

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
THE DAYTON POWER AND LIGHT
COMPANY FOR EXTENSION OF ITS
DISTRIBUTION MODERNIZATION RIDER.

CASE NO. 19-162-EL-RDR

ENTRY

Entered in the Journal on January 2, 2020

{¶ 1} In this Entry, the attorney examiner grants DP&L's unopposed request for an extension of time to file a memorandum contra the motion to dismiss filed by Ohio Consumers' Counsel on December 20, 2019.

{¶ 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 mandates that an electric distribution utility (EDU) shall provide 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 service, to all consumers within its certified territory. 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 February 22, 2016, as amended on October 11, 2016, DP&L filed an application for its third ESP (ESP III). *In re Dayton Power and Light Co.*, Case Nos. 16-395-EL-SSO, et al. (*ESP III Case*). On October 20, 2017, the Commission issued its Opinion and Order modifying and approving an amended stipulation (Amended Stipulation) filed by various parties in the *ESP III Case*. ESP III was effective November 1, 2017. *ESP III Case*, Opinion and Order (Oct. 20, 2017) at ¶¶ 1, 130, 131, 138. 141.

{¶ 5} On September 19, 2018, the Commission denied an application for rehearing filed by Interstate Gas Supply, Inc. (IGS) in the *ESP III Case*. *ESP III Case*, Third Entry on Rehearing (Sep. 19, 2019). Subsequently, on October 19, 2018, IGS withdrew from the

Amended Stipulation, requiring a second evidentiary hearing, according to the terms of the Amended Stipulation. *ESP III Case*, Entry (Nov. 15, 2018); *ESP III Case*, Entry (Nov. 20, 2018).

{¶ 6} While the second evidentiary hearing was pending in the *ESP III Case*, DP&L filed an application in this proceeding on January 23, 2019, requesting an extension of the distribution modernization rider provided for in the Amended Stipulation in the *ESP III Case*.

{¶ 7} Following the second evidentiary hearing in the *ESP III Case*, the Commission issued a Supplemental Opinion and Order on November 21, 2019. In the Supplemental Opinion and Order, the Commission further modified and approved the Amended Stipulation establishing ESP III, eliminating DP&L's distribution modernization rider 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.

{¶ 8} On November 26, 2019, DP&L filed a notice of withdrawal of its application for ESP III, pursuant to 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) at ¶¶ 1, 16, 22.

{¶ 9} Subsequently, on December 20, 2019, Ohio Consumers' Counsel (OCC) filed a motion to dismiss this proceeding.

{¶ 10} On December 30, 2019, DP&L filed a motion for a ten-day extension of time to file a memorandum contra the motion to dismiss filed by OCC and a request for expedited consideration. In support of its request for expedited consideration, DP&L represents that it has contacted counsel for the intervening parties in this proceeding and that no party, including OCC, objects to an expedited ruling.

{¶ 11} The attorney examiner finds that DP&L's motion for an extension of time is reasonable and should be granted. However, the examiner notes that no procedural schedule has been established in this case and that this case is closely related to other matters pending before the Commission. Thus, the examiner finds that the requested ten-day extension of time is insufficient and that the time to file a memorandum contra the motion to dismiss should be extended by 90 days. Accordingly, memoranda contra OCC's motion to dismiss should be filed by April 6, 2020. The attorney examiner also clarifies that the extension of time to file memorandum contra the motion to dismiss applies to all parties to this proceeding.

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That DP&L's motion for extension of time to file a memorandum contra the motion to dismiss filed by OCC on December 20, 2019, be granted. It is, further,

{¶ 14} ORDERED, That memoranda contra the motion to dismiss be filed by April 6, 2020. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Gregory A. Price

By: Gregory A. Price
Attorney Examiner

NJW/hac

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Case No(s). 19-0162-EL-RDR

Summary: Attorney Examiner Entry granting motion for extension of time to file a memorandum contra the motion to dismiss and setting deadline to file memoranda contra electronically filed by Heather A Chilcote on behalf of Gregory A. Price, Attorney Examiner, Public Utilities Commission of Ohio