

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. 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 January 24, 2020

{¶ 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 mandates that an electric distribution utility 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.

{¶ 3} On February 22, 2016, as amended on October 11, 2016, DP&L filed an application for its third ESP (ESP III). On October 20, 2017, the Commission issued its Opinion and Order modifying and approving an amended stipulation (Amended Stipulation) filed by various parties to this proceeding. ESP III was effective November 1, 2017.

{¶ 4} On September 19, 2018, the Commission denied an application for rehearing filed by Interstate Gas Supply, Inc. (IGS). Third Application for Rehearing (Sep. 19, 2019). Subsequently, on October 19, 2019, IGS withdrew from the Amended Stipulation, requiring a second evidentiary hearing, according to the terms of the Amended Stipulation. Entry (Nov. 15, 2018); Entry (Nov. 20, 2018). Following this additional evidentiary hearing, 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*). Supplemental Opinion and Order (Nov. 21, 2019) at ¶1, 102-110, 134.

{¶ 5} On November 26, 2019, DP&L filed a notice of withdrawal (Notice) of its application for ESP III, pursuant to its statutory right to withdraw its application under R.C. 4928.143(C)(2)(a). In the same document, DP&L stated that it was also exercising its related right to implement its first ESP from *In re the Dayton Power and Light Co.*, Case No. 08-1094-EL-SSO, et al. (*ESP I Case*), pursuant to R.C. 4928.143(C)(2)(b).

{¶ 6} On November 27, 2019, the attorney examiner issued an Entry in this case docket inviting any party to this proceeding to respond to DP&L's Notice on or before December 4, 2019. On that date, Ohio Energy Group, Industrial Energy Users-Ohio, and the Retail Energy Supply Association individually responded to the Notice. Additionally, the Ohio Manufacturers' Association Energy Group, the Kroger Company, IGS, and Ohio Consumers' Counsel (OCC) jointly filed a memorandum contra the Notice, and the City of Dayton (Dayton) and Ohio Partners for Affordable Energy (OPAE) filed a joint motion to strike the Notice. The joint motion to strike was fully briefed, with a memorandum contra filed by DP&L on December 10, 2019, and a reply in support filed on December 16, 2019.

{¶ 7} On December 18, 2019, the Commission issued a Finding and Order approving the Notice and finding that the withdrawal of the application terminated ESP III.¹ On the same day, the Commission issued a Second Finding and Order in the docket for Case No. 08-1094-EL-SSO, et al., approving proposed revised tariffs subject to modifications as directed therein. *ESP I Case*, Second Finding and Order (Dec. 18, 2019).

{¶ 8} On January 17, 2020, OCC filed an application for hearing of the Commission's December 18, 2019 Finding and Order.

{¶ 9} Subsequently, on January 22, 2020, DP&L filed a motion for an extension of time to file memoranda in opposition to the application for rehearing filed by OCC and a request for expedited consideration.² A similar motion was filed in the *ESP I Case*. DP&L requests a ten-day extension of time — until February 6, 2020 — for parties to file memoranda in opposition to OCC's application for rehearing. For cause, DP&L cites to the intervening holiday shortening response time, the various issues raised by OCC, and the related applications for rehearing filed in the *ESP I Case*. In support of its request for an expedited ruling, DP&L asserts that it contacted counsel for all intervening parties by email to determine whether there would be objections. DP&L represents that it received no objections to the issuance of an expedited ruling and that several parties had expressly stated they had no objection.

{¶ 10} In a January 23, 2020 email, counsel for DP&L informed the attorney examiner that a mistake had been made: OCC's counsel of record in the *ESP I Case* was not included on the correspondence sent to counsel inquiring whether there would be opposition to the request for expedited consideration, and OCC's counsel intended to lodge an objection.³

¹ The December 18, 2019 Finding and Order also denied the joint motion to strike filed by Dayton and OPAE.

² A similar motion was filed in the *ESP I Case* in response to five applications for rehearing of the Commission's December 18, 2019 Second Finding and Order.

³ No communication error was made in this proceeding; counsel of record for OCC was included in the original email correspondence.

Counsel for DP&L thus requested a telephone conference. During that telephone conference, OCC's counsel of record in this proceeding informed the attorney examiner that he, too, intended to lodge an objection to DP&L's request for an expedited ruling. The attorney examiner directed counsel for OCC to file any memorandum contra the motion for an extension of time to file memoranda in opposition to the application for rehearing by 12:00 p.m., on January 24, 2020.

{¶ 11} On January 24, 2020, OCC filed its memorandum contra DP&L's request for an extension of time. OCC proposes that the attorney examiner grant a three-day extension, instead of the requested ten-day period. OCC states that three additional calendar days will avoid undue delay of the Commission's decision on OCC's application for rehearing. Conversely, OCC insists that the requested ten-day period is unreasonable, as it could potentially deprive the Commission of sufficient time to consider the important consumer matters raised in OCC's application for rehearing, or could extend the Commission's review causing harm to DP&L's customers. Thus, OCC urges the Commission to deny DP&L's request for a ten-day extension of time and, instead, offers its lack of objection to a three-day extension.

{¶ 12} The attorney examiner finds that DP&L's motion for an extension of time is reasonable and, with the exception of the amount of time requested, should be granted. The attorney examiner further finds that an extension of seven days, rather than the 10 days requested by DP&L or the three days proposed by OCC, will provide sufficient additional time to respond to the arguments made on rehearing. In addition, the examiner finds that no party is prejudiced by this ruling. R.C. 4903.10 requires that the Commission grant or deny rehearing within 30 days after the filing of an applications for rehearing or the application will be denied by operation of law. This ruling has no effect upon that statutory deadline. Further, the examiner will clarify that this extension applies to all parties in this proceeding. Accordingly, the attorney examiner directs interested parties to file any

memoranda in opposition to OCC's January 17, 2020 application for rehearing no later than February 3, 2020.

{¶ 13} It is, therefore,

{¶ 14} ORDERED, That DP&L's motion for extension of time to file a memorandum contra the application for rehearing filed on January 17, 2020, be granted as stated in Paragraph 13. It is, further,

{¶ 15} ORDERED, That memoranda in opposition to the application for rehearing filed on January 17, 2020, be filed by February 3, 2020. It is, further,

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

THE OHIO POWER SITING BOARD

/s/Patricia A. Schabo

By: Patricia A. Schabo
Administrative Law Judge

JRJ/hac

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

Summary: Attorney Examiner Entry granting motion for extension of time and setting deadline to file memoranda in opposition to application for rehearing electronically filed by Heather A Chilcote on behalf of Patricia Schabo, Attorney Examiner, Public Utilities Commission