THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY TO ESTABLISH A STANDARD SERVICE OFFER IN THE FORM OF AN ELECTRIC SECURITY PLAN.	CASE NO. 08-1094-EL-SSO
IN THE MATTER OF THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY FOR APPROVAL OF REVISED TARIFFS.	CASE NO. 08-1095-EL-ATA
IN THE MATTER OF THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY FOR APPROVAL OF CERTAIN ACCOUNTING AUTHORITY.	CASE NO. 08-1096-EL-AAM
IN THE MATTER OF THE APPLICATION OF THE DAYTON POWER AND LIGHT COMPANY FOR WAIVER OF CERTAIN COMMISSION RULES.	CASE NO. 08-1097-EL-UNC

FINDING AND ORDER

Entered in the Journal on August 26, 2016

I. SUMMARY

{¶ 1} The Commission grants The Dayton Power and Light Company's motion to implement the provisions, terms, and conditions of its first electric security plan until a subsequent standard service offer is authorized by the Commission.

II. PROCEDURAL HISTORY

{¶ 2} The Dayton Power and Light Company (DP&L) is a public utility as defined under 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 (EDU) 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 2, 2003, in Case No. 02-2779-EL-ATA, et al., the Commission issued an Opinion and Order (Order) approving a stipulation establishing a rate stabilization period and authorizing DP&L to implement a rate stabilization surcharge (RSS). The RSS allowed 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. *In re The Dayton Power and Light Co.*, Case No. 02-2779-EL-ATA, et al., Opinion and Order (Sept. 2, 2003).

{¶ 5} Thereafter, on December 28, 2005, in Case No. 05-276-EL-AIR, the Commission adopted a stipulation authorizing DP&L to split its previously approved RSS into two separate components: (1) a rate stabilization charge (RSC) and (2) an environmental investment rider (EIR). The RSC was authorized to pay DP&L for costs associated with its provider of last resort (POLR) obligations, while the EIR authorized DP&L to recover environmental plant investments and incremental operations and maintenance, depreciation, and tax costs to install environmental control devices on its generating units. The Commission determined the RSC and EIR were both fair, reasonable, and supported by the record. *In re The Dayton Power and Light Co.*, Case No. 05-276-EL-AIR, Opinion and Order (Dec. 28, 2005). The Supreme Court of Ohio subsequently affirmed the Commission's decision and upheld both the RSC and the EIR. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 114 Ohio St.3d 340, 2007-Ohio-4276.

{¶ 6} By Order issued on June 24, 2009, in this case, the Commission approved a stipulation and recommendation establishing DP&L's first ESP (*ESP I*). *In re The Dayton Power and Light Co.*, Case No. 08-1094-EL-SSO, et al., (*ESP I Case*), Opinion and Order (June

24, 2009). The RSC, EIR, and a fuel and purchased power rider (fuel rider) were included in *ESP I*.

{¶ 7} Thereafter, by Order issued on September 4, 2013, in Case No. 12-426-EL-SSO, the Commission approved DP&L's proposal for a second ESP (*ESP II*) with certain modifications. Included in *ESP II* was a service stability rider (SSR) for DP&L's financial integrity. *In re The Dayton Power and Light Co.*, Case No. 12-426-EL-SSO, et al. (*ESP II Case*), Opinion and Order (Sept. 4, 2013).

{¶ 8} However, on June 20, 2016, the Supreme Court of Ohio issued an opinion reversing the decision of the Commission approving *ESP II*. *In re Application of Dayton Power & Light Co.*, --- Ohio St.3d ---, 2016-Ohio-3490, --- N.E.3d ---. Subsequently, on July 19, 2016, a mandate from the Supreme Court of Ohio was filed in the *ESP II Case* requiring the Commission to modify its order or issue a new order.

{¶ 9} On July 27, 2016, DP&L filed a motion and memorandum in support in the *ESP II Case* to withdraw its application for *ESP II*. Pursuant to R.C. 4928.143(C)(2)(a), "[i]f the Commission modifies and approves an application [for an ESP], the electric distribution utility may withdraw the application, thereby terminating it, and may file a new standard service offer under this section or a standard service offer under section 4928.142 of the Revised Code." Contemporaneous with this Order, the Commission grants DP&L's motion to withdraw *ESP II*, thereby terminating it.

{¶ 10} Pursuant to R.C. 4928.143(C)(2)(b), "[i]f the utility terminates an application * * * or if the commission disapproves an application * * *, the commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent offer is authorized pursuant to this section or section 4928.142 of the Revised Code, respectively." Accordingly, on July 27, 2016, DP&L filed a motion in this proceeding to implement *ESP I* pursuant to R.C.

4928.143(C)(2)(b). Thereafter, on August 1, 2016, DP&L filed proposed tariffs to implement *ESP I*.

{¶ 11} Memoranda contra to DP&L's motion to implement *ESP I* were filed in this case by the Ohio Manufacturers' Association (OMA), the Kroger Company (Kroger), the Ohio Consumers' Counsel (OCC), Industrial Energy Users - Ohio (IEU-Ohio), Ohio Energy Group (OEG), and the Retail Energy Supply Association (RESA). By Entry issued on August 3, 2016, the Commission requested comments from parties regarding DP&L's proposed tariffs. Comments on DP&L's proposed tariffs were filed by Ohio Partners for Affordable Energy (OPAE), Honda of America Manufacturing, Inc. (Honda), the City of Dayton (Dayton City), OCC, IEU-Ohio, Interstate Gas Supply, Inc. (IGS), RESA, Kroger, and OMA. On August 18, 2016, DP&L filed a reply to the memoranda contra and comments regarding DP&L's motion and proposed tariffs to implement *ESP I*. We note that some parties combined arguments regarding DP&L's motion to withdraw *ESP II* with arguments regarding DP&L's motion and proposed tariffs to implement *ESP I*. In this case, the Commission is only considering DP&L's motion to implement *ESP I* and the proposed tariffs. As we noted above, the Commission granted DP&L's motion to withdraw *ESP II*, thereby terminating it, in the *ESP II Case*.

III. ARGUMENTS OF THE PARTIES

{¶ 12} Pursuant to R.C. 4928.143(C)(2)(b), "[i]f the utility terminates an application * * * or if the commission disapproves an application * * *, the commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent offer is authorized." DP&L argues in its motion to implement *ESP I* that the Commission must issue an order authorizing it to implement *ESP I*, pursuant to R.C. 4928.143(C)(2)(b) until the Commission approves a subsequent SSO.

{¶ 13} OPAE, Honda, Dayton City, OCC, IEU-Ohio, IGS, RESA, Kroger, and OMA assert that the Supreme Court of Ohio's decision reversing the Commission's decision in *ESP II* should result in a rate decrease, whereas DP&L's proposed tariffs would increase rates to customers. Further, the parties aver that DP&L's proposed tariffs to implement *ESP I* should be moot because the Commission should require DP&L to continue *ESP II* without the SSR. They argue that DP&L's request to implement *ESP I* with the RSC is an attempt to circumvent the Supreme Court of Ohio's decision reversing the SSR.

{¶ 14} Honda, Dayton City, IEU-Ohio, OCC, and Kroger then argue that if the Commission authorizes DP&L to implement *ESP I*, the RSC should not be included because it expired by its own terms and should be terminated. They note that when *ESP I* was originally authorized, DP&L was providing service as a provider of last resort and the RSC was a POLR charge. However, they argue this justification for the RSC is no longer applicable because POLR service is now provided by competitive bidding process auction participants. Since DP&L no longer bears the risk of providing POLR service, they argue that it should not be permitted to collect the RSC. Further, the parties assert that the RSC would unlawfully authorize DP&L to collect transition revenues or equivalent revenues, much like the SSR that was reversed by the Supreme Court of Ohio. *In re Application of Dayton Power & Light Co.*, ---Ohio St.3d---, 2016-Ohio-3490, ---N.E.3d---. However, in its reply, DP&L argues the RSC should be implemented as a provision, term, or condition of *ESP I* for three reasons: (1) R.C. 4928.143(C)(2)(b) requires the Commission to continue the provisions, terms, and conditions of *ESP I*, (2) no party sought rehearing of the Commission's Order in the *ESP I Case* so they are barred from re-litigating the RSC due to the doctrines of res judicata and collateral estoppel, and (3) the RSC is a permissible charge authorized by the Commission pursuant to R.C. 4928.143(B)(2)(d).

{¶ 15} Similarly, OCC argues the Commission should not authorize DP&L to collect the EIR. OCC notes the EIR was authorized in *ESP I* to compensate DP&L for investments in its generation units to address United States Environmental Protection Agency (US

EPA) regulations. OCC asserts that DP&L is already collecting the EIR through base generation rates. Therefore, OCC avers that implementing the EIR would authorize DP&L to charge customers twice for the same service. Further, OCC asserts the EIR would unlawfully authorize DP&L to collect transition revenues or equivalent revenues, much like the RSC or the SSR that was reversed by the Supreme Court of Ohio. *In re Application of Dayton Power & Light Co.*, ---Ohio St.3d---, 2016-Ohio-3490, ---N.E.3d---.

{¶ 16} IEU-Ohio, OMA, and Kroger argue that if the Commission authorizes DP&L to implement *ESP I*, then the Commission should require DP&L to implement the provisions, terms, and conditions of *ESP I* as they were originally authorized. The parties argue that R.C. 4928.143(C)(2)(b) requires DP&L to implement *ESP I* exactly as it was. To do this, IEU-Ohio initially asserts the Commission should direct DP&L to delete its transmission cost recovery rider-bypassable (TCRR-B) and transmission cost recovery rider-nonbypassable (TCRR-N) tariff sheets to implement just the bypassable transmission cost recovery rider authorized in *ESP I*. IEU-Ohio then argues the Commission should direct DP&L to remove its request for shared savings from its application in Case No. 16-329-EL-RDR to update and reduce its energy efficiency rider rates. Further, IEU-Ohio asserts the Commission should direct DP&L to delete the storm cost recovery rider tariff sheet and the reconciliation rider tariff sheet. However, IGS, RESA, and OCC support maintaining some provisions of *ESP II* and support maintaining the integrity of the current market structure, including maintaining competitively bid generation rates and the TCRR-N.

{¶ 17} In its reply, DP&L argues that its proposed tariffs to maintain certain aspects of *ESP II* and market structure will minimize customer and market impacts. DP&L asserts that the parties ignore the following key points: (1) competitive bidding has occurred in DP&L's service territory, and parties have already entered into binding contracts in reliance upon that process, (2) several riders in *ESP I* were not impacted by *ESP II*, and (3) DP&L's rates would actually be significantly higher if new rates were implemented exactly

as they were in *ESP I* in 2013. When DP&L filed its proposed tariffs, it noted that it would honor existing contracts with winning competitive bid suppliers through the end of their term in May 2017 and maintain current PJM obligations for all suppliers. Therefore, DP&L intends for its tariffs to reflect the competitive bid rate in order to minimize rate impacts to customers.

{¶ 18} Finally, Honda and Dayton City request clarification concerning DP&L's calculation of fuel costs under the fuel rider and the continuation of the competitive bidding process. Honda and Dayton City also request the Commission establish a procedural schedule in this matter.

IV. COMMISSION CONCLUSION

{¶ 19} The Commission notes that on December 28, 2005, in Case No. 05-276-EL-AIR, the Commission adopted a stipulation authorizing DP&L to split its previously approved RSS into two separate components: the RSC and the EIR. The RSC was authorized to pay DP&L for costs associated with its POLR obligations, while the EIR authorized DP&L to recover environmental plant investments and incremental operations and maintenance, depreciation, and tax costs to install environmental control devices on its generating units. The Commission determined both the RSC and EIR were fair, reasonable, and supported by the record. *In re The Dayton Power and Light Co.*, Case No. 05-276-EL-AIR, Opinion and Order (Dec. 28, 2005). Thereafter, the Supreme Court of Ohio affirmed our decision. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 114 Ohio St.3d 340, 2007-Ohio-4276. By Order issued on June 24, 2009, in this case, the Commission approved a stipulation establishing *ESP I* and continuing the RSC and EIR as terms of *ESP I*. *ESP I Case*, Opinion and Order (June 24, 2009). Further, along with the RSC and EIR, the Commission authorized a fuel and purchased power rider, a storm cost recovery rider, an energy efficiency rider, and a transmission cost recovery rider. No party appealed the Commission's decision approving *ESP I*.

{¶ 20} Pursuant to R.C. 4928.143(C)(2)(b), if the utility terminates an ESP, the Commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent SSO. We note that we have granted DP&L's motion to withdraw *ESP II*, thereby terminating it. Accordingly, with the termination of *ESP II*, the Commission finds that DP&L shall implement the provisions, terms, and conditions of *ESP I*, along with any expected increases or decreases in fuel costs, pursuant to R.C. 4928.143(C)(2)(b), until a subsequent SSO is authorized.

{¶ 21} As a preliminary matter, the Commission grants DP&L's proposals to recover the costs of energy and capacity obtained through the competitive bid process to serve non-shopping customers through base generation rates (the "standard offer" tariff sheet) and to set the fuel rider to zero, excluding amounts being reconciled from prior periods. R.C. 4928.143(C)(2)(b) requires the Commission to adjust for any expected increases or decreases in fuel costs from those contained in the previous SSO. We find that R.C. 4928.143(C)(2)(b) allows adjustment for purchased power as well as fuel. In this case, all of DP&L's non-shopping customers are being served by energy and capacity purchased from the wholesale markets through the competitive bidding process. It is long standing regulatory practice for "fuel" and "purchased power" to be used interchangeably. For example, DP&L's existing fuel rider specifically includes both fuel and purchased power costs. Therefore, the Commission finds that DP&L's proposed tariffs should be approved as it relates to honoring existing contracts with winning competitive bid suppliers and maintaining current PJM obligations for all suppliers. This will maintain the integrity of the competitive bid process and allow non-shopping customers to continue to benefit from market-based rates.

{¶ 22} With respect to the EIR, the Commission notes the EIR is a bypassable rider, and thus, was part of the rate offered to non-shopping customers in *ESP I*. The EIR was authorized in *ESP I* to allow DP&L to recover environmental plant investments and incremental operations and maintenance, depreciation, and tax expenses to install

environmental control devices on its generating units to comply with US EPA regulations. However, when the EIR was originally authorized, those generating units were being used to provide public utility service to non-shopping customers as part of the standard service offer. With the implementation of the competitive bidding process to procure retail electric generation from wholesale suppliers, those generating units and their associated environmental controls are not currently being used to provide public utility service to non-shopping customers under the standard service offer. Therefore, while the EIR is a provision, term, or condition of *ESP I*, the environmental controls for which the EIR recovered DP&L's investments are no longer used and useful in rendering public utility service to customers. Accordingly, similar to the fuel rider, the EIR should be approved as a provision, term, or condition of *ESP I*, but should be set to zero. We also note the SSO for non-shopping customers in *ESP I* included base generation rates, the EIR, and the fuel rider. Thus, the energy and capacity obtained by the competitive bidding process should replace the EIR, as well as base generation rates and the fuel rider. As proposed by DP&L, the costs of such energy and capacity will be recovered through the standard offer tariff.

{¶ 23} The RSC is a nonbypassable POLR charge to allow DP&L to fulfill its POLR obligations. While POLR service is currently provided by competitive bidding process auction participants, DP&L retains its obligation, over the long term, to serve as provider of last resort. We note there are no further competitive auctions scheduled to procure energy and capacity for non-shopping customers after May 31, 2017. R.C. 4928.141 provides that the EDU must provide consumers with an SSO of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. Therefore, pursuant to R.C. 4928.141, DP&L maintains a long-term obligation to serve as provider of last resort, even while POLR services are being provided by competitive bidding auction participants in the short-term. Further, we have already determined the RSC is a valid provision, term, or condition of *ESP I*. The Commission stated in its December 19, 2012, Entry in this case, "[t]he Commission finds that the provisions, terms, and conditions of the ESP include the RSC.

As one of the provisions, terms, or conditions of the current ESP, the RSC should continue with the ESP until a subsequent standard service offer is authorized." *ESP I Case*, Entry (Dec. 19, 2012). On February 19, 2013, the Commission issued an Entry on Rehearing upholding its determination that the RSC is a provision, term, or condition of *ESP I*. *ESP I Case*, Entry on Rehearing (Feb. 19, 2013). No party appealed this ruling by the Commission. Accordingly, the Commission has already determined the RSC is a provision, term, or condition of *ESP I*; therefore, we find the parties' arguments both lack merit and are barred by the doctrines of res judicata and collateral estoppel.

{¶ 24} Further, the Commission finds the elimination of the transmission cost recovery riders, TCRR-B and TCRR-N, would unduly disrupt both the competitive bidding process supplying the SSO and individual customer contracts with suppliers of competitive retail electric service (CRES Providers). The wholesale suppliers for SSO customers rely upon DP&L to acquire certain transmission services under the TCRR-N and may not have included the costs of these transmission services in their bids to serve SSO customers. Thus, elimination of the TCRR-N may severely disrupt existing contracts for wholesale suppliers and discourage future participation in the competitive bidding process. Preservation of the integrity of the competitive bidding process is of the highest priority for the Commission. Likewise, CRES Providers also rely upon DP&L to procure certain transmission services under the TCRR-N and could be forced to terminate or renegotiate their contracts with their customers if the TCRR-N were eliminated. Further, if a mechanism like the TCRR-N is eliminated in this case and then restored in DP&L's next SSO, contracts between CRES Providers and individual customers could be further disrupted by the subsequent regulatory change. Accordingly, we will not accept IEU-Ohio's recommendation to eliminate the TCRR-N and TCRR-B at this time.

{¶ 25} However, the Commission understands that a number of mercantile customers could benefit by shopping for all transmission services. The Commission encourages such customers, and IEU-Ohio, to work with Staff to determine whether a

filing under R.C. 4905.31 could enable these customers to receive an exemption from the TCRR-N and to shop for transmission services.

{¶ 26} We also disagree with IEU-Ohio's claim that the Commission should direct DP&L to delete its storm cost recovery rider from DP&L's tariffs. The stipulation approved by the Commission in the *ESP I Case* specifically authorized DP&L to request a separate rider to recover the costs of storm damage. Therefore, the storm cost recovery rider is a provision, term or condition of *ESP I*, and DP&L should be permitted to continue its current storm cost recovery rider. *ESP I Case*, Opinion and Order (June 24, 2009) at 5-6.

{¶ 27} Likewise, the Commission disagrees with IEU-Ohio's argument that the Commission should direct DP&L to reduce the rates of the energy efficiency rider to the amounts recovered under *ESP I* and to remove its request for shared savings from DP&L's application in Case No. 16-329-EL-RDR. R.C. 4928.143(C)(2)(b) does not require the Commission to reestablish the "rates" of the previous SSO; the statute requires the Commission to continue the "provisions, terms, and conditions" of the previous SSO. Further, we note the stipulation in the *ESP I Case* specifically allows DP&L to implement an energy efficiency rider to recover costs related to programs implemented to achieve compliance with the statutory energy efficiency and peak demand reduction standards. *ESP I Case*, Opinion and Order (Sept. 4, 2013) at 5. Moreover, we find that the issue of whether DP&L should receive shared savings is better resolved in Case No. 16-329-EL-RDR.

{¶ 28} In conclusion, the Commission finds that DP&L's motion to implement *ESP I* should be granted. Therefore, within seven days, DP&L shall file final tariffs, consistent with this Finding and Order, subject to review by the Commission. Finally, the Commission finds that no hearing is necessary in this matter.

V. ORDER

{¶ 29} It is, therefore,

{¶ 30} ORDERED, That DP&L's motion to implement previously authorized rates be granted. It is, further,

{¶ 31} ORDERED, That, within seven days, DP&L file, in final form, two complete copies of its tariff, consistent with this Finding and Order. One copy shall be filed in this case docket and one copy in its TRF docket. It is, further,

{¶ 32} ORDERED, That the effective date of the new tariff shall be a date not earlier than the date of this Finding and Order, and the date upon which the final tariffs are filed with the Commission. It is, further,

{¶ 33} ORDERED, That nothing in this Finding and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 34} ORDERED, That DP&L notify all customers regarding the availability of the new tariffs via a bill message, via a bill insert, or via a separate mailing within 30 days of the effective date of the tariffs. A copy of the customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least 10 days prior to its distribution to customers. It is, further,

{¶ 35} ORDERED, That a copy of this Finding and Order be served upon each party of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

Lynn Slaby

M. Beth Trombold

Thomas W. Johnson

M. Howard Petricoff

GAP/BAM/sc/vrm

Entered in the Journal
AUG 2 6 2018

Barcy F. McNeal
Secretary