held on October 27, 2005 in Dayton, Ohio. Two witnesses testified at the public hearing: Ellis Jacobs, on behalf of the Community Action Partnership of the Greater Dayton Area, and Mr. Maurice Campbell, a residential customer of DP&L.

On November 3, 2005, a partial stipulation was filed with the Commission by DP&L, Cargill, Honda and IEU-Ohio. The evidentiary hearing commenced on November 4, 2005, during which testimony was received by witnesses on behalf of DP&L, OPAE and the staff regarding the company's application and the staff report. The hearing continued on November 8, 2005, during which additional testimony was received by witnesses on behalf of DP&L. The hearing was then adjourned to allow for further discovery related to the stipulation.

The hearing continued on November 14, 2005 at which time DP&L presented witnesses supporting the stipulation. The hearing concluded on November 15, 2005, following testimony by a witness on behalf of OCC in opposition to the stipulation.

Post hearing briefs were timely filed on November 22 by staff, DP&L, OCC, OPAE, IEU-Ohio and Cargill. OPAE filed its reply brief on November 29, 2005. Reply briefs were filed on December 1, 2005 by DP&L, OCC, IEU-Ohio and staff.

## II. SUMMARY OF THE STIPULATION

The stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. The stipulation includes, *inter alia*, the following provisions:

1. DP&L's rate stabilization period is extended through December 31, 2010.
2. DP&L will provide a market-based standard service offer (MBSSO) at rates fixed in the stipulation throughout the extended rate stabilization period.
3. The 5 percent residential generation discount established in Am. Sub. Senate Bill 3 will continue through December 31, 2008, and the 2.5 percent residential generation discount provided for by the RSP Stipulation will take effect from January 1, 2006, through December 31, 2008.
4. DP&L will implement an unavoidable RSS Rider equal to 11 percent of DP&L's January 1, 2004, tariffed generation rates.

5. Beginning on January 1 of each year from 2007 through 2010, DP&L will implement an Environmental Investment Rider (EIR) which will recover environmental plant investments and incremental operations and maintenance, depreciation, and tax costs during the rate stabilization period and will increase each year by 5.4% of DP&L's tariffed generation rates. All increases to the EIR shall be cumulative. The increases in 2009 and 2010 will be avoidable for switching customers. DP&L would implement the EIR through an ATA filing, which would be subject to review by the Commission staff for the limited purpose of confirming that the filing implements the rates provided for by the stipulation.
6. The provisions of the RSP Stipulation that were not superseded by this stipulation will remain in effect, including Section IX.F. of the RSP Stipulation, which provides that the Commission may terminate the rate stabilization period and trigger a competitive bidding process if market-based rates do not reasonably reflect the rates established by the stipulation.
7. The Voluntary Enrollment Procedure established by the RSP Stipulation will continue in 2006, as provided by the RSP Stipulation, and one additional time in 2007.
8. If subsequent legislation affects the terms of the stipulation, then the parties will engage in good faith negotiations to comply with the legislation and preserve the economic benefits of the stipulation.

### III. EVALUATION OF THE STIPULATION

Rule 4901-1-30, Ohio Administrative Code, authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such agreements are accorded substantial weight. See *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio State 3d 123, 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St. 2d 155 (1978).

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Dominion Retail v. Dayton Power and Light*, Case No., 03-2405-EL-CSS et al., Opinion and Order (February 9, 2005); *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR, Order on Remand (April 14, 1994); *Ohio Edison Co.*, Case Nos. 91-698-EL-FOR et al., Opinion and Order (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-179-EL-AIR, Opinion and Order (January 31, 1989). 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?

The Ohio Supreme Court 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 547 (1997) (quoting *Consumers' Counsel*, at 126). The Court 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.

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

OCC argues that the signatory parties are capable, knowledgeable parties who have breached their obligations under the RSP Stipulation. OCC further asserts that the stipulation is not the result of serious bargaining among capable, knowledgeable parties because the signatory parties did not include all of the signatory parties to the RSP Stipulation approved in Case No. 02-2779-EL-ATA. Finally, OCC argues that this stipulation cannot alter the RSP Stipulation without the agreement of all of the signatory parties to that stipulation (OCC brief at 12-13).

OPAE states that the issue is not whether the proposed settlement involved capable and knowledgeable parties; instead, OPAE argues that signatory parties lacked diversity of interests. OPAE concludes that the stipulation represents an accommodation among three self-interested parties which excludes significant consumer groups (OPAE brief at 2-3). In its reply brief, OCC concurred with OPAE's argument, noting that only two of the six parties to the RSP Stipulation also signed the stipulation in this case (OCC reply at 6).

DP&L notes that, although its witness testified that the stipulation was the product of serious bargaining among capable, knowledgeable parties, OCC's witness conceded that he did not offer an opinion on this issue (DP&L brief at 5-6; Tr. III at 20-21). Therefore, DP&L argues that based upon the evidence presented at the hearing, it is undisputed that this criterion is established. In its reply brief, DP&L argues that the Commission has rejected the proposition that this criterion is satisfied only if a

representative of each customer class signs the proposed stipulation (DP&L reply at 2, quoting *Dominion Retail v. Dayton Power and Light*, *supra*, at 17).

The Commission has previously held that it will not require any individual party's approval of stipulations in order to meet the first criterion of our three-prong standard of review. *Dominion Retail v. Dayton Power and Light*, at 18. In considering whether there was serious bargaining among capable and knowledgeable parties, the Commission evaluates the level of negotiations that appear to have occurred and takes notice of the experience and sophistication of the negotiating parties. In this case, it is clear from the record that all parties participated in negotiations. Neither OCC nor OPAE argue that they were kept away from the negotiating table. The signatory parties all routinely participate in complex cases before the Commission and are all represented by counsel who practice before the Commission on a regular basis. Moreover, although no parties representing residential consumers signed the stipulation, the signatory parties do represent a diversity of interests including the utility and industrial and commercial consumers as well as a competitive retail electric service provider. Therefore, the Commission finds that the first prong of the test is met by the stipulation.

(2) Does the settlement, as a package, benefit ratepayers and the public interest?

DP&L argues that the stipulation provides below-market prices and that the stipulation protects its standard service offer customers from volatility and rate shock (DP&L brief at 7-9). DP&L argues that there is no dispute that the stipulation will provide residential customers \$262 million in savings versus projected market rates from 2006 through 2010 (*id.* at 8).

Moreover, DP&L states that the stipulation will promote competition. According to DP&L, conducting Voluntary Enrollment Procedure (VEP) one additional time in 2007 will promote competition (DP&L brief at 9). Moreover, the fact that the increases in the EIR for 2009 and 2010 are avoidable will increase the shopping credits and promote competition. Finally, DP&L argues that shopping customers impose costs on DP&L because of its statutory provider of last resort obligation. DP&L argues that the value of these costs substantially exceeds the unavoidable portions of the rate stabilization charge and the EIR. In support of this, DP&L cites the testimony of its witness Strunk, who testified that the right of switching customers to return to DP&L's MBSSO is equivalent to granting customers a financial option to purchase generation from DP&L at a fixed price (*id.* at 10-13; DP&L Ex. 13C at 2-4). According to DP&L, Mr. Strunk's testimony established that the value of this option provided to switching customers substantially exceeds the price of the unavoidable portions of the rate stabilization charge and the EIR (DP&L brief at 13; DP&L Ex. 13C at 6). Therefore, DP&L argues that the stipulation promotes competition because the stipulation does not require switching customers to pay full value for their ability to return to the MBSSO.

IEU-Ohio argues that the stipulation will benefit customers, CRES providers and DP&L by eliminating the uncertainty on issues regarding price and reliability of supply for the period after December 31, 2008. IEU-Ohio states that the stipulation protects DP&L's customers from price volatility and potential price increases that may occur if the rate stabilization period ends on December 31, 2008. IEU-Ohio acknowledges that customers will see higher prices on their total bill than they would have under the RSP Stipulation; however, such increases are a result of known, measurable and justifiable increases in costs beyond the control of DP&L (IEU-Ohio brief at 5).

OCC states that, unlike many other stipulations approved by the Commission, the stipulation provides a complex solution to a simple compliance case and that the signatory parties propose to disturb a settlement that resolved the complex legal issues in Case No. 02-2279-EL-ATA (OCC brief at 13). Citing the testimony of its expert witness, OCC argues that residential customers would pay in excess of \$20 million more under the stipulation compared with the RSP Stipulation (OCC Ex. 1B at 5-6). OCC alleges that the average generation rate, using DP&L's market forecasts, would be a mere 0.36 percent above that proposed in the stipulation (*id.* at 14-15.) Further, OCC argues that the fact that the new charges are unavoidable would make it impossible for a marketer to compete with only the avoidable portion of DP&L's generation rate (*id.* at 16.)

OPAE contends that the stipulation fails to benefit ratepayers and that the stipulation is not in the public interest. OPAE argues that the stipulation raises customer rates above those contemplated by the RSP Stipulation. On the other hand, OPAE states that the benefit of protection of customers from a volatile market is unproven and speculative (OPAE brief at 5-7). OPAE further argues that the stipulation makes generation-related charges unavoidable despite the fact that such charges should be included as part of DP&L's market-based standard service offer (*id.* at 8-9). Finally, OPAE argues that, under the provisions of Am. Sub. Senate Bill 3, it is unreasonable and unlawful to charge customers for environmental compliance costs associated with generation (*id.* at 10-11).

The stipulation presented in this case would extend the rate stabilization plan approved by the Commission in Case No. 02-2279-EL-ATA. Therefore, in determining whether this settlement, as a package, benefits ratepayers and the public interest, the Commission will be guided by the three goals the Commission set forth for the rate stabilization plans: (1) rate certainty for customers; (2) financial stability for the utility; and (3) the further development of competitive markets. *In the Matter of the Application of The Cincinnati Gas & Electric Company to Modify its Nonresidential Generation Rates to Provide for Market-Bases Standard Service Offer Pricing and to Establish an Alternative Competitive-Bid Service Rate Option Subsequent to the Market Development Period*, Case No. 03-93-El-ATA, Opinion and Order (September 29, 2004) at 15.

Although DP&L alleges a \$262 million savings to residential consumers as the result of stipulation, the Commission finds that the comparison between rates to be paid under the stipulation and projected market rates from 2006 through 2010 is not the relevant comparison for the review and evaluation of the stipulation filed in this case. The RSP stipulation, which was approved by the Commission, establishes the price to be offered customers from 2006 through 2008, unless and until otherwise ordered by this Commission. Therefore, the proper comparison is between: (1) the price residential customers would pay from 2006 through 2008 under the RSP stipulation plus projected market prices in 2009 and 2010, and (2) the prices for 2006 through 2010 provided under the stipulation filed in this case. According to OCC's witness Haugh, the total generation revenue paid by residential customers under this comparison is substantially equal; under both scenarios, residential customers would pay \$1.66 billion from 2006 through 2010 (OCC Exhibit 1b, Schedule MPH-1, Scenario I and Scenario III, Schedule MPH -3, and Schedule MPH-5).

Nonetheless, the Commission's review cannot end with this comparison. The projected market prices for 2009 and 2010 are simply projections. According to the testimony at the hearing, it is undisputed that the current markets for power for 2009 and 2010 are not liquid and that this lack of financial liquidity makes such markets difficult to predict (Tr. III at 24). The Commission finds that there is significant value in providing predictable, stable rates for 2009 and 2010 rather than relying on projected market rates. Because of the unpredictable nature of the market for 2009 and 2010, the Commission finds that, although it is difficult to quantify the value of stable, predictable rates precisely, the known rates do have value for customers. Further, the Commission notes that DP&L's witness Shrunk testified that the value was consistent with that provided by an option purchased in the futures market (DP&L Ex. 13C at 2, 6). Moreover, this value is enhanced because the Commission retains the authority to terminate the rate stabilization period, at any time, in the event that market rates are substantially below the prices provided for by the stipulation (Signatory Parties Ex. 1 at 6; OCC Ex. 2 at 14-15. *See also, Dayton Power and Light Company*, Case No. 02-2279-EL-ATA at 26-27).

Moreover, the Commission must review the settlement package for benefits to *all* ratepayers and the public interest. No commercial and industrial customers have opposed the stipulation. Instead, representative of commercial and industrial customers are signatory parties to the stipulation and these parties agree that the stipulation benefits ratepayers by eliminating uncertainty and providing for stable, predictable rates through 2010.



Therefore, the Commission finds that the stipulation, as presented, meets the first goal for rate stabilization plans: the stipulation provides rate certainty to customers for the period January 1, 2006 through December 31, 2010. The second goal established by the Commission for rate stabilization plans is to provide financial stability for the utility. *Cincinnati Gas and Electric Co.*, Case No. 03-93-EL-ATA at 15. The testimony of DP&L witness Seger-Lawson established that the increases in the EIR provided for by the stipulation should recover revenues of \$374,318,805 between January 1, 2006, and December 31, 2010 (DP&L Ex. 11F, Attachment A). The Commission finds that this revenue should provide financial stability to the utility by recovering environmental compliance costs incurred by DP&L and thus meets the second goal for rate stabilization plans.

Nonetheless, the Commission is concerned by the impact of the stipulation on competition. The third goal for rate stabilization plans is to further the development of competitive markets. *Cincinnati Gas and Electric Co.*, Case No. 03-93-EL-ATA at 15. The Commission notes that, as presented, the stipulation provides that the increases to the EIR scheduled for 2009 and 2010 are avoidable. The Commission believes that the entire EIR should be avoidable to customers who shop for the duration of the stipulation. Making the entire EIR avoidable would promote competitive markets by increasing the shopping credit to customers who switch to competitive provider. Therefore, the Commission will modify the stipulation to provide that all increases in the EIR be avoidable from 2007 through 2010. The Commission finds that, as modified, the stipulation meets the goal of promoting the development of competitive markets.

In addition, the Commission believes that the stipulation does not specifically address whether DP&L is committed to financially support the Voluntary Enrollment Procedure (VEP). At the hearing, DP&L's witness Seger-Lawson testified that DP&L is committing the resources to support VEP in the amount of \$500,000 per year (Tr. III at 139-140). Therefore, in order to clarify this provision of the stipulation, the Commission orders DP&L to commit up to \$500,000 to support VEP in 2007, in addition to the funds already committed to support VEP in 2006 by the RSP Stipulation.

The Commission finds that the value of extending stable, predictable rates through 2010 is a significant benefit to ratepayers and the public interest and that such value outweighs the burden of the increased rates. Moreover, the Commission finds that the stipulation, as modified, meets the three goals established by the Commission for rate stabilization plans. Therefore, upon careful consideration of the record in this proceeding, the Commission finds that the stipulation, as a package and as modified by the Commission, benefits ratepayers and the public interest.

3) Does the settlement package violate any important regulatory principle or practice?

The OCC argues in its post-hearing brief that approval of the stipulation would violate important regulatory principles and practices. Specifically, OCC argues that the stipulation is a collateral attack on the Commission's order approving the RSP stipulation in Case No. 02-2279-EL-ATA and is therefore illegal (OCC brief at 16-17). Further, OCC argues that the settlement package violates DP&L's tariffs (*id.* at 18-20). Finally, OCC argues that approval of this stipulation undermines the settlement process (*id.* at 20-21).

DP&L asserts that the stipulation does not violate any important regulatory principles or practices. DP&L argues that the stipulation provides market-based rates and provides for competitive bidding through the voluntary enrollment process (DP&L brief at 25-26). Moreover, DP&L argues that the stipulation is not barred by the doctrine of collateral estoppel because several important facts and events have occurred since the RSP stipulation was approved by the Commission. DP&L states that, although the RSP Stipulation included several provisions designed to promote competition, there has been very little customer switching to competitive providers since the Commission approved the RSP Stipulation; DP&L cites to undisputed testimony at the hearing that only 0.03 percent of its load have switched to competitive providers unaffiliated with DP&L (*id.* at 26-27; DP&L Ex. 11E at 3). Moreover, DP&L argues that fuel and environmental cost increases have greatly exceeded expectations at the time the RSP Stipulation was approved, noting that the staff report demonstrates that the increase in such costs exceeded 11 percent in the first year of the RSP Stipulation alone (DP&L brief at 27; Staff Ex. 2, Schedule A-1).

The Commission finds that the stipulation does not represent an improper collateral attack on the Commission's order approving the RSP Stipulation in Case No. 02-2279-EL-ATA. The Commission finds that, based upon the evidence in the record in this proceeding, the competitive market in DP&L's service territory has not developed as the Commission expected when it approved the RSP Stipulation. According to the testimony at hearing, only 0.03 percent of DP&L's total load has switched to a competitive supplier not affiliated with DP&L (DP&L Ex. 11E at 3). In addition to this testimony, the Commission notes that, in 2005, there were four rounds of competitive bidding under the Voluntary Enrollment Program and that none of the rounds of competitive bidding produced a single bidder (*In the Matter of the Commission's Selection of Generation Providers for The Dayton Power and Light Company's Voluntary Enrollment Procedure*, Case No. 05-302-EL-UNC, Reports of the VEP Oversight Group dated March 8, 2005, May 12, 2005, July 7, 2005, and August 31, 2005). Similarly, the Commission finds that the record in this proceeding demonstrates that fuel and environmental costs vastly exceeded the Commission's expectations at the time the RSP Stipulation was approved. The Commission believes in the precedential value upon all of its prior decisions, including the

decision to adopt the RSP Stipulation in Case No. 02-2279-EL-ATA; however, in light of the changed circumstances enumerated above, the Commission finds that extension and modification of the RSP Stipulation is clearly needed. *Consumers' Counsel v. Pub. Util. Comm.* (1984), 10 Ohio State 3d 49.

The Commission finds that the stipulation does not violate any important regulatory principles or practices. OCC alleges that the "settlement package" violates DP&L's tariff. At the hearing, the OCC elicited testimony from DP&L's witness Seger-Lawson that DP&L had offered to waive the tariff provision requiring sixty days notice to return to its standard offer service for Cargill and Honda (Tr. III at 104-107). The OCC believes that such waivers are improper and, therefore, the "settlement package" violates DP&L's tariffs. The Commission notes that DP&L's witness Seger-Lawson also testified at the hearing that DP&L will apply the waiver in a non-discriminatory fashion to any similarly situated customer (*id.* at 107). To the extent that OCC or any other party believes that DP&L has applied such waiver in a discriminatory fashion, they may file a complaint with the Commission under Section 4905.26, Revised Code. However, the Commission finds that this waiver is not part of the stipulation presented to the Commission for review and, therefore, is not relevant to this proceeding.

#### IV. RATE STABILIZATION SURCHARGE RIDER

The stipulation proposed a RSS Rider amounting to 11 percent of DP&L tariffed generation rates as of January 1, 2004. The staff recommended that DP&L be authorized to increase its revenue by \$76,250,127, an increase of 11 percent over current generation revenue and of 7.30 percent over total current revenue (Staff Ex. 2 at 2; Staff Ex. 3 at 2). Adding the increase of \$76,250,127 to the test-year revenue of \$1,043,610,976 produces a new pro forma revenue total of \$1,119,817,954.

The Commission finds the recommended increase of \$76,250,127 in revenue to be fair, reasonable and supported by the record and, therefore, will authorize DP&L to implement the RSS Rider proposed by the stipulation.

#### V. TARIFFS

As part of its investigation in this proceeding, the staff reviewed the proposed tariff provisions for the RSS Rider, including the methodology used to calculate the rates to be included in the RSS Rider and the placement of the rider in DP&L's Distribution Service Tariff, and has recommended that they be approved by the Commission. The tariffs filed by DP&L do not reflect the 2.5 percent generation reduction for residential customers provided in the stipulation. The Commission directs DP&L to make this adjustment in the final tariffs. Otherwise, the Commission finds that the tariffs filed on April 4, 2005, are reasonable, and they will be approved by the Commission.

## VI. OTHER ISSUES

OCC objected that the staff report failed to require DP&L to reduce its generation rates for residential customers by the additional 2.5 percent provided for by the RSP Stipulation, as modified by the Commission. The OCC states that the Commission had ruled, in adopting the RSP Stipulation, that the additional 2.5 percent reduction will take effect if "insufficient competition" has been experienced in the DP&L service territory (OCC brief at 6-7). OCC notes the testimony of its witness Haugh, who testified that residential competition has not developed in areas served by DP&L (OCC Ex. 1-A at 11). Because the stipulation includes the additional 2.5 percent reduction in generation rates sought by the OCC, the Commission finds that, in light of our adoption of the modified stipulation in this case, the OCC's objection is moot.

OCC objected to the staff report's conclusion that the placement of the RSS Rider in the company's Distribution Service Tariff is reasonable. OCC argues that DP&L agreed in the RSP Stipulation that the RSS is a generation charge and that the tariffs should conform to that agreement (OCC brief at 9). In the staff report, the staff concluded that, since the rider is unavoidable, its placement in the Distribution Service Tariff is reasonable (staff report at 27). The Commission agrees with the staff's conclusion that placement of the rider in the Distribution Service Tariff reduces confusion as to whether the charges are avoidable; therefore, the Commission finds that this objection should be denied.

Finally, OCC objected to the failure of the staff report to evaluate DP&L's application for compliance with the requirements of Section 4909.18, Revised Code. Staff argues that OCC has failed to identify with any particularity either DP&L's or the staff's failure to comply with such requirements (staff brief at 6; staff reply at 3). Further, staff argues that the process for adjusting the RSS Rider was set forth in the RSP Stipulation, of which the OCC was a signatory party. Staff notes that the Commission specifically found that the RSS mechanism was "reasonable and legally sustainable" (*id.* at 4, *quoting Dayton Power and Light*, Case No. 02-2279-EL-ATA at 28) and that this finding was upheld by the Supreme Court in *Constellation NewEnergy, Inc. v. Pub. Util. Comm'n*, (2004) 104 Ohio St. 3d 530, 539. Finally, the staff notes that, in this proceeding, the Commission has granted to DP&L waivers of a number of the Commission's Standard Filing Requirements (staff reply at 5; Entry (March 23, 2005)). The Commission finds that the RSP Stipulation clearly stated that adjustments to the RSS Rider should be made by application of the company under Section 4909.18, Revised Code, and that the parties intended that such application be limited to the rider only, rather than a general rate proceeding. Therefore, the Commission finds that OCC objection should be denied.

OPAE objected to the failure of the staff report to require DP&L to provide increased funding for energy efficiency services to low-income customers. OPAE believes that such services could mitigate the impact of the rate increases resulting from the stipulation. OPAE cites to the testimony of its witness Donnellan, the chief executive officer of the Community Action Partnership of the Greater Dayton Area, who testified for the need for \$1 million in funding for these services (OPAE brief at 12).

DP&L disagrees with OPAE's objection. DP&L argues that past contributions of funds by DP&L for energy efficiency funding occurred in the context of settlements and that OPAE declined to participate in the settlement in this case. DP&L also argues that witness Donnellan provided no basis for arriving at the \$1 million figure for funding energy efficiency programs and that witness Donnellan provided no plan on how his organization would spend these funds (DP&L brief at 21). The staff also disagreed with OPAE's objection. The staff argues that the RSS Rider sought in this proceeding was previously authorized subject to review and verification, by the Commission in the RSP Stipulation and that there was no provision in that case for the funds recommended by OPAE (staff brief at 6). Therefore, the staff concludes that such funding is beyond the limited scope of this proceeding (*id.* at 6-7; staff reply at 9).

The Commission will not order DP&L to provide such funding at this time. The Commission believes that, absent a provision in the stipulation, the question of funding for energy efficiency programs is properly left to general rate cases. Although, as provided for in the RSP Stipulation, this case was brought pursuant to Section 4909.18, Revised Code, the scope of this proceeding remains a limited one, and the Commission finds that OPAE's recommendation is outside of the scope of this proceeding and its objection should be denied.

Although the stipulation purports to have resolved all outstanding issues in this proceeding, there are a number of objections to the staff report which have not been addressed on brief or withdrawn. To the extent that any such objection is not specifically addressed in this opinion and order, the Commission finds that the objection should be denied.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) DP&L is an electric light company within the meaning of Sections 4905.03(A)(4) and 4928.01(A)(7), Revised Code, and, as such, is a public utility as defined by Section 4905.02, Revised Code, subject to the jurisdiction and supervision of the Commission.

- (2) On March 1, 2005, DP&L filed a notice of intent to file an application for an increase in rates to be charged. In that notice, DP&L requested a test period beginning October 1, 2004, and ending September 30, 2005, and a date certain of March 31, 2005.
- (3) DP&L's application was filed pursuant to, and this Commission has jurisdiction over the application under, the provisions of Section 4909.18, Revised Code. The application complies with the requirements of this statute.
- (4) By entry of March 23, 2005, the Commission approved the requested test year and date certain.
- (5) On April 4, 2005, DP&L filed its application for an increase in rates. By entry dated May 4, 2005, the Commission accepted DP&L's application for filing.
- (6) Intervention was granted to: the Ohio Consumers' Counsel; Industrial Energy Users-Ohio; Ohio Partners for Affordable Energy; Cargill, Inc.; and Honda of America Mfg., Inc.
- (7) A motion was granted to admit David C. Rinebolt to practice *pro hac vice* on behalf of OPAE.
- (8) On August 26, 2005, staff filed its written report of investigation with the Commission. Objections to the staff report were filed by several parties.
- (9) A prehearing conference was held on October 6, 2005.
- (10) The local public hearing was held on October 27, 2005, pursuant to published notice. Two public witnesses gave unsworn testimony.
- (11) The evidentiary hearing commenced on November 4, 2005, and continued on November 8, 2005, November 14, 2005, and November 15, 2005.
- (12) On November 3, 2005, a stipulation which purports to resolve all of the issues raised by these proceedings was filed by four parties.

- (13) The ultimate issue for the Commission's 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 the 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?
- (14) The stipulation was the product of serious bargaining among capable, knowledgeable parties representing a diversity of interests including the utility and industrial and commercial consumers as well as a competitive retail electric service provider.
- (15) As modified by this Opinion and Order, the stipulation, as a package, benefits ratepayers and the public interest. The stipulated resolution of this case is for many reasons advantageous and meets the three goals established by the Commission for the consideration of rate stabilization plans.
- (16) The stipulation does not violate any important regulatory principles or practices. In light of the changed circumstances since the approval of the RSP Stipulation, extension and modification of the RSP Stipulation is clearly needed.
- (17) The stipulation submitted by the parties is reasonable and, as indicated herein, shall be adopted as modified by the Commission.
- (18) DP&L is authorized to implement the RSS Rider to increase its revenue by \$76,250,127, an increase of 11 percent over current generation revenue and of 7.30 percent over total current revenue. This RSS Rider is fair, reasonable and supported by the record in this proceeding.

ORDER:

ORDERED, That the stipulation presented in these proceedings be adopted as modified by the Commission. It is, further,

ORDERED, That the application of The Dayton Power and Light Company for authority to increase its rates and charges for service is granted to the extent provided in this opinion and order. It is, further

ORDERED, That DP&L is authorized to file in final form four complete, printed copies of tariffs consistent with this opinion and order, and to cancel and withdraw its superseded tariffs. One copy shall be filed with this case docket, one copy shall be filed with the applicant's TRF docket and the remaining two copies shall be designated for distribution to the Rates and Tariff Division of the Commission's Utilities Department. The applicant shall also update its tariffs previously filed electronically with the Commission's docketing division. It is, further,

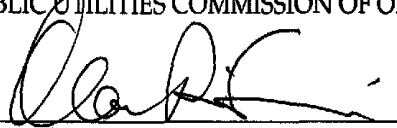
ORDERED, That the effective date of the new tariffs shall be a date not earlier than both January 1, 2006, and the date upon which four complete, printed copies of final tariffs are filed with the Commission. The new tariffs shall be effective for services rendered on or after such effective date. It is, further,

ORDERED, That DP&L shall notify all affected customers of the tariff changes via a bill message or a bill insert within 30 days of the effective date of the tariffs. It is, further,

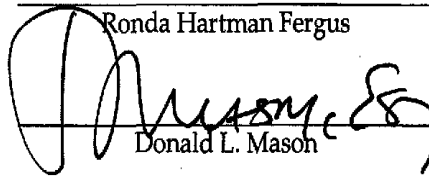


ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



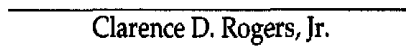
Alan R. Schriber, Chairman



Ronda Hartman Fergus



Judith A. Jones

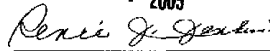


Clarence D. Rogers, Jr.

GAP:ct

Entered in the Journal

DEC 28 2005



Renee J. Jenkins  
Secretary