

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE APPLICATION OF
THE DAYTON POWER AND LIGHT
COMPANY FOR APPROVAL OF ITS PLAN
TO MODERNIZE ITS DISTRIBUTION GRID.**

CASE No. 18-1875-EL-GRD

**IN THE MATTER OF THE APPLICATION OF
THE DAYTON POWER AND LIGHT
COMPANY FOR APPROVAL OF A LIMITED
WAIVER OF OHIO ADM.CODE 4901:1-18-
06(A)(2).**

CASE No. 18-1876-EL-WVR

**IN THE MATTER OF THE APPLICATION OF
THE DAYTON POWER AND LIGHT
COMPANY FOR APPROVAL OF CERTAIN
ACCOUNTING METHODS.**

CASE No. 18-1877-EL-AAM

**IN THE MATTER OF THE APPLICATION OF
THE DAYTON POWER AND LIGHT
COMPANY FOR ADMINISTRATION OF THE
SIGNIFICANTLY EXCESSIVE EARNINGS
TEST UNDER R.C. 4928.143(F) AND OHIO
ADM.CODE 4901:1-35-10 FOR 2018.**

CASE No. 19-1121-EL-UNC

**IN THE MATTER OF THE APPLICATION OF
THE DAYTON POWER AND LIGHT
COMPANY FOR A FINDING THAT ITS
CURRENT ELECTRIC SECURITY PLAN
PASSES THE SIGNIFICANTLY EXCESSIVE
EARNINGS TEST AND MORE FAVORABLE
IN THE AGGREGATE TEST IN R.C.
4928.143(E).**

CASE No. 20-680-EL-UNC

**IN THE MATTER OF THE APPLICATION OF
THE DAYTON POWER AND LIGHT
COMPANY FOR ADMINISTRATION OF THE
SIGNIFICANTLY EXCESSIVE EARNINGS
TEST UNDER R.C. 4928.143(F) AND OHIO
ADM.CODE 4901:1-35-10 FOR 2019.**

CASE No. 20-1041-EL-UNC

ENTRY

Entered in the Journal on October 27, 2020

{¶ 1} The Dayton Power and Light Company (DP&L) is an electric distribution utility, an electric light company, and a public utility as defined in R.C. 4928.01(A)(6), R.C. 4905.03(C), and R.C. 4905.02, respectively. As such, DP&L is subject to the jurisdiction of this Commission.

General Procedural History

{¶ 2} 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 service. 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.

{¶ 3} Pursuant to R.C. 4928.143(F), following the end of each annual period of an approved ESP, the Commission is required to evaluate if any adjustments resulted in significantly excessive earnings for the electric utility. This determination is measured by whether the earned return on common equity of the utility is significantly in excess of the return on common equity that was earned during the same period by publicly traded companies (including other utilities) that face comparable business and financial risk, with adjustments for capital structure as may be appropriate.

{¶ 4} Pursuant to R.C. 4928.143(E), if a Commission-approved ESP has a term that exceeds three years from the effective date of the plan, the Commission must test the plan in the fourth year to determine whether the ESP, including its then-existing pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, continues to be more favorable in the aggregate and during the remaining term of the plan as compared to the expected results that would otherwise apply under R.C. 4928.142, i.e., under an MRO. The Commission must also determine the prospective effect of the ESP to determine if that effect is substantially likely to provide the EDU with a return on common equity that is significantly in excess of the return on common equity that is likely to be

earned by publicly traded companies, including utilities, that face comparable business and financial risk, with adjustments for capital structure as may be appropriate. The administration of these two tests—the more favorable in the aggregate test and the significantly excessive earnings test—is referred to herein as the quadrennial review.

{¶ 5} On October 20, 2017, the Commission approved, with modifications, DP&L’s third application for an ESP under R.C. 4928.143. *In re the Application of Dayton Power and Light Co. to Establish a Std. Serv. Offer in the Form of an Electric Security Plan*, Case No. 16-395-EL-SSO (*ESP III Case*), Opinion and Order (Oct. 20, 2017).

{¶ 6} On November 26, 2019, DP&L filed a notice of withdrawal of its application for ESP III under R.C. 4928.143(C)(2)(a). *ESP III Case*, Notice of Withdrawal (Nov. 26, 2019). Additionally, citing to R.C. 4928.143(C)(2)(b), DP&L filed proposed revised tariffs seeking to implement its most recent SSO, which was its first ESP (ESP I). *In re 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 (*ESP I Case*), Proposed Revised Tariffs (Nov. 26, 2019). On December 18, 2019, the Commission issued a Finding and Order approving DP&L’s withdrawal of its Application, thereby terminating ESP III. *ESP III Case*, Finding and Order (Dec. 18, 2019).

{¶ 7} On December 18, 2019, the Commission also issued a Second Finding and Order approving, with modifications, DP&L’s proposed revised tariffs in order to continue the provisions, terms, and conditions of ESP I. *ESP I Case*, Second Finding and Order (Dec. 18, 2019). In addition to restoring ESP I, the Commission acknowledged that the term of ESP I has cumulatively exceeded three years and is thus subject to mandatory review under R.C. 4928.143(E). Accordingly, the Commission directed DP&L to open a docket by April 1, 2020, in which the Commission would conduct the quadrennial review detailed in R.C. 4928.143(E). *ESP I Case*, Second Finding and Order (Dec. 18, 2019) at ¶ 41.

{¶ 8} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the

dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

Relevant Proceedings

{¶ 9} On December 21, 2018, the Company filed an application for approval if its plan to modernize its distribution grid together with a requests for a limited waiver of Ohio Adm.Code 4901:1-18-06(A)(2) and for approval of certain accounting methods necessary to implement its plan. *In re Application of The Dayton Power and Light Company for Approval of Its Plan to Modernize Its Distribution Grid*, Case No. 18-1875-EL-GRD; *In re Application of The Dayton Power and Light Company for Approval of a Limited Waiver of Ohio Adm.Code 4901:1-18-06(A)(2)*, Case No. 18-1876-EL-WVR; *In re Application of The Dayton Power and Light Company for Approval of Certain Accounting Methods*, Case No. 18-1877-EL-AAM (combined, *Smart Grid Case*).

{¶ 10} On May 15, 2019, DP&L filed an application and supporting documents for the administration of the significantly excessive earnings test for calendar year 2018. *In re Application of The Dayton Power and Light Company for Administration of the Significantly Excessive Earnings Test Under R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2018*, Case No. 19-1121-EL-UNC (2018 SEET Case).

{¶ 11} On April 1, 2020, pursuant to the Commission's Second Finding and Order in the *ESP I Case*, DP&L filed an application for a finding that its current ESP passes the administration of the quadrennial review for the forecast period of 2020-2023. *In re Application of The Dayton Power and Light Company for a Finding that Its Current Electric Security*

Plan Passes the Significantly Excessive Earnings Test and More Favorable in the Aggregate Test in R.C. 4928.143(E), Case No. 20-680-EL-UNC (Quadrennial Review Case).

{¶ 12} On May 15, 2020, in Case No. 20-1041-EL-UNC, DP&L filed an application and supporting documents for the administration of the significantly excessive earnings test for calendar year 2019. *In re Application of The Dayton Power and Light Company for Administration of the Significantly Excessive Earnings Test Under R.C. 4928.143(F) and Ohio Adm.Code R.C. 4901:1-35-10 for 2019, Case No. 20-1041-EL-UNC (2019 SEET Case).*

{¶ 13} Throughout the procedural history of these cases, the following entities have sought and been granted intervention in the *2018 SEET Case*, *2019 SEET Case*, and/or the *Quadrennial Review Case*: the City of Dayton (Dayton); Honda of America Mfg., Inc. (Honda); Industrial Energy Users-Ohio (IEU-Ohio); Interstate Gas Supply, Inc.; Kroger Co. (Kroger); Ohio Consumers' Counsel (OCC); Ohio Energy Group (OEG); Ohio Hospital Association (OHA); Ohio Manufacturers' Association Energy Group (OMAEG); and University of Dayton (UD). The following additional entities filed motions to intervene in the *Smart Grid Case*: Armada Power, LLC (Armada); ChargePoint, Inc. (ChargePoint); Direct Energy Services, LLC and Direct Energy Businesses, LLC (Direct Energy); Environmental Law & Policy Center (ELPC); IGS Solar, LLC; Mission:data Coalition (Mission:data); Natural Resources Defense Council (NRDC); Ohio Environmental Council (OEC); Ohio Partners for Affordable Energy (OPAE); Sierra Club; and The Smart Thermostat Coalition (STC). These motions remain pending and are unopposed. For good cause shown, the attorney examiner finds that the motions to intervene are reasonable and should be granted.

{¶ 14} On October 23, 2020, DP&L and other parties listed below filed a stipulation and recommendation (Stipulation) that purports to resolve all issues raised in the *Smart Grid Case*, the *2018 SEET Case*, the *2019 SEET Case*, and the *Quadrennial Review Case*. The following entities are signatory parties to the Stipulation: DP&L, Staff, Dayton, IEU-Ohio, Interstate Gas Supply, Inc. and IGS Solar, LLC (together, IGS), OEG, OHA, OMAEG, Kroger, Honda, OPAE, UD, Mission:data, STC, ELPC, Sierra Club, NRDC, OEC, ChargePoint, and

Armada. The Stipulation does not indicate Direct Energy's or OCC's position as a non-opposing or opposing party.

Procedural Schedule

{¶ 15} At this time, the attorney examiner determines that the *Smart Grid Case*, the *2018 SEET Case*, the *2019 SEET Case*, and the *Quadrennial Review Case* should be consolidated for purposes of considering the Stipulation. Furthermore, the following procedural schedule will govern this proceeding going forward:

- (a) All motions to intervene shall be filed by November 20, 2020.
- (b) Testimony in support of the Stipulation, except that submitted by Staff, shall be filed by November 30, 2020.
- (c) Testimony in opposition to the Stipulation shall be filed by December 14, 2020.
- (d) All discovery requests, except notices of deposition, shall be served by December 21, 2020.
- (e) Staff shall file testimony by December 30, 2020.
- (f) A prehearing conference and technology test session will be conducted virtually on January 5, 2021, at 10:00 a.m.
- (g) An evidentiary hearing will commence January 11, 2021, at 10:00 a.m., via remote hearing technology.
- (h) Anyone interested in attending the evidentiary hearing as a non-party can access the hearing using the link <http://bit.ly/18-1875-EVH>, and entering the password PUCO, or by calling 1-408-418-9388, and entering access code/event number 173 197 9170.

- (i) Instructions for participation by the parties in the prehearing conference and the evidentiary hearing will be sent to counsel at his or her email address of record prior to the relevant event.

{¶ 16} This procedural schedule supersedes and replaces any procedural schedule previously issued in any of the newly consolidated cases. For the purposes of intervention, any party previously granted intervention in any of the four cases is hereby deemed a party in all cases unless otherwise requested by that party no later than the new intervention deadline.

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That the motions to intervene filed by Armada, ChargePoint, Direct Energy, ELPC, IGS Solar, LLC, Mission:data, NRDC, OEC, OP&E, Sierra Club, and STC in the *Smart Grid Case* be granted as stated in Paragraph 13. It is, further,

{¶ 19} ORDERED, That the *Smart Grid Case*, the *2018 SEET Case*, the *2019 SEET Case*, and the *Quadrennial Review Case* be consolidated for purposes of consideration of the Stipulation as stated in Paragraph 15. It is, further,

{¶ 20} ORDERED, That all parties and interested persons follow the procedural schedule set forth in Paragraph 15. It is, further,

{¶ 21} ORDERED, That a copy of this Entry be served upon all interested persons and parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Patricia A. Schabo

By: Patricia A. Schabo
Attorney Examiner

GAP/hac

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Case No(s). 18-1875-EL-GRD, 18-1876-EL-WVR, 18-1877-EL-AAM, 19-1121-EL-UNC, 20-0680-EL-UNC

Summary: Attorney Examiner Entry granting motions to intervene filed by Armada, ChargePoint, Direct Energy, ELPC, IGS Solar, LLC, Mission:data, NRDC, OEC, OPAA, Sierra Club, and STC in the Smart Grid Case; ordering that the Smart Grid Case, the 2018 SEET Case, the 2019 SEET Case, and the Quadrennial Review Case be consolidated for purposes of consideration of the Stipulation as stated in Paragraph 15; and, ordering that all parties and interested persons follow the procedural schedule set forth in Paragraph 15 electronically filed by Heather A Chilcote on behalf of Patricia Schabo, Attorney Examiner, Public Utilities Commission