

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 11, 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} 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 above-captioned cases.¹

{¶ 3} By Entry dated October 27, 2020, the attorney examiner consolidated the six cases for purposes of considering the Stipulation and granted all motions to intervene that were still pending. 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 (except by Staff) 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.

{¶ 4} On November 30, 2020, DP&L and Mission:Data Coalition filed testimony in support of the Stipulation.

{¶ 5} 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 electric security plan

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.

(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 to these proceedings, the Court concluded that the Commission's decision to exclude revenue resulting from 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 [significantly excessive earnings test (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.

{¶ 6} On December 4, 2020, the attorney examiner issued an entry recognizing that the Stipulation subject to review in these consolidated proceedings includes the resolution of two applications filed by DP&L that seek a finding that the Company did not have significantly excessive earnings under R.C. 4928.143(F): one for calendar year 2018 (Case No. 19-1121-EL-UNC) and one for calendar year 2019 (Case No. 20-1041-EL-UNC). Because those applications, and the submitted supporting testimony, excluded the Company's DMR revenues from the necessary calculations, the December 4, 2020 Entry permits the parties to file supplemental testimony regarding how the SEET should be conducted in light of the Supreme Court of Ohio's decision in *In re Ohio Edison, supra*, Slip Opinion No. 2020-Ohio-5450. The deadline for filing this tailored supplemental testimony is December 23, 2020.

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).

{¶ 7} The December 4, 2020 Entry also granted a motion to appear pro hac vice on behalf of the Environmental Law & Policy Center (ELPC) filed by Robert Kelter on August 23, 2019, in the first three of the above-captioned cases (Case Nos. 18-1875-EL-GRD, 18-1876-EL-WVR, and 18-1877-EL-AAM). On further review of the record, the attorney examiner notes that Mr. Kelter filed a “Notice of Withdraw of Counsel” (Notice) on January 2, 2020, in Case No. 18-1875-EL-GRD. The Notice indicates that Mr. Kelter intended to withdraw as counsel for ELPC, but that all other attorneys listed for the party should remain unchanged. To give effect to Mr. Kelter’s intention to withdraw as counsel for ELPC, the attorney examiner vacates that part of the December 4, 2020 Entry granting his motion to appear pro hac vice. Counsel need not include Mr. Kelter in any correspondence or service of documents in these cases on a prospective basis.

{¶ 8} On December 10, 2020, Ohio Consumers’ Counsel (OCC) filed a motion for a three-day extension for filing its testimony opposing the Stipulation and requested an expedited ruling. OCC seeks to extend its filing deadline from December 14, 2020, to December 17, 2020. For cause, OCC cites to an increased press in business associated with activity in the legislative “lame duck” session and other unfolding events. OCC states that the requested extension would allow it a reasonable opportunity to complete testimony in opposition to the Stipulation and would not prejudice other parties or cause a delay in the remaining procedural schedule, which does not require Staff to file testimony until December 30, 2020. In support of its request for an expedited ruling, OCC invokes Ohio Adm.Code 4901-1-12(C), which permits an immediate ruling without the filing of memoranda where a motion requests an extension of time of five days or less.

{¶ 9} On December 11, 2020, Staff filed a memorandum contra OCC’s motion for extension. Staff states that it opposes OCC’s request because it allows less time for Staff to review any testimony submitted by OCC in Staff’s preparation of its own testimony, which is compounded by the fact that Staff’s testimony is due during a holiday week. Thus, Staff requests that OCC’s motion be denied. Alternatively, and in the event that the Commission grants an extension to OCC, Staff requests that the Commission also grant an extension of

the deadline for filing its testimony in support of the Stipulation. Staff requests that the December 30, 2020 deadline be extended to January 5, 2021.

{¶ 10} Because both extensions can be granted without causing undue delay or great prejudice to any party, the attorney examiner finds that OCC's motion should be granted. However, the attorney examiner notes that there is a prehearing conference scheduled to occur in this consolidated matter on January 5, 2021. To allow a full discussion of the issues and procedural matters prior to the January 11, 2021 hearing, the attorney examiner finds that all testimony should be filed, with all parties having had at least a brief opportunity to review the same, before the prehearing conference takes place. Therefore, Staff's requested extension will be lessened by one day. Accordingly, OCC shall file testimony on or before December 17, 2020, and Staff shall file testimony on or before January 4, 2021.

{¶ 11} The December 23, 2020 deadline for filing supplemental testimony regarding how the SEET should be conducted in light of *In re Ohio Edison, supra*, Slip Opinion No. 2020-Ohio-5450, remains unchanged.

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That the portion of the December 4, 2020 Entry granting Robert Kelter's motion to appear pro hac vice be vacated, as stated in Paragraph 7. It is, further,

{¶ 14} ORDERED, That OCC's motion for extension of time to file testimony in opposition to the Stipulation be granted, as stated in Paragraph 10. It is, further,

{¶ 15} ORDERED, That OCC and Staff observe the new filing deadlines set forth Paragraph 10. It is, further,

{¶ 16} 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 portion of the December 4, 2020 Entry granting Robert Kelter's motion to appear pro hac vice be vacated, as stated in Paragraph 7; ordering that OCC's motion for extension of time to file testimony in opposition to the Stipulation be granted, as stated in Paragraph 10; and, ordering that OCC and Staff observe the new filing deadlines set forth Paragraph 10 electronically filed by Heather A Chilcote on behalf of Patricia Schabo, Attorney Examiner, Public Utilities Commission