

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 December 4, 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.

{¶ 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 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*).

{¶ 9} On August 23, 2019, and August 29, 2019, motions to appear pro hac vice on behalf of the Environmental Law & Policy Center in the *Smart Grid Case* were filed by Nikhil Vijaykar and Robert Kelter, respectively. Each motion is accompanied by the required affidavit and a copy of the movant's certificate of pro hac vice registration furnished by the Supreme Court of Ohio and otherwise complies with Ohio Adm.Code 4901-1-08. The attorney examiner finds that each motion is reasonable and should be granted.

{¶ 10} On May 15, 2019, DP&L filed an application and supporting documents for the administration of the significantly excessive earnings test (SEET) 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 SEET 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} On October 23, 2020, DP&L filed a stipulation and recommendation (Stipulation) executed by the Company, Staff, and 19 intervening parties 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*.¹

{¶ 14} By Entry dated October 27, 2020, the attorney examiner consolidated the *Smart Grid Case*, the *2018 SEET Case*, the *2019 SEET Case*, and the *Quadrennial Review Case* for purposes of considering the Stipulation. The Entry also set forth a procedural schedule to govern the consolidated proceeding, which schedule included staggered deadlines for filing testimony in support of and in opposition to the Stipulation. Specifically, testimony in support of the Stipulation was to be filed by November 20, 2020, testimony in opposition to the Stipulation is to be filed by December 14, 2020, and Staff is to file testimony by December 30, 2020.

{¶ 15} On December 1, 2020, the Supreme Court of Ohio issued an opinion in an appeal taken from the Commission's determination that Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, FirstEnergy) did not have significantly excessive earnings under its ESP for calendar year 2017.² *In re Determination of Existence of Significantly Excessive Earnings for 2017 Under the Elec. Sec. Plan for Ohio Edison Co.*, Slip Opinion No. 2020-Ohio-5450. As is relevant herein, the Court concluded that the Commission's decision to exclude revenue resulting from

¹ There are 24 parties involved in these consolidated cases: DP&L, Staff, and 22 intervenors. Of these parties, only Direct Energy Services, LLC, Direct Energy Businesses, LLC, and Ohio Consumers' Counsel are not signatory parties to the Stipulation.

² The Commission issued its Opinion and Order approving and adopting, as modified, a stipulation between FirstEnergy and Staff on March 20, 2019. *In re the Determination of the Existence of Significantly Excessive Earnings for 2017 Under the Electric Security Plan of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 18-857-EL-UNC, Opinion and Order (March 20, 2019).

FirstEnergy's Distribution Modernization Rider (DMR), which had been approved as part of the ESP, was not reasonable. *In re Ohio Edison, supra*, at ¶ 3, 16. More specifically, the Court stated that "the commission's interpretation of R.C. 4928.143(F) – that it allows the exclusion of DMR revenue from the SEET – is not reasonable." *In re Ohio Edison, supra*, at ¶ 16. Accordingly, the Court reversed the Commission's orders and remanded the case for further review. *In re Ohio Edison, supra*, at ¶ 3, 65. Further, the Court instructed the Commission to "conduct a new SEET proceeding in which it includes the DMR revenue in the analysis, determines the SEET threshold, considers whether any adjustments under R.C. 4928.143(F) are appropriate, and makes any other determinations that are necessary to resolve [the] matter" on remand. *In re Ohio Edison, supra*, at ¶ 65.

{¶ 16} The Stipulation subject to review in these consolidated proceedings includes the resolution of both the *2018 SEET Case* and the *2019 SEET Case*, the applications for which seek a Commission finding that the Company did not have significantly excessive earnings under R.C. 4928.143(F) for calendar year 2018 and 2019, respectively. Each of the applications, and the submitted supporting testimony, exclude the Company's DMR revenues from the necessary calculations. At this time, the attorney examiner finds it reasonable to permit the parties to submit separate, supplemental testimony regarding how the SEET test should be conducted in light of the Supreme Court of Ohio's recent decision in *In re Ohio Edison*. In conjunction with the procedural schedule issued October 27, 2020, the parties may file this narrowly-focused supplemental testimony on or before December 23, 2020.

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That the motions to appear pro hac vice filed on August 23, 2019, and August 29, 2019 be granted as stated in Paragraph 9. It is, further,

{¶ 19} ORDERED, That the parties be permitted to file supplemental testimony in accordance with Paragraph 16. It is, further,

{¶ 20} 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

MJA/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 ordering that the motions to appear pro hac vice filed on August 23, 2019, and August 29, 2019 be granted as stated in Paragraph 9 and ordering that the parties be permitted to file supplemental testimony in accordance with Paragraph 16 electronically filed by Heather A Chilcote on behalf of Patricia Schabo, Attorney Examiner, Public Utilities Commission