

## 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

### ENTRY

Entered in the Journal on July 22, 2021

#### I. SUMMARY

{¶ 1} In this Entry, the attorney examiner grants The Dayton Power and Light Company's motion for an extension of time to file memoranda contra the applications for rehearing filed on July 16, 2021.

#### II. PROCEDURAL HISTORY

{¶ 2} The Dayton Power and Light Company (DP&L or the Company) 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 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 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 extended 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 as directed by the Court and then granted DP&L's application to withdraw ESP II, thereby terminating it. *ESP II Case*, Finding and Order (Aug. 26, 2016). 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, 2016), Third Entry on Rehearing (Dec. 14, 2016).

{¶ 7} 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 ESP (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. The Supreme Court of Ohio then dismissed as moot the appeals of the August 26, 2016 Finding and Order which reinstated ESP I, including the RSC. *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.

{¶ 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, 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 1487, 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 (Nov. 21, 2019) at ¶¶ 1, 102-110, 134.

{¶ 9} 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 R.C. 4928.143(C)(2)(a). 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. 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, 2019, 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} On February 14, 2020, the Commission issued a Fourth Entry on Rehearing, in which it denied the application for rehearing filed by IGS and granted the remaining applications for rehearing for the purpose of further consideration of the matters raised in the applications for rehearing.

{¶ 12} On June 16, 2021, the Commission issued a Fifth Entry on Rehearing, granting, in part, and denying, in part, the application for rehearing submitted by OCC.

{¶ 13} On July 16, 2021, OCC and DP&L each filed an application for rehearing regarding the Fifth Entry on Rehearing. On July 19, 2021, the Company filed a motion for extension of time to file memoranda contra the applications for rehearing. DP&L requested an expedited ruling on the motion. On July 20, 2021, the attorney examiner directed that memoranda contra the motion be filed by July 21, 2021.

{¶ 14} Subsequently on July 21, 2021, OCC filed a memorandum contra the motion for an extension.

{¶ 15} In support of its motion for an extension, the Company notes that Ohio Adm.Code 4901-1-35(B) requires that memoranda contra applications for rehearing be filed within ten days. In this case, OCC and DP&L each filed applications for rehearing on July

16, 2021; accordingly, by rule, memoranda contra the applications for rehearing should be due on July 26, 2021. The Company seeks a four-day extension of this deadline. The Company claims that there is good cause to extend the deadline due to the various issues raised by OCC, summer travel schedules, and the application for rehearing filed by OCC on July 16, 2021, in *In re The Dayton Power and Light Co.*, Case No. 18-1875-EL-GRD, et al. (*Quadrennial Review Case*).

{¶ 16} OCC opposes the four-day extension, claiming that the ten days provided by rule is sufficient time for DP&L to respond to the application for rehearing.

{¶ 17} The attorney examiner finds that the brief extension requested by the Company is reasonable given the simultaneous filing of the applications for rehearing in the *Quadrennial Review Case*. Therefore, DP&L's motion should be granted. The attorney examiner clarifies that the extension of time for filing memoranda contra applies to both memoranda contra the application for rehearing filed by OCC and memoranda contra the application for rehearing filed by DP&L.

### III. ORDER

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That DP&L's motion for an extension of time to file memoranda contra the applications for rehearing filed on July 16, 2021, be granted. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Gregory A. Price

By: Gregory A. Price  
Attorney Examiner

SJP/hac

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**7/22/2021 10:48:41 AM**

**in**

**Case No(s). 08-1094-EL-SSO, 08-1095-EL-ATA, 08-1096-EL-AAM, 08-1097-EL-UNC**

Summary: Attorney Examiner Entry ordering that DP&L's motion for an extension of time to file memoranda contra the applications for rehearing filed on July 16, 2021, be granted electronically filed by Heather A. Chilcote on behalf of Gregory A. Price, Attorney Examiner, Public Utilities Commission of Ohio