

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REVIEW OF THE
DISTRIBUTION MODERNIZATION RIDER
OF THE DAYTON POWER AND LIGHT
COMPANY.

CASE NO. 18-264-EL-RDR

ENTRY

Entered in the Journal on February 26, 2020

I. SUMMARY

{¶ 1} In this Entry, the Commission finds that the Staff's motion for an extension of time is moot and that this case should be dismissed and closed of record.

II. DISCUSSION

{¶ 2} The Dayton Power and Light Company (DP&L or the Company) is a public utility and an electric distribution utility as defined under R.C. 4905.02 and R.C. 4928.01, respectively. Therefore, DP&L is subject to this Commission's jurisdiction.

{¶ 3} R.C. 4928.141 mandates that an electric distribution utility shall provide a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric service, including a firm supply of electric generation service, to all consumers within its certified territory. The SSO may be established as a market rate offer under R.C. 4928.142 or an electric security plan (ESP) under R.C. 4928.143.

{¶ 4} On October 20, 2017, the Commission approved, with modifications, DP&L's application for an ESP. *In re the Application of Dayton Power and Light Co. to Establish a Std. Serv. Offer in the Form of an Electric Security Plan*, Case No. 16-395-EL-SSO (ESP III Case), Opinion and Order (Oct. 20, 2017). As part of the approved ESP, the Commission authorized DP&L to implement a distribution modernization rider (DMR). The Commission further directed Staff to conduct an ongoing review of the use of DMR cash flow during the term of the ESP. *ESP III Case*, Opinion and Order at ¶43. Additionally, to provide assistance for the anticipated review, we instructed Staff to prepare a request for proposal for a third-party monitor to assist Staff and work with DP&L and its parent company, DPL Inc. The

Commission directed that a final report from the third-party monitor should be filed 90 days after the termination of Rider DMR or its extension. *Id.* On April 11, 2018, the Commission selected Oxford Advisors, LLC, (Oxford) to serve as the third-party monitor.

{¶ 5} On October 19, 2018, at the conclusion of the rehearing process in the *ESP III Case*, Interstate Gas Supply, Inc. withdrew from the Amended Stipulation, necessitating a second evidentiary hearing. *ESP III Case*, Entry (Nov. 15, 2018); Entry (Nov. 20, 2018). Following the additional evidentiary hearing, the Commission issued a Supplemental Opinion and Order on November 21, 2019 (Supplemental Opinion and Order). Therein, the Commission further modified and approved the Amended Stipulation establishing ESP III by eliminating DP&L's DMR in light of the Supreme Court of Ohio's decision in *In re Application of Ohio Edison Co.*, 157 Ohio St.3d 73, 2019-Ohio-2401, 131 N.E.3d 906, *reconsideration denied*, 156 Ohio St.3d 1487, 2019-Ohio-3331, 129 N.E.3d 458 (*Ohio Edison*). *ESP III Case*, Supplemental Opinion and Order (Nov. 21, 2019) at ¶¶ 1, 102-110, 134. On November 29, 2019, pursuant to the Supplemental Opinion and Order DP&L filed revised final tariffs removing the DMR, effective November 29, 2019.

{¶ 6} In addition, on November 26, 2019, DP&L filed a notice of withdrawal of its application for ESP III, stating that it was exercising its statutory right to withdraw its application under R.C. 4928.143(C)(2)(a). On December 18, 2019, the Commission approved the notice of withdrawal, finding that the withdrawal of the application terminated ESP III. *ESP III Case*, Finding and Order (Dec. 18, 2019). On January 17, 2020, an application for rehearing contesting the Commission's approval of DP&L's withdrawal of the application in ESP III was filed by Ohio Consumers' Counsel. The Commission granted rehearing for the limited purpose of further consideration of the matters raised on rehearing on February 14, 2020. *ESP III Case*, Sixth Entry on Rehearing (Feb. 14, 2020).

{¶ 7} Thereafter, on February 18, 2020, Staff requested an extension of time for the filing of the final report in this proceeding. Staff represents that Oxford needs additional time to complete the final report and requests that the date for filing the report be extended to March 31, 2020.

{¶ 8} The Commission finds that the provisions for a final review of the DMR were an essential part of the terms and conditions related to the DMR in ESP III. *ESP III Case*, Opinion and Order at ¶ 43. *See also, In re Ohio Edison Co., Cleveland Elec. Illum. Co., and Toledo Edison Co.*, Case No. 14-1297-EL-SSO, Eighth Entry on Rehearing at ¶113, Ninth Entry on Rehearing (Oct. 11, 2017) at ¶¶ 17-20. In support of the ruling in *Ohio Edison*, the Court specifically objected to the usefulness of the proposed final review, questioning the lack of an effective remedy resulting from such review. *Ohio Edison* at ¶26. In light of the *Ohio Edison* decision, the Commission eliminated the DMR from ESP III. We find that elimination of the provisions for the DMR necessarily eliminated all terms and conditions of the DMR, including the provisions for a final review of the DMR. Accordingly, the Commission finds that Staff's motion for an extension of time to file the final report is moot and that this case should be dismissed and closed of record.

III. ORDER

{¶ 9} It is, therefore,

{¶ 10} ORDERED, That Staff's motion for an extension of time be denied as moot. It is, further,

{¶ 11} ORDERED, That this case be dismissed and closed of record. It is, further,

{¶ 12} ORDERED, That a copy of this Entry 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/MJA/mef

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Case No(s). 18-0264-EL-RDR

Summary: Entry that the Commission finds that the Staff's motion for an extension of time is moot and that this case should be dismissed and closed of record electronically filed by Docketing Staff on behalf of Docketing