

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF THE
DAYTON POWER AND LIGHT COMPANY FOR
APPROVAL OF ITS ELECTRIC SECURITY PLAN.

CASE NO. 16-395-EL-SSO

IN THE MATTER OF THE APPLICATION OF THE
DAYTON POWER AND LIGHT COMPANY FOR
APPROVAL OF REVISED TARIFFS.

CASE NO. 16-396-EL-ATA

IN THE MATTER OF THE APPLICATION OF THE
DAYTON POWER AND LIGHT COMPANY FOR
APPROVAL OF CERTAIN ACCOUNTING
AUTHORITY.

CASE NO. 16-397-EL-AAM

ENTRY

Entered in the Journal on July 11, 2016

I. SUMMARY

{¶ 1} In this Entry, the attorney examiner finds that Industrial Energy Users-Ohio should be permitted to file a surreply opposing the motion of the Dayton Power and Light Company to implement an extension of its Service Stability Rider.

II. DISCUSSION

{¶ 2} The Dayton Power and Light Company (DP&L) is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

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

{¶ 4} On September 4, 2013, in *In re Application of the Dayton Power and Light Co.*, Case No. 12-426-EL-SSO (*ESP II Case*), the Commission issued an Opinion and Order

approving DP&L's second electric security plan (*ESP II Case Order*), with certain modifications, including authorization of a Service Stability Rider (SSR).

{¶ 5} On October 4, 2013, in the *ESP II Case*, Ohio Partners for Affordable Energy and Edgemont Neighbors Coalition (OPAE/Edgemont), the Ohio Consumers' Counsel (OCC), Industrial Energy Users-Ohio (IEU-Ohio), FirstEnergy Solutions Corp. (FES), the Ohio Hospital Association (OHA), Ohio Energy Group (OEG), the Kroger Co. (Kroger), and DP&L filed applications for rehearing. Thereafter, on October 23, 2013, the Commission issued an Entry on Rehearing granting rehearing for further consideration of the matters specified in the applications for rehearing and denied two assignments of error filed by DP&L and FES. On March 19, 2014, the Commission issued a Second Entry on Rehearing granting, in part, and denying, in part, applications for rehearing filed by OCC, FES, Kroger, and DP&L. Further, the Commission's Second Entry on Rehearing denied the applications for rehearing filed by OPAE/Edgemont, IEU-Ohio, OHA, and OEG.

{¶ 6} On April 17, 2014, in the *ESP II Case*, IEU-Ohio and OEG filed second applications for rehearing, and, on April 18, 2014, DP&L and OCC filed second applications for rehearing. Thereafter, on May 7, 2014, the Commission issued a Third Entry on Rehearing granting rehearing for further consideration of the matters specified in the applications for rehearing. On June 4, 2014, the Commission issued its Fourth Entry on Rehearing denying the applications for rehearing filed by OCC, IEU-Ohio, and OEG, and granting, in part, and denying, in part, the application for rehearing filed by DP&L.

{¶ 7} On July 1, 2014, in the *ESP II Case*, OCC filed a third application for rehearing. Thereafter, on July 23, 2014, the Commission issued its Fifth Entry on Rehearing denying OCC's application for rehearing.

{¶ 8} Thereafter, IEU-Ohio, DP&L, and OCC appealed the *ESP II Case Order* to the Supreme Court of Ohio.

{¶ 9} On February 22, 2016, in the above-captioned case (*ESP III Case*), DP&L filed an application for an SSO pursuant to R.C. 4928.141. DP&L's application is for an ESP in accordance with R.C. 4928.143. Additionally, DP&L filed accompanying applications for approval of revised tariffs and for approval of certain accounting authority.

{¶ 10} On March 30, 2016, in the *ESP III Case*, DP&L filed a motion to implement an SSR Extension Rider (SSR-E) on January 1, 2017, to the extent previously authorized by the Commission. Memoranda contra DP&L's motion were filed on April 29, 2016, by OP&E/Edgemont, IEU-Ohio, Honda of America, the city of Dayton, OEG, and OCC.

{¶ 11} On June 20, 2016, the Supreme Court of Ohio reversed the *ESP II Case* Order on the authority of *In re Application of Columbus S. Power Co.*, ___ Ohio St.3d ___, 2016-Ohio-1608, ___ N.E.3d ___. *In re Application of Dayton Power & Light Co.*, Slip Opinion No. 2016-Ohio-3490.

{¶ 12} Thereafter, on June 28, 2016, in the *ESP III Case*, IEU-Ohio filed a motion for an order authorizing it to file a surreply opposing DP&L's motion to implement the SSR-E. To its motion, IEU-Ohio attached its proffered surreply. In its motion, IEU-Ohio explains that, although the Commission's rules do not expressly authorize a surreply, the Commission has permitted parties to file surreplies to prevent prejudice and so that the Commission is fully informed as to the merits of the issues before it. Here, IEU-Ohio argues that good cause exists to permit a surreply, because, after IEU-Ohio filed its memorandum contra opposing DP&L's March 30, 2016 motion, the Supreme Court of Ohio held that the Commission was without authority to authorize DP&L to bill and collect transition revenue or its equivalent.

{¶ 13} The attorney examiner finds that, given the Supreme Court of Ohio's reversal of the *ESP II Case* Order after memoranda contra DP&L's motion were due, good cause exists to permit IEU-Ohio's motion for an order authorizing it to file a surreply. Therefore, the surreply attached to IEU-Ohio's motion shall be permitted.

III. ORDER

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That IEU-Ohio's motion for an order authorizing it to file a surreply is granted. It is, further,

{¶ 16} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Mandy Willey Chiles

By: Mandy Willey Chiles
Attorney Examiner

JRJ/dah

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Case No(s). 16-0395-EL-SSO, 16-0396-EL-ATA, 16-0397-EL-AAM

Summary: Attorney Examiner Entry ordering that IEU-Ohio's motion for an order authorizing it to file a surreply be granted. Entry electronically filed by Debra Hight on behalf of Mandy Willey Chiles, Attorney Examiner.