

## 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

### FOURTH ENTRY ON REHEARING

Entered in the Journal on February 14, 2020

#### I. SUMMARY

{¶ 1} In Fourth Entry on Rehearing, the Commission denies the application for rehearing filed by Interstate Gas Supply and grants the remaining applications for rehearing for the purpose of further consideration of the matters raised in 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. DP&L also filed on November 26, 2019, 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) (collectively, Consumer Groups) 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. Consumer Groups filed a reply on December 17, 2019.

{¶ 10} The Commission accepted the withdrawal of ESP III in the *ESP III Case* on December 18, 2019. *ESP III Case*, Finding and Order (Dec. 18, 2019). On December 18, 2019, in this proceeding, the Commission also approved DP&L's proposed tariffs, implementing the provisions terms and conditions of ESP I, 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.

{¶ 11} 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, 2020 and a request for expedited consideration. The motion for extension of time was granted by the attorney examiner, and DP&L filed its memorandum contra on February 3, 2020. On February 4, 2020, RESA filed a motion for leave to file memorandum contra *instanter* to the application for rehearing filed by IGS.

### III. CONCLUSION

{¶ 12} The Commission finds that IGS' application for rehearing should be denied because IGS is not a party to this proceeding and IGS has not sought leave to file an application for rehearing. R.C. 4903.10 states that, after any order has been made by the Commission, any "party" who has entered an appearance in person or by counsel in the

proceeding may apply for a rehearing in respect to any matters determined in the proceeding. IGS is not a “party” to this proceeding. Ohio Adm.Code 4901-1-10 enumerates who are parties to a Commission proceeding, and R.C. 4903.221 and Ohio Adm.Code 4901-1-11 establish criteria for intervention. IGS did not seek and has not been granted intervention in this case. IGS did file comments in this proceeding on August 12, 2016, on one narrow issue, but the filing of comments, without filing a motion to intervene, does not make an interested person a “party” to a Commission proceeding. R.C. 4903.10 also provides that an affected person, firm or corporation may file for rehearing in an uncontested proceeding or by leave of the Commission. However, this proceeding is not an uncontested proceeding, and IGS did not seek leave from the Commission to file its application for rehearing. Accordingly, IGS application for rehearing must be denied.

{¶ 13} In light of our ruling, RESA’s motion for leave to file a memorandum contra instanter to the application for rehearing filed by IGS is moot.

{¶ 14} The Commission denies the application for rehearing filed by IGS and grants the remaining applications for rehearing filed on January 17, 2020. We believe that sufficient reason has been set forth by the parties to warrant further consideration of the matters specified in the applications for rehearing.

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That the applications for rehearing filed on January 17, 2020, be granted for further consideration of the matters specified in the applications for rehearing. It is, further,

{¶ 17} ORDERED, That a copy of this Fourth Entry on Rehearing be served upon each party of record.

COMMISSIONERS:

*Approving:*

M. Beth Trombold

Daniel R. Conway

Dennis P. Deters

*Recusal:*

Lawrence K. Friedeman

GAP/hac

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Summary: Entry in Fourth Entry on Rehearing, the Commission denies the application for rehearing filed by Interstate Gas Supply and grants the remaining applications for rehearing for the purpose of further consideration of the matters raised in the applications for rehearing filed on January 17, 2020. electronically filed by Docketing Staff on behalf of Docketing