

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 January 27, 2020

I. SUMMARY

{¶ 1} In this Entry, the attorney examiner grants a seven-day extension of time in which to file memorandum contra the applications for rehearing filed on January 17, 2020.

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 (MRO)

in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} R.C. 4928.143(C)(2)(b) provides that if a utility terminates an application for an ESP 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 SSO, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent SSO is authorized.

{¶ 5} By Opinion and Order issued in this case on June 24, 2009, the Commission adopted the stipulation and recommendation of the parties (Stipulation) to establish DP&L's first ESP (ESP I). Included among the terms, conditions, and charges in ESP I was a rate stabilization charge (RSC). Thereafter, on December 19, 2012, the Commission continued ESP I, including the RSC, until a subsequent SSO could be authorized. Entry (Dec. 19, 2012) at 3-5.

{¶ 6} 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. Thereafter, on August 26, 2016, in the *ESP II Case*, the Commission modified ESP II pursuant to the Court's remand and then granted DP&L's application to withdraw ESP II, thereby terminating it. *ESP II Case*, Finding and Order (Aug. 26, 2016). The Supreme Court of Ohio dismissed as moot the subsequent appeals of the August 26, 2016 Finding and Order. *In re Application of Dayton Power & Light Co.*, 154 Ohio St.3d 237, 2018-Ohio-4009, 113 N.E.3d 507, *reconsideration denied*, 154 Ohio St.3d 1446, 2018-Ohio-4962, 113 N.E.3d 545.

{¶ 7} In light of DP&L's withdrawal of ESP II, the Commission, pursuant to R.C. 4928.143(C)(2)(b), granted DP&L's application in this case to implement the provisions, terms and conditions of ESP I, its most recent SSO, until a subsequent SSO could be authorized. Finding and Order (Aug. 26, 2019), Third Entry on Rehearing (Dec. 14, 2016). The Supreme Court dismissed as moot the ensuing appeal. *In re Dayton Power & Light Co.*, 154 Ohio St.3d 1434, 2018-Ohio-4732, 112 N.E.3d 920. The provisions, terms and conditions of ESP I remained in effect until the Commission modified and approved an amended stipulation establishing DP&L's third electric security plan (ESP III), effective November 1, 2017. *In re Dayton Power and Light Co.*, Case No. 16-395-EL-SSO (*ESP III Case*), Opinion and Order (Oct. 20, 2017) at ¶ 131.

{¶ 8} Subsequently, Interstate Gas Supply (IGS) withdrew from the amended stipulation in the *ESP III Case*, necessitating an additional evidentiary hearing in that proceeding. *ESP III Case*, Entry (Nov. 15, 2018). Following the additional evidentiary hearing, the Commission issued a Supplemental Opinion and Order in the *ESP III Case*. In the Supplemental Opinion and Order, the Commission further modified and approved the amended stipulation filed in the *ESP III Case*, eliminating DP&L's distribution modernization rider (DMR), 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, 2019-Ohio-3331, 129 N.E.3d 454, and *reconsideration denied*, 156 Ohio St.3d 1487, 2019-Ohio-3331, 129 N.E.3d 458. *ESP III Case*, Supplemental Opinion and Order (November 21, 2019) at ¶¶ 1, 102-110, 134.

{¶ 9} R.C. 4928.143(C)(2)(a) states that if the Commission modifies and approves an application for an ESP, the EDU may withdraw the application, thereby terminating it. On November 26, 2019, DP&L filed a notice of withdrawal of its application and amended application filed in the *ESP III Case*, pursuant to this statute. The Commission accepted that withdrawal in the *ESP III Case* on December 18, 2019.

{¶ 10} On November 26, 2019, DP&L also filed proposed tariffs in this proceeding to implement the provisions, terms and conditions of ESP I, its most recent ESP prior to ESP III. On December 4, 2019, comments were filed by Ohio Energy Group, Ohio Hospital Association, Industrial Energy Users-Ohio (IEU-Ohio) and the Retail Energy Supply Association (RESA). Joint comments were filed on December 4, 2019 by City of Dayton and Honda of America Mfg., Inc. (Dayton/Honda). Further, Ohio Consumers' Counsel (OCC), Ohio Manufacturers' Association (OMA) and The Kroger Co. (Kroger) filed a motion on December 4, 2019, seeking rejection of DP&L's proposed tariff filing. DP&L filed a memorandum contra the Consumer Groups' motion on December 10, 2019.

{¶ 11} On December 18, 2019, the Commission approved DP&L proposed tariffs, subject to the modifications directed by the Commission. Second Finding and Order (Dec. 18, 2019). Subsequently, on January 17, 2020, applications for rehearing were filed by IEU-Ohio, IGS, OCC, and Dayton/Honda, and a joint application for rehearing was filed by OMA and Kroger.

{¶ 12} Thereafter, on January 22, 2020, DP&L filed a motion for an extension of time to file memorandum contra to the applications for rehearing filed on January 17, 2019 and a request for expedited consideration.¹

III. DISCUSSION

{¶ 13} In support of its request for an expedited ruling, DP&L represented that it contacted counsel for all intervening parties by email to determine whether there would be objections. DP&L represented that it received no objections to the issuance of an expedited ruling and that several parties had expressly stated they had no objection. However, 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 this proceeding was not included on the

¹ A similar motion was filed in the *ESP III Case* in response to an application for rehearing filed by OCC.

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. Counsel for DP&L thus requested a telephone conference. During that telephone conference, 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.

{¶ 14} 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.

IV. CONCLUSION

{¶ 15} 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 application 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.

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That DP&L's motion for extension of time to file a memorandum contra the applications for rehearing filed on January 17, 2020, be granted to the extent set forth in Paragraph 15. It is, further,

{¶ 18} ORDERED, That memorandum contra to the applications for rehearing filed on January 17, 2020, be filed by February 3, 2020. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Gregory A. Price

By: Gregory A. Price
Attorney Examiner

MJA/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 granting motion for extension of time and setting deadline to file memorandum contra applications for rehearing electronically filed by Heather A Chilcote on behalf of Gregory A. Price, Attorney Examiner, Public Utilities Commission of Ohio