

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 ON REHEARING

Entered in the Journal on August 11, 2021

I. SUMMARY

{¶ 1} In this Entry on Rehearing, the Commission grants the applications for rehearing filed by Ohio Consumers' Counsel and The Dayton Power and Light Company for the purpose of further consideration of the matters raised in the applications for rehearing.

II. PROCEDURAL HISTORY

A. *General Procedural History*

{¶ 2} The Dayton Power and Light Company (DP&L or Company) is an electric distribution utility (EDU), 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.

{¶ 3} R.C. 4928.141 provides that an 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.

{¶ 4} 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.

{¶ 5} 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 (MFA test) and the significantly excessive earnings test (SEET)—is referred to herein as the quadrennial review.

{¶ 6} On October 20, 2017, the Commission approved, with modifications, DP&L’s application for its third ESP (ESP III) 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).

{¶ 7} 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).

{¶ 8} On December 18, 2019, the Commission also issued a Second Finding and Order approving, with modifications, DP&L’s proposed revised tariffs 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 had cumulatively exceeded three years and was 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.

B. 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 request 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 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} 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). Further, pursuant to the attorney examiner entry issued on October 27, 2020, the following additional entities were granted intervention in the *Smart Grid Case*: Armada Power, LLC (Armada); ChargePoint, Inc. (ChargePoint); Direct Energy Services, LLC and Direct Energy Businesses, LLC (together, Direct Energy); Environmental Law & Policy Center (ELPC); IGS Solar, LLC (IGS Solar); 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).

{¶ 14} 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

{¶ 15} 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

¹ There are 24 parties involved in these consolidated cases: DP&L, Staff, and 22 intervenors. Of these parties, only Direct Energy and OCC are not signatory parties to the Stipulation.

purposes of considering the Stipulation and established a procedural schedule, which included deadlines for filing testimony regarding the Stipulation.

{¶ 16} 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. *In re Determination of Existence of Significantly Excessive Earnings for 2017 Under the Elec. Sec. Plan for Ohio Edison Co.*, 162 Ohio St.3d 651, 166 N.E.3d 1191, 2020-Ohio-5450. In its decision, the Court determined that the Commission erred in excluding revenue resulting from FirstEnergy's Distribution Modernization Rider (DMR) in determining the company's SEET earnings. As a result, the Court reversed the Commission's orders and remanded the case for further review, instructing 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* at ¶ 65.

{¶ 17} On December 4, 2020, in recognition of the application of the Supreme Court of Ohio's decision in *In re Ohio Edison* to the determination of both the 2018 SEET Case and the 2019 SEET Case, the attorney examiner modified the procedural schedule in the case, determining that the parties were permitted to submit separate, supplemental testimony regarding how the SEET test should be conducted.

{¶ 18} Following the evidentiary hearing that commenced on January 11, 2021, the Commission adopted the Stipulation, which resolved all issues raised in the *Smart Grid Case*, the 2018 SEET Case, the 2019 SEET Case, and the *Quadrennial Review Case*. Opinion and Order (June 16, 2021).

{¶ 19} On July 16, 2021, OCC and DP&L filed separate applications for rehearing.

{¶ 20} On July 19, 2021, DP&L filed a motion for extension of time to file memoranda in opposition to applications for rehearing. On July 21, 2021, OCC filed a memorandum contra DP&L's motion for extension of time to file memoranda in opposition to applications for rehearing. On July 22, 2021, the attorney examiner granted the motion for extension of time to file memoranda contra applications for rehearing, extending the time for filing memoranda contra as to both applications for rehearing until July 30, 2021.

{¶ 21} On July 30, 2021, IGS Solar, IEU-Ohio, and DP&L separately filed memoranda contra OCC's application for rehearing. Also on July 30, 2021, OCC filed a memorandum contra DP&L's application for rehearing.

III. CONCLUSION

{¶ 22} The Commission grants the applications for rehearing filed by OCC and DP&L on July 16, 2021. We believe that sufficient reasons have been set forth by the parties to warrant further consideration of the matters specified in the applications for rehearing.

IV. ORDER

{¶ 23} It is, therefore,

{¶ 24} ORDERED, That the applications for rehearing filed by OCC and DP&L on July 16, 2021, be granted for further consideration of the matters specified in the applications for rehearing. It is, further,

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

COMMISSIONERS:

Approving:

Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

MLW/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: Entry on Rehearing, the Commission grants the applications for rehearing filed by Ohio Consumers' Counsel and The Dayton Power and Light Company for the purpose of further consideration of the matters raised in the applications for rehearing. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio