

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
Power Company for Approval of its) Case No. 16-574-EL-POR
Program Portfolio Plan.)

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Approval of its) Case No. 16-576-EL-POR
Program Portfolio Plan.)

In the Matter of the Application of the)
Dayton Power and Light Company for) Case No. 16-649-EL-POR
Approval of its Program Portfolio Plan.)

ENTRY

The Commission finds:

- (1) Ohio Power Company (AEP), Duke Energy Ohio, Inc. (Duke), and Dayton Power and Light Company (DP&L) are public utilities as defined in R.C. 4905.02 and electric utilities under R.C. 4928.01(A)(11), subject to the energy efficiency and peak demand reduction (EE/PDR) requirements of R.C. 4928.66. Ohio Adm.Code 4901:1-39-04(A) requires each electric utility to file an update to their EE/PDR program portfolio plans (POR) by April 15, 2016.
- (2) On May 28, 2014, the General Assembly passed 2014 Sub.S.B. No. 310 (S.B. 310), which became effective on September 12, 2014. S.B. 310 amended provisions in R.C. Chapter 4928 to freeze the EE/PDR mandates at 2014 levels and gave each electric utility the option of extending its then-current POR through 2016, or amending its POR to scale back to the frozen standard levels.
- (3) On March 16, 2016, AEP and Duke filed requests in Case Nos. 16-574-EL-POR and 16-576-EL-WVR,¹ respectively, seeking

¹ Duke had originally docketed its request under Case No. 16-576-EL-WVR as a request for a rule waiver, but for administrative convenience, this case has been designated using the "POR" purpose code.

expedited rulings to waive the April 15, 2016 filing deadline for approval of their respective PORs.

AEP asserts that the April 15, 2016 deadline is not required by statute and can be waived by the Commission. Further, AEP notes that S.B. 310 created an Energy Mandates Study Committee to evaluate the EE/PDR requirements which issued its report on September 30, 2015, recommending that the existing frozen mandate levels be continued indefinitely. AEP seeks to extend its POR filing deadline to June 15, 2016, and asserts that this temporary delay will avoid unnecessary expenditure of time and resources by AEP and stakeholders in light of the pending Committee recommendations and potential legislative action with respect to future EE/PDR requirements.

In Case No. 16-576-EL-POR, Duke requests that its POR filing deadline be extended to October 15, 2016, noting the Energy Mandates Study Committee recommendations, and arguing that uncodified Section 7(B) of S.B. 310 prohibits the Commission from taking any action with regard to any portfolio plan or application regarding a portfolio plan prior to January 1, 2017. Duke asserts that its requested waiver will not impact the Commission's review of Duke's POR for 2017 and beyond.

- (4) On March 25, 2016, DP&L filed a request in Case No. 16-649-EL-POR also seeking to extend its POR filing deadline for six months to October 15, 2016. DP&L raised similar arguments to Duke and AEP regarding the Energy Mandate Study Committee and uncodified Section 7(B) of S.B. 310. In addition, DP&L asserts that they have several significant cases, Case No. 16-1830-EL-AIR, 16-395-EL-SSO, and 16-329-EL-RDR, pending before the Commission that may impact the future of the EE/PDR structure.

Procedural Issues

- (5) The Kroger Co. (Kroger) and Ohio Manufacturers' Association (OMA), filed motions to intervene in Case No. 16-576-EL-POR on March 23 and 28, 2016, respectively, and submitted comments objecting to Duke's request to extend its POR filing deadline to October 15, 2016. On March 29, 2016, Ohio Partners for Affordable Energy (OPAE) filed motions to intervene in

both captioned cases. On March 31, 2016, the Ohio Consumers' Counsel (OCC) moved to intervene in Case No. 16-649-EL-POR on behalf of the residential utility customers of DP&L, pursuant to R.C. Chapter 4911. On April 4, 2016, the Environmental Law & Policy Center (ELPC) filed a motion to intervene with comments objecting to Duke's request in Case No. 16-576-EL-POR. On April 6, 2016, Kroger and OMA both moved to intervene in Case No. 16-649-EL-POR and filed comments objecting to DP&L's extension request. Kroger asserts that it has numerous facilities served by Duke that will be impacted by the outcome in this proceeding. The OMA is a non-profit association representing the interests of Ohio manufacturers, including members who take electric service from Duke. OPAE represents non-profit organizations and community action agencies located in the service areas of both AEP and Duke that provide bill payment assistance programs, and weatherization and energy efficiency services to low income customers. ELPC is a non-profit environmental advocacy organization with members in Ohio. Kroger, OMA, OPAE, and ELPC have been active participants in past POR cases, and assert that they have real and substantial interests which may be adversely affected by the outcome of these cases, and which cannot be adequately represented by any other party.

- (6) The motions for intervention of Kroger, OMA, OPAE, OCC, and ELPC will be granted.

Consideration of the Waiver Requests

- (7) Kroger and OMA argue that Duke's stated justification of regulatory uncertainty for the requested waiver could be used in virtually any case to support the waiver of a Commission-adopted rule that is not otherwise required by statute, as such risks are present in almost any Commission case. They assert that until the Commission or General Assembly acts to modify existing rules or statutes, Duke is bound by current law and precedent. Moreover, Kroger claims that the 6-month extension requested by Duke is clearly in excess of what is ordinarily permitted by the Commission. OPAE's comments do not distinguish between AEP and Duke's requests. In both cases, OPAE contends that delay in the filing of the POR virtually guarantees that programs will have to be interrupted,

thereby reducing the effectiveness of the programs by confusing customers and harming program contractors. ELPC also objects to Duke's request for a 6-month extension, and argues that Duke's interpretation of Section 7(B) of S.B. 310 would result in absurd consequences if the Commission was to be precluded from commencing these POR review processes before January 1, 2017. Such preclusion, ELPC asserts, would also include any Commission ruling on the pending waiver requests in the instant cases.

- (8) We agree with Kroger's contention that the 6-month extension requested by Duke, and joined by DP&L, is excessive. With respect to Duke's argument, uncodified Section 7(B) of S.B. 310 provides that "[p]rior to January 1, 2017, the Commission shall not take any action with regard to any portfolio plan or application regarding a portfolio plan, except those actions expressly authorized or required by Section 6 of this act [relating to the utility's option to amend its POR prior to October 15, 2014] and actions necessary to administer the implementation of existing portfolio plans." In addition, Section 6(E)(2) specifically provides that beginning January 1, 2017, the provisions of R.C. 4928.66, as amended by this act, shall apply to electric distribution utilities. We disagree with Duke and DP&L's insinuation that this provision prohibits initiation of Commission proceedings regarding 2017 PORs before January 1, 2017.

Further, a 60-day extension of the POR filing deadline should provide a reasonable time for AEP, Duke, and DP&L to formulate their 2017-2019 PORs, notwithstanding that such plans remain subject to legislative changes in EE/PDR mandates, and may require modification to comply with future changes in the law or rules. Accordingly, AEP, Duke, and DP&L will be granted waivers of Ohio Adm.Code 4901:1-39-04(A) and should file their 2017-2019 PORs by June 15, 2016.

It is, therefore,

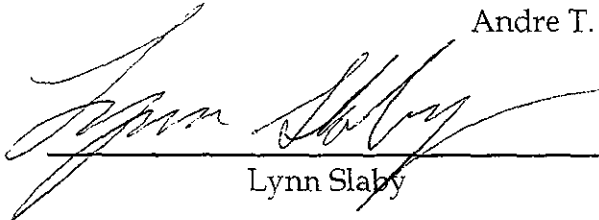
ORDERED, That AEP, Duke, and DP&L be granted waivers of Ohio Adm.Code 4901:1-39-04(A) to file their 2017-2019 PORs by June 15, 2016. It is, further,

ORDERED, That the motions of Kroger, OMA, OPEA, OCC, and ELPC to intervene be granted. It is, further,


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

THE PUBLIC UTILITIES COMMISSION OF OHIO

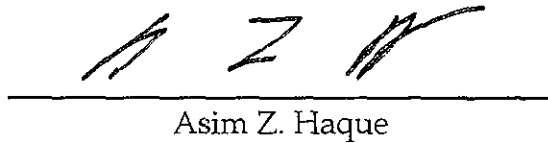
Andre T. Porter, Chairman



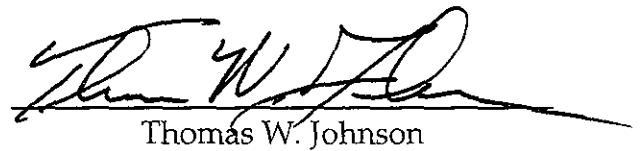
Lynn Slaby



M. Beth Trombold



Asim Z. Haque

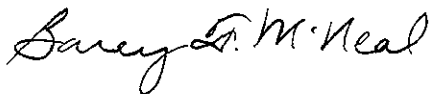


Thomas W. Johnson

RMB/dah

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Barcy F. McNeal
Secretary