

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

ENTRY

Entered in the Journal on November 27, 2019

{¶ 1} 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.

{¶ 2} 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.

{¶ 3} In this case, by Opinion and Order issued on June 24, 2009, the Commission adopted the stipulation and recommendation of the parties to establish DP&L's first ESP (ESP I). Among other terms, conditions, and charges, ESP I included a rate stabilization

charge (RSC). Thereafter, by Entry issued on December 19, 2012, the Commission continued ESP I, including the RSC, until a subsequent SSO could be authorized.

{¶ 4} By Opinion and Order issued on September 4, 2013, the Commission modified and approved DP&L's application for a second ESP (ESP II). *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). On June 20, 2016, the Supreme Court of Ohio issued an opinion reversing the decision of the Commission approving ESP II and disposing of all pending appeals. *In re Application of Dayton Power & Light Co.*, 147 Ohio St.3d 166, 2016-Ohio-3490, 62 N.E.3d 179. Subsequently, on July 16, 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. Therefore, on August 26, 2016, the Commission modified ESP II pursuant to the Court's directive and then granted DP&L's application to withdraw ESP II, thereby terminating it. *ESP II Case*, Finding and Order (Aug. 26, 2016).

{¶ 5} Meanwhile, on February 22, 2016, as amended on October 11, 2016, DP&L filed an application (Application) for a third ESP (ESP III). On October 20, 2017, the Commission issued an Opinion and Order modifying and approving an amended stipulation (Amended Stipulation) executed by most, but not all, of the interested parties. *In re The Dayton Power and Light Co.*, Case No. 16-395-EL-SSO, et al. (*ESP III Case*). After completion of the rehearing process, Interstate Gas Supply, Inc., one of the original signatories, withdrew from the Amended Stipulation, which prompted a second hearing.

{¶ 6} On June 19, 2019, after briefing for the second hearing concluded but before the Commission issued an opinion, the Supreme Court of Ohio struck down a distribution modernization rider (DMR) authorized by the Commission in a separate ESP proceeding upon finding that the DMR did not qualify as an incentive under R.C. 4928.143(B)(2)(h) and that the conditions placed on the recovery of the DMR revenues were not sufficient to protect ratepayers. *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, 2019-Ohio-331, 129 N.E.3d 454, and *reconsideration denied*, 156 Ohio St.3d. 1487, 2019-Ohio3331, 129 N.E.3d 458 (*Ohio Edison*).

{¶ 7} On November 21, 2019, the Commission issued a Supplemental Opinion and Order in the *ESP III Case* that modified and approved the Amended Stipulation in light of the Supreme Court of Ohio's decision in *Ohio Edison*. The Commission found that the DMR in DP&L's ESP III was unlawful and violated important regulatory practices and principles; therefore, the Commission modified the Amended Stipulation to eliminate the provisions regarding the DMR. *ESP III Case*, Supplemental Opinion and Order (Nov. 21, 2019) at ¶ 110.

{¶ 8} Pursuant to R.C. 4928.143(C)(2)(a) if the Commission modifies and approves an application for an ESP filed under R.C. 4928.143(C)(1), the electric utility may withdraw the application, thereby terminating it. Furthermore, pursuant to R.C. 4928.143(C)(2)(b), if the utility terminates an application for an ESP pursuant to R.C. 4928.143(C)(2)(a), the Commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent SSO, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent SSO is authorized.

{¶ 9} On November 26, 2019, DP&L filed a notice of withdrawal (Notice) of its ESP III Application. In the Notice, DP&L states that it is exercising its statutory right to withdraw its Application under R.C. 4928.143(C)(2)(a). Citing to R.C. 4928.143(C)(2)(b), DP&L further states that it is exercising its statutory right to implement its most recent SSO, i.e., ESP I authorized in this case on June 24, 2009, and extended on December 19, 2012, specifically including the RSC. On the same day, DP&L filed proposed tariffs, which DP&L represents to be consistent with those previously approved by the Commission on August 26, 2016 in this *ESP I Case* and that were in effect before the Commission's October 20, 2017 Opinion and Order in the *ESP III Case*. DP&L submits that the tariffs should remain in effect until a subsequent SSO is approved pursuant to R.C. 4928.143 or R.C. 4928.142.

{¶ 10} The attorney examiner finds that interested parties may file comments or otherwise respond to DP&L's November 26, 2019 proposed tariffs on or before December 4, 2019.

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That interested parties may file comments on or before December 4, 2019. It is, further,

{¶ 13} ORDERED, That a copy of this Entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Patricia A. Schabo

By: Patricia A. Schabo
Attorney Examiner

NJW/hac

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Case No(s). 08-1094-EL-SSO, 08-1095-EL-ATA, 08-1096-EL-AAM, 08-1097-EL-UNC

Summary: Attorney Examiner Entry setting deadline to file comments electronically filed by Heather A Chilcote on behalf of Patricia Schabo, Attorney Examiner, Public Utilities Commission