

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REVIEW OF THE
RECONCILIATION RIDER OF THE
DAYTON POWER AND LIGHT COMPANY.

CASE NO. 20-165-EL-RDR

ENTRY

Entered in the Journal on November 30, 2020

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

{¶ 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 established as a market rate offer under R.C. 4928.142 or an electric security plan (ESP) under 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 an Opinion and Order modifying and approving an amended stipulation and establishing ESP III with an effective date of November 1, 2017. *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). As part of the approved ESP III, the Commission authorized DP&L to recover or credit the net proceeds of selling Ohio Valley Electric Corporation (OVEC) energy and capacity into the PJM Interconnection, LLC (PJM) marketplace and OVEC costs through a reconciliation rider. *ESP III Case*, Opinion and Order (Oct. 20, 2017) at ¶ 14, 63, 119. The reconciliation rider became effective as part of ESP III and is subject to annual true-ups. *Id.*

{¶ 4} On September 14, 2018, in Case No. 18-1379-EL-RDR, DP&L filed an application to update the reconciliation rider for the period spanning November 1, 2018, through October 31, 2019. The application proposed an increased rider rate of \$0.68 per month (for a typical residential customer using 1,000 kilowatt hours) and new tariff language clarifying that the reconciliation rider is subject to reconciliation, including refunds to customers, based upon the results of audits as approved and ordered by the Commission. Ultimately, the Commission issued a Finding and Order approving DP&L's application. *In re The Dayton Power and Light Co.*, Case No. 18-1379-EL-RDR, Finding and Order (Oct. 24, 2018).

{¶ 5} In July 2019, the 133rd General Assembly passed Amended Substitute House Bill Number 6 (H.B. 6), which enacted R.C. 4928.148 effective October 22, 2019. Pursuant to the new statute, on January 1, 2020, any mechanism authorized by the Commission prior to October 22, 2019, for recovery of prudently incurred costs related to a legacy generation resource—including OVEC—shall be replaced by a nonbypassable rate mechanism established by the Commission for recovery of those costs through December 31, 2030, from customers of all EDUs in Ohio. DP&L's reconciliation rider is subject to the new legislation and, thus, was required to be replaced by the statute's prescribed mechanism.

{¶ 6} On September 16, 2019, in Case No. 19-1776-EL-RDR, DP&L filed an application to update its reconciliation rider. Considering H.B. 6, the Company's application sought to update the reconciliation rider for the period November 1, 2019, through December 31, 2019, only. After evaluating the application and a September 26, 2019 review and recommendation by Staff, the Commission issued a Finding and Order approving the application to update the reconciliation rider rates effective November 1, 2019. *In re The Dayton Power and Light Co.*, Case No. 19-1776-EL-RDR, Finding and Order (Oct. 23, 2019).

{¶ 7} On November 21, 2019, the Commission established the new nonbypassable rate mechanism—the Legacy Generation Resource Rider (LGR Rider)—for recovery of

legacy generation resource costs pursuant to R.C. 4928.148. *In the Matter of Establishing the Nonbypassable Recovery Mechanism for Net Legacy Generation Resource Costs Pursuant to R.C. 4928.148*, Case No. 19-1808-EL-UNC, Entry (Nov. 21, 2019). On December 27, 2019, DP&L filed new tariff sheets, which replaced the reconciliation rider with the LGR Rider, bearing an effective date of January 1, 2020.

{¶ 8} On January 29, 2020, the Commission issued an Entry in this docket directing Staff to issue a request for proposal (RFP) for audit services to assist with a prudency and performance audit of DP&L's reconciliation rider for the period of November 1, 2018, through December 31, 2019. And, by Entry dated March 11, 2020, the Commission selected Vantage Energy Consulting, LLC (Vantage) to conduct the audit. Pursuant to the RFP, the final audit report was due to be filed with the Commission on September 16, 2020.

{¶ 9} On March 17, 2020, Ohio Consumers' Counsel (OCC) filed a motion to intervene on behalf of DP&L's residential customers.

{¶ 10} On September 16, 2020, Staff filed an unopposed motion for an extension of the deadline for filing the final audit report with a request for expedited consideration of the motion.

{¶ 11} By Entry dated September 17, 2020, the attorney examiner granted both the motion to intervene filed by OCC and Staff's motion to extend the filing deadline. The Entry extended the deadline for filing the final audit report to October 7, 2020.

{¶ 12} On October 7, 2020, Staff filed the audit report on behalf of Vantage.

{¶ 13} Also on October 7, 2020, Staff filed a motion for protective order requesting that the audit report be kept confidential pursuant to Ohio Adm.Code 4901-1-24. Staff seeks to protect from public release financial and other confidential information contained within the report that is highly sensitive in nature. Staff states that disclosure of the information to

the public would be prejudicial and that keeping the material confidential is consistent with Commission precedent in prior audit proceedings. The motion is unopposed.

{¶ 14} R.C. 4905.07 generally provides that information in the possession of the Commission shall be public, except as provided in R.C. 149.43 and as consistent with the purposes of R.C. Title 49. In turn, R.C. 149.43 provides that a record prohibited from release under state or federal law is not a “public record.” R.C. 149.43(A)(1)(v). This exemption includes information falling within the category of a trade secret. *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000). Similarly, under Ohio Adm.Code 4901-1-24, an attorney examiner may issue an order to protect the confidentiality of information before the Commission to the extent that state or federal law prohibits its release and where nondisclosure of the information is not inconsistent with the purposes of R.C. Title 49.

{¶ 15} Upon review of the material sought to be kept confidential, the attorney examiner finds that the motion for protective order should be granted subject to clarification. Specifically, the entirety of the audit report is not to be kept confidential; instead, only those portions redacted from the report as filed in the public record should be protected from public disclosure. In accordance with Ohio Adm.Code 4901-1-24, this protective order will automatically expire 24 months after the date of this Entry; any party wishing to extend the confidential treatment should file an appropriate motion at least 45 days in advance of the expiration date.

{¶ 16} The attorney examiner further finds it appropriate to allow the parties to file comments regarding the October 7, 2020 audit report pursuant to the following schedule:

- (a) January 5, 2021 – deadline for filing comments.
- (b) January 20, 2021 – deadline for filing reply comments.

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That Staff's motion for a protective order be granted as stated in Paragraph 15. It is, further,

{¶ 19} ORDERED, That the parties follow the comment schedule set forth in Paragraph 16. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Patricia A. Schabo

By: Patricia A. Schabo
Attorney Examiner

JRJ/hac

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/30/2020 11:46:45 AM

in

Case No(s). 20-0165-EL-RDR

Summary: Attorney Examiner Entry granting Staff's motion for a protective order and ordering that the parties follow the comment schedule set forth in Paragraph 16 electronically filed by Heather A Chilcote on behalf of Patricia Schabo, Attorney Examiner, Public Utilities Commission